

**Crab & Hammer
Premises License Application 059397
Response to Karl Martin's concerns**

The Blue Sea Food company is seeking to open the Crab & Hammer to celebrate the fantastic Devon Crab. Additionally, we are looking to join with other businesses, organisations and harbour users in regenerating what we think is the prettiest harbour in Torbay.

It is our understanding that, since there were no major investors interested in wholesale regeneration of Paignton Harbour, the council's aim was to encourage local businesses to organically develop the area in order to attract more visitors to a largely unknown but delightful area of Torbay. With the support of the council this regeneration has begun with the new Harbour Lights restaurant, improvements to the Harbour Inn and the new Molly's café. Alongside the fabulous existing establishments including TJ's, The Curious Crab Café and the rowing club these new businesses have started to attract a respectable crowd of locals and tourists alike. We hope that our destination restaurant will further add to the creation of a wonderful harbour atmosphere that can become a real gem of Torbay.

We are fully aware of our 4 obligations under the licensing act and particularly appreciate the concerns over nuisance. As a restaurant rather than a bar we expect to cause very little noise, we have previously explained to the owners and tenants of the flats above that we have added several layers of sound insulation to the restaurant and we will of course make sure our guests respect the local residents. However, the working harbour never has been and never will be a sanctuary of peace, indeed many locals and the council itself want to create a buzzing and lively harbour that will attract locals and visitors to the area. We appreciate that it is our job to balance this with the local residence need to enjoy their homes.

With regard to outside seating, the government recognizes that, as a society, we want more outside eating and now positively encourages the promotion of these spaces in towns and cities throughout the UK. There are many examples, even in Torbay, that mixes bars and restaurants with flats above, not least with the new Abbey Sands, Torr Abbey, development that has become a vibrant and attractive area that has lifted the entrance to Torquay.

In summary our aim is to promote our fantastic Devon Crab at the same time as helping to regenerate Paignton Harbour which has been left behind by the developments in Torquay and Brixham. Paignton Harbour has a long history with crab and indeed our live crab and lobster tanks are at the end of the quay, exporting around the world from China to the USA, it seems logical to lean on this great heritage and have a crab shack on the harborside.

In answer to the points raised by Karl Martin (Public Protection Officer):

1. The premises, situated in Paignton Harbour, occupies the ground floor of a building with residential accommodation situated on the floors above and to the side. See Appendix 1.



- a. The restaurant is on the ground floor of a 3-story building with the flats occupying the 3rd floor only. On the middle floor there is only toilets and offices
2. The ground floor level has previously been used as an industrial unit. No record of any planning application for change of use was found on Torbay Council Planning portal. The applicant may wish to clarify if a planning application has been submitted.
 - a. The part of the building being converted to a restaurant has class 1 shop license; we have been advised that there is no need for change of use application
3. In the past residents living in the flats above have mentioned to Officers they could hear noise from industrial unit on the ground floor, but as the operation was largely confined to the daytime no official complaints were received. However, this does indicate the building may have poor sound attenuation properties that need consideration, particular for licensed premises.
 - a. While this was used as a live crab facility, we have been aware of complaints from one of the tenants in the flats above through numerous text messages. The site was used outside normal working hours including late nights and early mornings to fit in with flight schedules for our crab shipments to Asia
 - b. While converting the premises to a restaurant we have added substantial sound insulation to both floors and we have informed the tenants and owner of the flats above of this. The insulation includes:
 - i. Between the ground floor restaurant and the 2nd floor: 18mm floor boards, 50mm Celotex and 18mm floorboards
 - ii. Between the 2nd floor and the tenants above: Rock mineral fiber pads over mineral tile ceiling:
 - i. "Rock Mineral Fibre insulation pads when used in conjunction with mineral fibre suspended ceilings can dramatically
 - ii. reduce sound breakout. Typically, a 50mm 45 kg/m³ pad correctly installed can achieve a up to 45db rating and a 50mm 60 kg/m³ pad can achieve upto a 48db overall rating, with a 100mm pad being able to offer upto 70db overall, and 150mm offering around 85db overall, in conjunction with a mineral tile ceiling."
 - iii. The fans for the extraction are housed in sound insulated boxes
4. I would expect as part of the application the applicant would have submitted documentation such as a noise consultant report to offer some reassurance to residents and the responsible authority that noise nuisance arising from the business has been considered.
 - a. While we did not include a noise consultant report in our application we did include: the below in our application:
 - b. The prevention of public nuisance
 - i. Prominent, clear and legible notices will be displayed at all exits requesting the public to respect the needs of nearby residents and to leave the premises and the area quietly.
 - ii. Deliveries of materials necessary for the operation of the business will be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents.
 - iii. The Licensee will ensure that staff who arrive early morning or depart late at night when the business has ceased trading conduct themselves in such a manner to avoid causing disturbance to nearby residents.
 - iv. Customers will be asked not to stand around talking in the street outside the premises; and asked to leave the vicinity quickly and quietly.
 - v. A specific taxi operator has been nominated for staff and customers use. The company's telephone number is



advertised to customers. The operator, and all drivers, are aware that they should arrive and depart as quietly as possible, should not sound vehicle horns as a signal of their arrival or leave engines running unnecessarily.

- vi. The movement of bins and rubbish outside the premises will be kept to a minimum after 11.00pm. This will help to reduce the levels of noise produced by the premises.
- vii. Bright lights on or outside the premises will be positioned and screened in such a way so as to not cause a disturbance to nearby residents.
- viii. Adequate waste receptacles for use by customers will be provided in the local vicinity.

c.

- 5. Had a planning application been submitted, Environmental Health would have required a noise impact assessment to be undertaken by the applicant and any remedial works completed.
 - a. We are of the understanding that no planning permission is required for the change of use from Class 1 shop to class 3 restaurant. However as described above we object to the notion that we have not considered the issue of nuisance to the flats above or indeed the wider residential community
- 6. Torbay Councils Licensing Statement of Principles P22 Para 4 states: -

'Where Applicants are completing Operating Schedules, they are expected to have regard to the location of the proposed or actual premises. In particular, consideration should be given to whether proposals may have a disproportionate impact in residential areas or near to sensitive premises such as nursing homes, older people's accommodation, hospitals, hospices, schools, childcare facilities or places of worship.'

There is no indication in the operating schedule that the applicant has considered noise transmission through the building and impact this may have on the existing residential properties.

- a. We strongly object to this assertion.
 - i. Firstly, in conjunction with other businesses and organisations on the harbour, including: Harbour Lights, Mollies, The Harbour Inn, TJ's, The Curious Crab Café, The Rowing Club, The Harbour Master and local councilors, Blue Sea is working hard (and spending money) on improving the harbour and wider area in order to make Paignton harbour a more attractive place for visitors and locals alike. This has begun with Blue sea and Bright & Brown jet washing the front of the carpark to clean up 30+ years of stains. We are working with other stakeholders to improve signage for our beautiful harbour and, in particular, to clean up the carpark to make it less intimidating to visitors. This will include engaging with the art college to commission murals of scenes of Torbay on the lower car park deck which will make the entrance to the harbour far more inviting while inevitably adding revenue for the council through greater use of a currently quiet car park.
 - ii. We have very much considered our impact on the residents above our restaurant; as previously discussed we have added substantial insulation on both levels of the building to minimize noise transfer
 - iii. The crab & Hammer is planning to open 7am to 11pm. The Rowing Club bar immediately adjacent to the flats above our restaurant has a license to operate until 12 am 7 days a week, they also have seating directly outside their building. The Curious Crab Café has a license to 11pm and also has seating outside. Harbour Lights and Harbour Inn (also on the harbour) are also open to 11pm with outside seating. We are a restaurant and not a bar and therefore expect to be quieter than other premises surrounding the harbour. We fully respect our neighbors desire



to keep the harbour quiet, however it is a working harbour and what we are trying to do with the Crab & Hammer is in line with the harbour master, local councilors and the wider Torbay council's desire to encourage local businesses to develop the area.

7. The Responsible Authority notes the terminal hour for alcohol is at 11:00pm with a premises closure at 11:30. The applicant wishes to use the benefit of the Live Music Act 2012 and therefore this activity does not require authorisation, however this does not absolve the applicant from the requirement of the Environmental Protection Act 1990.

a. We appreciate this and have no plans for regular live music. However, we note that other venues around the harbour have had live music at night. We have discussed the idea of coordinating any live music with other venues to ensure only one event takes place at any one time.

8. When the Council receive complaints about licensed premises situated underneath residential accommodation the lack of suitable sound insulation is often identified as the main cause. Most commonly experience by residents includes disturbance from music (even at a low volume), voices, doors closing, catering noise and noise from the movement of furniture.

a. As explained, we have added substantial sound insulation to two levels of our building. We are confident that this will mitigate the vast majority of the general noise from the restaurant including doors closing, catering noise and noise from the movement of furniture. In the summer months, should we have live music this is most likely to be outside or next to our bi-fold doors therefore if there is a disturbance this would more likely to come up and through the windows of the flats above. However, we reiterate that we are not intending to have live music regularly and when we do it would be of a nature befitting of a restaurant and not a bar, therefore it would be of a gentle form. As with other live music that currently appears on the harbour it is organized to encourage a lively but respectful clientele to our wonderful harbour

9. Torbay Councils Licensing Statement of Principles P42 Para 5 states:-

Applicants with access to outdoor spaces, such as beer gardens and designated smoking areas, may be asked to provide a written noise management plan if the location of outdoor spaces is adjacent to or in proximity of residential accommodation or hospitality services, such as hotels and B&Bs.

The operating schedule makes reference to an outdoor seating area, yet the operating schedule is silent on how this area will be controlled. An outdoor seating area situated directly under residential accommodation needs to be considered. I would urge the applicant to produce a suitable and sufficient noise management plan.

- a. As with the Curious Crab Café and the Rowing Club immediately adjacent to where our seating will be, outside seating is essential for business and in line with the café culture that everyone wants these days. Indeed, it is positively encouraged by the government, especially in these covid times.
- b. In our application we have explained that we will do all possible to ensure staff and guests alike respect local residents. Again, we are a restaurant and not a beer garden and therefore we expect lively chat rather than loader noise that may be associated with a bar. Should any guests become rowdy we will of course ask them to respect our residential neighbors.

10. The operating schedule states deliveries will take place at a time to minimise disruption to residents, but what time will this be? Likewise emptying of rubbish is stated as 'will be minimise' after 11pm. The emptying of beer bottle into waste bins has been recorded as producing a peak level of 120dB and is often cited by residents as a nuisance.



- a. Our team have experience working at local hotels and are fully aware of the potential nuisance of deliveries and particularly the disposal of bottles. We will agree not to take bottles outside after 2030 or before 0830 but we have no interest in causing noise for our neighbours or indeed those eating at our restaurant. We will aim for deliveries to also be made between 0830 and 2030 however business deliveries do need to consider the need to avoid general traffic during the day, especially in a busy place such as Torbay.
11. The application is also silent on the matter of extraction equipment for the kitchen. Is there one? Has planning permission being applied for? What is the specification? Has it been designed to minimise noise and odour nuisance? How will it be maintained?
 - a. Yes we will have extraction from the kitchen
 - b. The fan for the extraction is on the 2nd floor and housed in a sound insulated box, the ceiling above is again fitted with further sound insulation. The pipework vents above the roofs of neighboring buildings. We do not expect significant odors anyway and if there are some odors they will come nowhere near any residential premises. However, if additional filters are needed, we have incorporated space for these to be added at a future date. Having spent a great deal of money on our restaurant and the wider harbour area we would like to only add this if and when it is deemed necessary.
12. In summary licensed premises such as bistros, restaurants and Cafes generally do not cause public or Statutory nuisance. In cases where this types of premises do it is almost always because of the lack of sound insulation between the licensed premises and adjoining residential accommodation. Applicants must consider the impact of the proposed activity will have, especially in situations where a change of use is taking place.
 - a. We agree that we do not expect our restaurant to cause any **nuisance**, in fact we expect it to add significantly to the attraction of the harbour and indeed, as a destination restaurant, to the wider Torbay hospitality offering.
 - b. I hope that we have reiterated our understanding of our neighbours concerns regarding noise **nuisance** through our installation of several layers of sound insulation throughout the restaurant.
13. At this time I will not make any formal recommendations as the applicant may wish to provide further supporting evidence to alleviate the concerns raised by residents and those contained in this report.
 - a. We hope that the above goes far enough to demonstrate that the Crab & Hammer will not cause a nuisance and indeed will add to the regeneration of our beautiful harbour...

