

Memorandum

To: Licensing	From : Community Safety
c.c	Contact : Mr Gareth Fudge
c.c.	Ext : 01803 208010
c.c	My Ref : 1ZV SRU No: 158591/GDF
.	Your Ref :
For the attention of: Licensing Steve Cox	Date : 4 th April 2011

Subject: Licensing Act 2003- Review of Premises Licence
Premises Name & Address: The Brewery, The Old Brewery Works,
Lower Ellacombe Church Road, Torquay, Devon, TQ1 1JH

The Old Brewery Public House is a licensed premises in Lower Ellacombe Church Road Ellacombe Torquay. It is situated in a predominantly residential area and has residential accommodation in close proximity on three sides. The nearest residential accommodation is no more than 1m away from the premises. At the front of the premises is the Brewery Park, a relatively small park area, with a multi use games area and some children's play equipment. The other side of the park is overlooked by residential accommodation.

The premises has a licence only for the serving of alcohol from noon to 23:00, there is no provision for live or amplified music. The area is not a main thoroughfare and there is very little pedestrian or vehicle traffic, leading to the area being quiet. The park is used by local children, however, the complainants have identified that this does not disturb them.



The satellite image (above) shows the Old Brewery in its predominantly residential context.



The above photograph shows the proximity of the premises to residential accommodation.

For some time, I have had grave concerns over the way in which this premises is being managed. The Designated Premises Supervisor, Mr Sean Martin has been approached on

a number of occasions regarding complaints about noise arising from the premises. Details of these interventions are listed below. When I have communicated my concerns to Mr Sean Martin, I have found him to be very difficult to communicate with; he has been very defensive and has denied the existence of any noise issues. I have written to Mr Sean Martin in respect of these noise issues and he has denied that the issues exist. He has been advised by both myself and my colleagues on activities that constitute regulated entertainment, yet complaints and evidence that he has been operating in breach of his licence has been collected. When he has been approached about these breaches, he has continued to deny them and complaints have continued.

On the 29th of July 2008, a noise complaint was received regarding noise from the premises. The complaint related to the playing of amplified music (karaoke), shouting and generally rowdy behaviour outside the premises. Following the provision of evidence from the complainant, Mr Sean Martin was informed of the complaint and was written to in respect of the noise complaint on the 7th of August 2008 (copy attached labelled **exhibit 1**). He was advised that Karaoke was a licensable activity and he would need to vary his licence.

On the 19th of April 2010 Mr Sean Martin was visited as part of a joint inspection between the Licensing Team and the Police. Mr Sean Martin was given advice on activities that were permissible by his licence. A copy of Amanda Guy's statement covering the event is attached exhibited as **exhibit 3**.

On the 19th of May 2010 the Old Brewery was visited again, advice was given and a Mr Mark Reynolds was sent a copy of standard conditions typically required by the Responsible Authority for Public Nuisance for controlling noise arising as a result of playing music etc.

On the 21st of July 2010, following a noise complaint, a revisit inspection of the premises was carried out by Mandy Guy Licensing Officer.

On the 13th of August 2010, a complaint was received regarding an event held under a Temporary Event Notice at the premises where the music continued until 04:30 in the morning. As a result of this Mr Sean Martin was written to advising him again of the complaint. (A copy of the letter is attached labelled **Exhibit 2**)

On the 14th of September 2010, Mr Sean Martin applied to transfer the licence held by his company The Old Brewery (Torquay) limited to UK Pub Projects Limited. The Old Brewery (Torquay) limited had been dissolved by Companies House on the 4th of May 2010. This resulted in the licence ceasing to have effect immediately.

On the 22nd of September, I visited the premises and met Mr Sean Martin, at his request, to advise that I was concerned the premises was not suitable for the playing of amplified music as it was very close to residential accommodation and the structure of the premises was not adequately acoustically insulated. I was also not satisfied that he would be able to adequately ventilate the premises when music was playing as the premises did not have any air conditioning. I advised this would lead to doors being opened to cool the premises which in turn would allow the music to break out of the building. I advised that I thought this may lead to public nuisance.

During this visit we discussed the installation of a noise limiter. I was concerned that the weaknesses in the structure would mean any music played above background levels would break out of the building, leading to nuisance. To prevent nuisance, the limiter would need to keep the volume of the music so low that it could not practically be enjoyed as entertainment.

During the visit, I noted that the premises was fitted with facilities for the playing of recorded music.

I offered Mr Sean Martin some advice on how to sound insulate his business and suggested that he seek the services of an Acoustic Consultant who would be able to offer much more detailed advice and would be able to provide calculations to allay my concerns. I suggested that if such works were not carried out I would have no alternative but make my representation to the Licensing Committee advising the application of stringent conditions to his licence or refusal of his licence application.

On the 9th of October 2010, following the submission of a Temporary Event Notice, a music event was held at the Old Brewery, Mr Karl Martin of my department visited the vicinity and recorded substantial disturbance caused by patrons outside the premises and by music being played in the premises. It was clear from the evidence, that no attempt was being made to control noise from the premises either externally or internally. (A copy of the evidence collected is attached labelled DVD1)

On the 26th of October 2010 Mr Sean Martin applied for a new licence with recorded music, live music and indoor sports until midnight. However, my advice on controlling noise was not being followed; the work I had suggested had not been carried out; and the evidence gained on the 9th of October 2011 indicated that his staff were making no attempt to control noise from the premises. As such I was left with no alternative but to object to the grant of the new premises licence. (A copy of my representation is exhibited labelled **exhibit 5**)

That application for a licence was refused by the Licensing Committee at a hearing on 18th of November 2010. It is worth noting that no complaints have been received regarding noise in the area whilst the premises did not have a licence but that complaints were received when the premises operated under a Temporary Event Notice.

Following on from this Mr Sean Martin obtained legal advice and had the previous lapsed premises licence reinstated that allowed the sale of alcohol only. It is important to note that the reinstated licence did not permit the playing of live or recorded music.

On the 24th of January 2011, I received a complaint from members of the public in the immediate vicinity regarding noise from The Old Brewery, the complaints related to shouting and customer's rowdy behaviour outside the premises and to my surprise, amplified music coming from the premises that the complainants alleged could be heard in their home.

On the 28th of January 2011, I wrote to Mr Sean Martin advising him that we had received further complaints. A copy of the letter is attached (labelled **exhibit 4**), in which I pointed out that he was not allowed to play music as entertainment and that if the music was above background level then he would be in breach of his licence. I also advised him of the steps he could take to control noise from his patrons and suggested that he seek a minor variation to his licence to add conditions, as this would help demonstrate his commitment to managing noise arising from his premises.

On the 4th of February 2011, in response to my letter, Mr Sean Martin called me to say that he was doing everything I asked, he wasn't playing music and that he was being blamed for regular house parties that were occurring in the district. I advised him that the complaint was very specific and that it did relate to noise from his premises. He then went on to state that he only had a television and that he could play what he liked through the television because that wasn't music. I again advised him that amplified music would be amplified music even if it was played through the television unless it was at background levels. I pointed out that background levels should not be audible from the street. He told me that he had spoken to his neighbours and they weren't disturbed. He even went on to suggest

that he would get his neighbours to write in and say they weren't disturbed. No letters were ever forthcoming.

I received another complaint on the 7th of February and in response, the complainant was given access to our Out of Hours service.

On Friday the 11th of February, I happened to be on call and was called by the complainant; they were quite distressed and explained that they were being disturbed by noise from the premises. I agreed to visit.

As I reached the area, at 22:00 it was apparent that music was being played in the Old Brewery, I could clearly hear music from my position on the street. I then entered the complainant's home. I was shown into the front bedroom of the premises where music was clearly audible, particularly when the windows were ajar for ventilation. The complainant advised me that the music had been turned down since their initial phone call.

After about 10 minutes a group of smokers emerged from the premises to smoke, they proceeded to talk loudly and remained outside getting louder and louder as the night progressed. The group increased in size and the noise they created was clearly audible inside the complainant's bedroom with the windows shut. In my opinion, the noise was sufficiently loud to prevent the quiet enjoyment of the property, it would have for instance been impossible to read a book or sleep undisturbed. The conversations were clearly audible as was the music when they stopped "talking". I remained in the complainant's home until 11:00 pm and in my opinion the noise constituted a public nuisance.

A colleague and Mr Neil Stanlake Police Licensing Officer were carrying out joint routine visits to licensed premises and visited the premises on the 11th of February 2011, whereby they witnessed after hours drinking going on in the premises. Mr Stanlake also visited on the 12th of February 2011 at 23:35 pm but the premises was shut.

The complainant telephoned me on the following Tuesday telling me that the music had been loud on the 12th of February, the Saturday night. I also received a copy of an email from Mr Sean Martin alleging that there had been a house party on the Saturday the 12th of February and he felt he was being blamed for the noise. (a copy of the email is attached labelled Exhibit 6) As I was aware of Mr Stanlake's visit, I discussed this with Mr Stanlake who reported to me that he had not seen or heard any evidence of a house party when he visited the premises on the 12th of February 2011.

On the 15th of February I left a recording device with the complainant who was able to record both music and shouting and rowdy behaviour coming from the Old Brewery. I have reviewed the evidence provided by the complainant. Approximately 14 hours of sound recordings were provided from the Old Brewery, in many cases the lyrics of the songs etc are clearly audible and the songs being played are clearly identifiable. These include artists such as Pink Floyd, URoy, UB40, Boney M, Billy Joel as well as some dance music. Evidence has also been provided of rowdy behaviour outside the premises, including domestic arguments, general shouting and swearing, singing football songs and drunken loud conversations going on outside the premises. Due to time constraints, I have had to heavily edit the recordings, I have copied a number of 10 second segments on to a disk as an example of the noise being experienced by the complainant. Many of these segments I have identified continued for some time. Copies of all the evidence can be provided if requested. It is my opinion that the noise created amounts to public nuisance.

On Saturday 5th of March 2011 a colleague Mrs Sara Desbois-Kelly visited the complainant and witnessed noise nuisance arising from the Old Brewery she witnessed both the playing of amplified music and shouting etc outside, her statement indicates that the noise was audible throughout the complainant's home. (A copy of the statement is exhibited as Exhibit 7)

It has been clear throughout my dealing with Mr Sean Martin that there has been little effort to control the noise arising from the Old Brewery despite my continued advice and guidance. He has not demonstrated any willingness to control the noise from his patrons as evidenced by the fact that complaints have continued even since the service of the Review Notice. I am gravely concerned, that should the Licensing Committee chose to place conditions on the licence that these will not be adhered to, as there have been several breaches of his licence as it exists currently.

Mr Sean Martin, has argued to me that this premises is a Community Pub and as such provides a valuable public service. It is my opinion that the public nuisance suffered by the complainants far outweighs any benefit received by the community by the operation of the Old Brewery Public House. In considering this issue, I would draw the attention of the Committee to the case law *R v Dennis* [2003] EWHC 793 (QB) that deals with the effect of public nuisance on premises arising from the use of an RAF airfield for training pilots. In this case the judge decided that whilst the benefit to society provided by trained RAF pilots was highly laudable, it was unacceptable that residents should suffer the burden.

The complainants have expressed a genuine concern that they will suffer serious repercussions if they come forward to make a complaint, but have stated to me that the noise from the premises is preventing their teenage child from studying, is preventing them from enjoying their property and leaves them constantly in fear of being disturbed. The complainant feels that they cannot invite their grandchildren to their house or to use the park because of the shouting and swearing that occurs on the premises' external terrace.

Attachments

Please reply to: Caz Babbage, Enforcement
Officer (Licensing), Safety and Licensing Team,
1st Floor, Roebuck House, Abbey Road, Torquay,
TQ2 5EJ

My Ref: CB080036/115167

Your Ref:

Telephone: 01803 208121

Fax: 01803 208854

E-mail: Licensing@torbay.gov.uk

Website: www.torbay.gov.uk

Date: 7th August 2008

Mr S Martin
Old Brewery
Lower Ellacombe Church Road
Torquay
TQ1 1JH

Dear Sean

Licensing Act 2003 – Complaint about noise

Re: Old Brewery, Lower Ellacombe Church Road, Torquay

Further to my visit at the Old Brewery by myself and my colleague I write to advise you of your responsibilities as Designated Premises Supervisor under the Licensing Act 2003.

As we discussed on Wednesday 6th August, this department has received a complaint about noise nuisance at the Old Brewery. Under the requirements of the Licensing Act 2003 the Council has a duty to investigate and monitor such complaints. It would appear that the noise nuisance was due to a karaoke night and as I explained to you the Old Brewery does not have permission on its current premises licence for music.

If you wish to play music in the future you will need to apply to vary your premises licence but in the meantime you **must not** hold any further karaoke nights at the Old Brewery or else legal proceedings may be taken against you.

You should familiarise yourself with the premises licence and ensure that you are aware of the activities for which you are licensed and the conditions that apply.

If you would like advice, then please do not hesitate to contact me on the above number.

Yours sincerely



Caz Babbage
Enforcement Officer (Licensing)
Safety and Licensing Section

Schools and services for children and young people • social care and housing • recycling,
waste disposal and clean streets • community safety • roads and transportation • town
planning • tourism, harbours and economic regeneration • consumer protection and
licensing • leisure, museums, libraries and arts

If you require this in a different format or language, please contact me.



SW/WS1

**STATEMENT OF WITNESS
C.J.A. Statement**

(Criminal Procedure Rules, r 27.1(1); Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s. 5B)

STATEMENT OF Amanda Jayne Guy

Age of Witness Over 18

(True age to be shown where witness is a juvenile or person involved in serious crime enquiry, otherwise "over 18" will suffice)

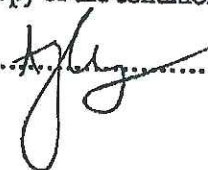
Occupation of Witness: Licensing Officer

This statement, consisting of 2 pages each signed by me, is true to the best of my knowledge and belief, and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 4th day of April 2011

Signed.....


I am employed by Torbay Council as a Licensing Officer in the Licensing and Public Protection section. At 1430hrs on the 19th April 2010 I visited the Old Brewery with my colleague Karen Ellicott, Enforcement Officer (Licensing) and Sergeant Pebworth from Devon and Cornwall Constabulary. The purpose of the joint inspection was to carry out a full licensing inspection and to advise Sean Martin, the Premises Licence Holder, on the process of varying his Premises Licence. At the time of the visit we discussed how background music could be played very quietly without being considered a licensable activity. The issue of licensable activities was discussed in depth to ensure Mr Martin was aware of the difference between background music and recorded music which then becomes licensable. I felt this was necessary as, although I have inspected many of Mr Martin's previous licensed premises, this was the first premises, which was not licensed for regulated entertainment. A full inspection was then carried out and a letter sent to Mr Martin regarding his statutory requirements. This is shown as Exhibit 1. At 1410hrs on the 19th May 2010 I returned with Karen Ellicott to the Old Brewery to check on the issues highlighted on the previous visit. Mr Martin requested a copy of the conditions commonly

Signed.....



SW/WS1

requested by Environmental Protection when music is added to a Premises Licence. These were sent out by Karen Ellicott. At 1430hrs on 21st July 2010 I returned to the Old Brewery with Karen Ellicott, PC Laing and PC Haworth. I checked the issues outstanding from the previous visit and gave advice regarding the refurbishment of the kitchen. During the visit the Police checked the premises for traces of drugs. A letter was sent to Mr Martin listing works required and also re-iterating the advice given on previous visits regarding the offence of carrying out licensable activities without the appropriate licence. Mr Martin was advised that once he had paid his outstanding licence fees, we would be happy to assist him in completing his variation application to add Music, Dancing, Films and Indoor Sporting Events. This is shown as Exhibit 2.

Signed.....

Memorandum

To: Licensing	From : Community Safety
c.c	Contact : Mr Gareth Fudge
c.c.	Ext : 01803 208010
c.c	My Ref : 1ZV SRU No: 154404/GDF
For the attention of: Licensing Steve Cox	Your Ref :
	Date : 5 October 2010

Subject: Premises– Licensing Act 2003
**Premises Name & Address: The Brewery, The Old Brewery Works,
Lower Ellacombe Church Road, Torquay, Devon, TQ1 1JH**

- a) I have no comments to make on the above application
- b) The application does not meet the following licensing objectives:
- i) Prevention of crime and disorder
 - ii) Protection of children from harm
 - iii) Public safety
 - iv) Prevention of public nuisance

The premises are situated immediately adjacent to a terrace of houses, the bedroom windows of the closest house are within 10 feet of the beer garden at the front, as can be seen by the included photographs. There is housing on both sides of the premises. To the rear of the premises is a lane, there is no scope for a smoking area to the rear. On one side the premises adjoins a light industrial unit, but adjacent to this is more residential accommodation. Mr Sean Martin, who I met on site has indicated to me that the frontage of his premises extends to the end of the building it is situated in.(photograph 1 + 2). As far as I am aware, this is a relatively quiet area of Torquay, it is not a main road so there is no masking effect caused by passing vehicles or a high ambient noise level.

It is my experience that where public houses are located in such close proximity to residential accommodation some disturbance to residents is inevitable. The Health Act 2006 introduced the requirement for Public Houses to be smoke free. This has resulted in patrons of such premises spending large portions of their time outside whilst smoking. This has resulted in significant disturbance to local residents from a number of Public Houses in the area. There is a general expectation in society at large that is expressed in various guidance documents that people are awake between the hours of 07:00 and 23:00 hours and that people should have a reasonable expectation of being able to sleep between the hours of 23:00 and 07:00 am. *Planning Policy Guidance Note PPG 24 – Planning and*

Noise requires that particular consideration be given to noise during these hours when people are normally sleeping. The World Health Organisation publish *Guidelines on Community Noise*, this document deals with the effect of noise on sleep, it indicates that where sleepers are exposed to noises in excess of 40dB(A)Lmax they will be woken. Regular sleep disturbance can have a detrimental effect on a person's health. It would certainly be considered to be a public nuisance should more than one person be affected.

People under the influence of drink tend to talk loudly; the more people that are present the louder people get as they attempt to be heard. Typically noise levels can easily exceed a sound level of 72dB(A)Lmax. Ten feet away at the residential accommodation this will drop to 62dB(A). As a rule of thumb it is usual to assume that the façade of a building with an open window provided 10dB attenuation of noise so noise levels in bedrooms will be 52dB(A)Lmax. Therefore, if patrons are outside the premises talking loudly as normal they will be clearly audible within the bedrooms. It would almost be as loud as someone having a conversation in the room where you are trying to sleep. The 52dB(A)Lmax clearly breaches the maximum level recommended by the WHO document. Anybody sleeping will be woken. This would particularly be the case should patrons be leaving when the premises intends to close. However, annoyance and nuisance is likely even during the evening.

Prior to the premises losing its licence, this premises operated as a public house closing at 23:00. It did not have a licence for either amplified or live music. However, it did have a number of occasions where it took advantage of the Temporary Event process to hold events. Looking back at our records, complaints have been received when the premises has had a temporary event. The complaints relate to the playing of amplified music causing nuisance and from patrons outside causing disturbance. Should the premises have a licence for amplified music and live music to midnight, it is reasonable to assume that the incidence of public nuisance will only be increased. The proposed increase in hours of trading will only serve to intensify the nuisance as patrons will cause disturbance until much later as they leave the premises.

Our records show that following complaints about noise, members of the Licensing and Public Protection team have visited and offered Mr Martin advice on controlling noise from the premises.

Despite this, my colleague Mr Karl Martin visited on the 9th of October 2010 and witnessed nuisance from the premises. The management were making no attempt to control noise, doors were open, patrons were outside singing, a staff member was observed to pass outside and take no action to control the noise. The noise from both patrons outside and amplified music was clearly audible from Mr Martins position.

I met with Mr Sean Martin on site to discuss his application, he indicated that he intended to block the single door into the bar and add an acoustically treated lobby to the double doors to control noise breakout into the street in support of his application.

The application as it stands does not offer enough protection from noise breakout, it offers no measures to deal with patron noise other than suggesting that patrons will be quickly dispersed. As it stands no attempt will be made to deal with the issue of patrons being outside to smoke. With regard to the works to the building proposed, the door in the bar area is glass panelled door and is insufficient to contain noise from the playing of amplified music. To contain amplified music sufficiently it would be necessary to seal this door adding significant mass to the structure, the vent axia vent adjacent to the door would also need to be blocked. As there are un-lobbied double doors to the rear of the premises, these also would require treatment to prevent noise breakout to the rear of the premises.

Even if such works were implemented, I am concerned that there would be insufficient ventilation for the premises leading to a build-up of heat inside.

Patrons would then either open the doors and windows or go outside. This would negate the effect of any sound insulation and increase the potential for disturbance by patron noise. Effectively preventing noise breakout would require acoustically treated mechanical ventilation. Whilst the fitting of equipment of this nature is not impossible, I doubt it is economically viable in a small premises.

The proposed use of a noise limiter whilst feasible in well insulated premises some distance from noise sensitive accommodation is not feasible in this case as the structure has so many "weak points" that preventing nuisance would require noise levels to be extremely quiet in the premises.



Photograph 1

I draw the attention of the committee to section 3.3 of the Licensing Policy and would point out that the applicant has provided no information as to how they will control noise breakout from the premises or deal with noise from patrons. As such the policy dictates that such an application in the vicinity of residential accommodation would normally only be allowed to 23:00 pm.

I also draw the attention of the licensing committee to appendix 3 sections 4.4 and 4.5 of the new draft licensing policy which deals with licensable activities in licensed premises.

I draw the committee's attention to the judgement in *Thwaites vs Wirral*, where it was held that the Committee and later the Magistrates had acted unlawfully in refusing to extend the hours of a premises licence as they had insufficient evidence that the premises would be a problem. In this case, there is evidence from the previous use of the premises that noise is an issue, the noise has been witnessed. The applicant has a demonstrable poor track record of management of the premises and complaints have been received regarding the proposed activity. I have also provided evidence of the likely effect on residents in the vicinity of operating the premises until 00:30.

I therefore, wish to object to the grant of this licence for the provision of live music and amplified music at the premises. I also wish to object to the licence for this premises being extended beyond 23:00.

However, should the committee be minded to grant the licence, I recommend to the committee that the following conditions be applied to the licence.

"A noise management plan shall be submitted in writing and be approved by the Licensing and Public Protection Team prior to the first performance of live music or playing of amplified music. The plan shall include details of the following:-

"Single doors, windows and any ventilation ducts into the premises shall be acoustically treated to the satisfaction of the Licensing and Public Protection team prior to the playing of live or amplified music for the first time.

Doors and Windows must be kept shut at all times during the playing of both live and amplified music.

An acoustically treated lobby (the construction details of which shall be submitted and approved by the Licensing and Public Protection Team) is to be created for access and egress to the premises is to be constructed prior to the playing of amplified music or live music for the first time."

"Patrons will not be allowed outside the premises to smoke or drink after 10:30 pm to minimise the disturbance to immediate neighbours. To that end tables and chairs will be removed from the external drinking area at 10:00 pm."

"A member of staff shall ensure that patrons are not allowed to congregate outside after 10:30 pm so that disturbance to residents in the locality."

"The volume of music shall be under the control of the management at all times. A responsible member of staff shall check every hour to ensure that noise breakout from the premises is inaudible at the boundary with the nearest residential accommodation. "

"The playing of amplified music and live music shall cease by 23:00 hours."

Mr Gareth Fudge
Senior Environmental Health Officer
Licensing and Public Protection