



SW/WS1A

**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 SARA DESBOIS-KELLY

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: Senior Environmental Health 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 7th day of March 2011

Signed.....

My name is Sara Desbois-Kelly and I am a Senior Environmental Health Officer (EHO) employed by Torbay Council. I am a fully qualified EHO in accordance with the Chartered Institute of Environmental Health's Environmental Health Officer Registration Board and I am authorised for the purposes of the Environmental Protection Act 1990 and Licensing Act 2003. On the 5th March 2011 I was the duty officer on call with regards to the department's out of hours service. On Saturday 5th March 2011 at approximately 21:15 I received a call from Torbay Council Control to advise that [REDACTED] had called regarding loud music being played from The Old Brewery, Lower Ellacombe Church Road, Torquay. I contacted [REDACTED] directly and arranged to visit, she was in tears over the phone and stated that 'I can't take much more of this'. On approach to [REDACTED] property I could see the heads of 6 people sat at the front of The Old Brewery and a plume of smoke above them. The people were loudly laughing, talking and shouting to each other. I arrived at the home of [REDACTED] at 21:40

Signed.....

and was shown by [REDACTED] to the upstairs rear bedroom. The window was open and the song 'Shine' by Aswad was being played from The Old Brewery, the words of the song were clearly audible. I could also hear people talking, laughing, shouting and screaming although I was not able to make out what was being said. I closed the window of the rear bedroom, I could still hear the words of the song being played and the noise of people talking loudly and shouting. I then went to the front bedroom where the window was open. The noise levels of the people talking, laughing, and shouting at the front of The Old Brewery were much louder than in the rear bedroom. I closed the front bedroom window and the noise levels were almost identical in volume. I could hear, word for word all conversations taking place at the front of The Old Brewery including an argument between a male and female. He shouted 'I don't care what you fucking think, I don't give a shit' at her and the female shouted at the male 'Well you should' over and over again. This argument went on for 1 minute and 10 seconds. Another male could be heard describing a 'Level 2 college course in Newton Abbot' that he is currently doing. In the background of the conversation I could hear the base of the music being played in the premises. I returned to the back bedroom at 21:55, the window was closed and I was able to clearly identify two further songs and hear word for word the song lyrics; 'Whoops Now' by Janet Jackson and 'Stop' by the Spice girls. I then went downstairs to the living room, the window was closed and I could still clearly hear the Spice Girls song playing plus people loudly shouting and swearing at one another. During my visit [REDACTED] became quite tearful and she again repeated 'I can't take much more of this'. I left the property at 22:05. The music was still playing and people were still at the front of the property on my departure. Notes were made in my notebook throughout the visit. In my opinion the music that could be heard in the rear bedroom and living room constituted a noise nuisance. Furthermore, in my opinion the noise from the people at the front of The Old Brewery that could be heard in the front bedroom constituted a public nuisance.

Signed.....



SW/WS1A

Address Community Safety, Torbay Council, Roebuck House, Abbey Road, Torquay, TQ2 5EJ

Tel: 01803 208010

Should it be required, I am prepared to attend at Court to give my evidence.

Signed

Date2011.....

AVAILABILITY OF WITNESS

Note any dates when witness is not available:

22/04/11 – 03/05/11		

Signed.....



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: **KARL MARTIN**

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)

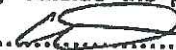
Occupation of Witness: **HEALTH AND SAFETY OFFICER**

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 1st April.....day of April.....2011..

Signed..........

I am employed by Torbay Council as a Health and Safety Officer of the Licensing and Public Protection section. On Friday the 11th October 2011 I was undertaking planned noise and licensing visits at various premises throughout Torbay with Neil Stanlake, Police Licensing Officer. Mr Gareth Fudge, Senior Environmental Health Officer had instructed me if I was in the vicinity of The Old Brewery, Ellacombe, to take a look as the department was receiving on-going complaints regarding noise. Shortly before 20:00 hrs as I was preparing to leave home I received a call from FUDGE stating he had been called out to a complaint regarding noise coming from The Old Brewery. I said I would take a look before I was due to meet with STANLAKE. I arrived at Lower Ellacombe Church road at approximately 21:15 hrs and parked my car about 20 meters from The Old Brewery, close to the Egerton Road Junction. I noted as soon I got out of my vehicle I could hear people talking loudly some frequent shouting and general pub noise emanating from the direction of the Old Brewery. I decided to walk past the Old Brewery using the pavement directly outside the pub and walk

Signed..........



SW/WS1

towards the bottom of Lower Ellacombe Church Road. As I walked past I noted approximately 8 people outside drinking in the Beer Garden, at least 4 were inside the lobby smoking. I noted the inner lobby door was closed. The noise was excessive and intimidating. A number of patrons were shouting and talking loudly often using bad language. Standing outside I could hear music clearly emanating from inside The Old Brewery. The words to the song could clearly be heard, I was of the opinion the volume was greater than what would be expected from background music. I walked a further 20 metres past the old brewery and stood for 5 minutes listening to the noise being generated from Patrons. I could not hear the music anymore but could clearly hear patrons being unreasonable noisy. I had no doubt if I lived in the vicinity I would be able to hear the noise from patrons inside my home. I decided to walk across the park to the junction of Egerton Road and Denys Road. I could not hear the music but noted I could still hear patrons outside of the pub, as before it consisted of occasional shouting and general loud chatter. I returned to my vehicle at about 21:40 hrs as I had to leave to meet STANLAKE. As I approached my vehicle I became aware the volume of the music coming from the Old Brewery had greatly increased and I could clearly hear the music 20 meters away where my car was parked. I cannot confirm how long this lasted as I had to leave the area. After continuing my inspections with STANLAKE we both returned to the Old Brewery at about 23:15 and parked outside the premises. We noted at least three individuals standing inside the entrance lobby. At least 1 individual was drinking from a pint glass. Stanlake called for assistance from the Police. They arrived at 11:35 when STANLAKE, three Police Constables and myself entered the premises. I noted 7 customers still in the premises drinking including at least 3 individuals with full pints. STANLAKE asked them to leave and to see Mr Shaun MARTIN. We were informed by Mark REYNOLDS, Bar Manager, that MARTIN had just left. REYNOLDS tried to contact MARTIN by phone but could not reach him. After all the customers had left STANLAKE had a conversation with REYNOLDS about drinking after hours. We left the premises at about 11:45 and returned to our vehicles. We left the area to continue with other Licensing and noise visits.

Signed.....



The Company Secretary
UKPP The Old Brewery Limited
The Old Brewery
Lower Ellacombe Church Road
Ellacombe
Torquay
Devon TQ1 1JH

**Please reply to: Licensing and Public
Protection**
Environmental Health & Consume, Abbey Road
Torquay, Devon TQ2 5EJ

My ref: Notice No: 001317

Your ref:

Telephone: 01803 208010

Fax: 01803 208854

E-mail: licensing@torbay.gov.uk

Website: www.torbay.gov.uk/housing

Date: 27 April 2011

Dear Sirs,

Re: Section 80 Environmental Protection Act 1990
Statutory Noise Nuisance arising from the playing of amplified music and noise from voices
at The Old Brewery, Lower Ellacombe Church Road, Torquay, Devon, TQ1 1JH

You are no doubt aware that complaints about noise arising from the playing of amplified music and shouting have been received from your premises and that this matter has been brought to the attention of the licensing committee.

Further complaints have been received and evidence has been obtained that you are continuing to cause nuisance and that this nuisance amounts to a statutory noise nuisance.

The enclosed abatement notice requires you to control the noise from the playing of amplified music and voices from the front of your premises so that it does not materially interfere with the use and enjoyment of neighboring residential accommodation.

Failure to comply with an abatement notice is an offence under the terms of the above legislation, and such you may be liable to a fine of up to £20 000 from an industrial trade or business premises. It is therefore in your interest to ensure that there is no further cause for complaint.

Yours faithfully

Mr Gareth Fudge
Senior Environmental Health Officer
Licensing and Public Protection

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



COMMUNITY SAFETY

ENVIRONMENTAL PROTECTION ACT 1990, SECTION 80
Abatement Notice in respect of Statutory Noise Nuisance
Notice No: 001317/GDF/2NB

To: **UKPP The Old Brewery Limited**

Of: **The Old Brewery, Lower Ellacombe Church Road, Torquay, Devon, TQ1 1JH**

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 Torbay Council being satisfied of the existence of noise amounting to a statutory nuisance under section 79(1)(g) of that Act at:

The Old Brewery, Lower Ellacombe Church Road, Torquay, Devon, TQ1 1JH

within the district of the Council arising from **NOISE FROM AMPLIFIED MUSIC AND VOICES AT AN EXCESSIVE VOLUME EMITTED FROM THE PREMISES** ("the nuisance").

HEREBY REQUIRE YOU as the person responsible for the said nuisance **FORTHWITH** from the service of this notice to abate the nuisance and prohibit its recurrence.

If without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be committing an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will liable to a fine not exceeding level 5 on the Standard Scale, together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction.

A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance.

If you fail to comply with this Notice the Council may also abate the nuisance and do whatever may be necessary in execution of the Notice.

Signed 
Mr Gareth Fudge
Senior Environmental Health Officer

Dated 27-6-11

Name, address and telephone number for all communications: Executive Head, Community Safety, Torbay Council, Roebuck House, Abbey Road, Torquay TQ2 5EJ Telephone: 01803 208091

N.B. A person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with the date of service of the notice. See the notes on the reverse of this form.

2NB Ehp0/EPAct1990 - S.80 - Noise

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:-

Appeals under section 80(3) of the 1990 Act

- (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case:-
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
 - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
 - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates:-
 - (i) is a nuisance falling within section 79(1)(a),(d),(e),(f) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney, or
 - (iii) is a nuisance falling within section 79(1)(ga) (a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes,that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
 - (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of:-
 - (i) any notice served under section 60 or 66 of the 1974 Act (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
 - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the 1993 Act (loudspeakers in streets or roads);
 - (h) that the abatement notice should have been served on some person instead of the appellant, being:-
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
 - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being:-
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,and that it would have been equitable for it to have been so served;
 - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being:-
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may:-
- (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit, or
 - (c) dismiss the appeal;
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit:-
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
 - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above the court:-
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, where contractual or statutory, of any relevant tenancy and of the nature of the works required, and
 - (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.
- Suspension of notice**
- (1) Where:-
- (a) an appeal is brought against an abatement notice served under section 80 or section 80A or the 1990 Act, and:-
 - (b) either:-
 - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal, or
 - (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise
- c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) This paragraph applies where:-
- (a) the nuisance to which the abatement notice relates:-
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
 - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice:-
- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
 - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

Please reply to: Karen Ellicott, Licensing
Enforcement Officer, Community Safety
1st Floor Roebuck House
Abbey Road, Torquay, TQ2 5EJ
My Ref: SR No: 2T152993/KA EY – Noise
complaints LA03

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

Your Ref:
Telephone: 01803 208029
Fax: 01803 208854
E-mail: licensing@torbay.gov.uk
Website: www.torbay.gov.uk
Date: 13 August 2010

Copy

Dear Mr Martin,

Environmental Protection Act 1990 and Licensing Act 2003 – Complaint of Noise Nuisance
Re: The Old Brewery Works, Lower Ellacombe Church Road, Torquay, Devon, TQ1 1JH

This Department has recently received a complaint about loud noise arising from the above premises due to music being played until 4.45am. This is a contravention of your Premises Licence which does not entitle you to any form of regulated entertainment.

Under the above legislation, the Council has a duty to investigate such complaints, even though they may turn out to be incorrect or unfounded. As part of these duties the Council may undertake monitoring of your premises for a period of time. If it appears that the complaint may be justified, then the Council must take action to stop the nuisance that is causing the problem, preferably by offering advice on measures to avoid creating a nuisance.

If you believe that this complaint is unfounded, or if your address has been supplied by mistake, please accept my apologies.

I would appreciate if you can write to me, either to let me know what measures you propose to take in the matter, if you feel there may be some justification in the complaint, or to inform me if you feel the complaint is unfounded.

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

Yours sincerely

Karen Ellicott
Licensing Enforcement Officer
Community Safety

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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.

Please reply to: Licensing and Public Protection
Environmental Health & Consume, Abbey Road,
Torquay, Devon TQ2 5EJ

My ref: SRU 158591/GDF

Your ref:

Telephone: 01803 208010

Fax: 01803 208854

E-mail: licensing@torbay.gov.uk

Website: www.torbay.gov.uk/housing

Date: 28 January 2011

Mr Sean Martin,
The Old Brewery
Lower Ellacombe Church Road
Torquay
Devon

Dear Sir

Re: Licensing Act 2003
The Old Brewery Lower Ellacombe Church Road Torquay

I have received renewed complaints regarding the above premises, the complaints relate to noise from the playing of amplified music at the premises and patrons outside in your seated area shouting, singing and generally behaving in a loud manner.

I remind you that amplified music is not included on your licence and therefore, the playing of amplified music on the premises is an offence unless it is background music. Background music is considered to be music that is played at a low level and that certainly would not be audible outside the premises.

I note from our files that you have offered to accept conditions on your licence to control noise from your premises.

As we are now receiving complaints about the issues raised at your previous application for a premises licence that my previous recommended conditions were meant to address, I feel it would be appropriate for you to now implement appropriate control measures. It would be appropriate for you to add the conditions by way of submitting a minor variation. I have listed the conditions below that I feel are sufficient to prevent public nuisance given your proximity to residential accommodation and the nature of complaints that have been received in the past.

- 1. Drinking in the external areas of the premises shall be prohibited after 19:00 hours. Patrons will be prevented from taking drinks outside after 19:00 to ensure that they do not linger outside.*
- 2. A responsible member of staff shall monitor the external area after 19:00 to ensure that noise from patrons is controlled and that the level of noise is not sufficient to disturb nearby residential accommodation. Patrons shall be discouraged from remaining outside unless smoking, they shall be asked to return inside once they have stopped smoking.*
- 3. The volume of any music played on the premises will be maintained at a level that is inaudible outside the fabric of the building. A responsible member of staff will monitor this.*

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

I am continuing to investigate the complaints that have been received, should it become apparent that you are engaged in any unlicensed activity, I will have little alternative but to report the matter to the Council's enforcement panel for enforcement action.

If you would like to discuss this matter, I can be contacted on the telephone number above.

Mr Gareth Fudge
Senior Environmental Health Officer
Licensing and Public Protection

Exhibit 6 FW UNCLASSIFIED RE FYI - Need to bring to your attention.txt
From: Cox, Steve
Sent: 06 April 2011 17:07
To: Fudge, Gareth
Subject: FW: UNCLASSIFIED: RE: FYI - Need to bring to your attention

-----Original Message-----

From: Cox, Steve
Sent: 15 February 2011 16:59
To: 'The Old Brewery'
Cc: Parrott, Julien
Subject: UNCLASSIFIED: RE: FYI - Need to bring to your attention
Dear Sean

I have copied the email onto Gareth as this is a matter for him.

Steve

From: The Old Brewery [mailto:theoldbrewery@gmail.co.uk]
Sent: 15 February 2011 16:40
To: Cox, Steve
Cc: Parrott, Julien
Subject: FYI - Need to bring to your attention
Importance: High

Hi Steve

I would just like to bring to yours and Gareth's attention of a house party on Denys Road, just cross the park from us. One of the houses on that road had a house party Saturday (12/02/11) night that went on to the early hours of Sunday morning It is noted in our managers / DPS book that at time of locking up the pub (11:30pm) it was observed that loud music and quite an elevated noise was coming from one of the houses.

Since we have reopened, we have been keeping a daily book from 7pm each evening. In this it is noted any noise that we can hear outside and when the park is in use by the kids in the area

So if you do get any noise complaints, please advise of date & time and we will cross reference with our daily managers / DPS book and advise you of any observations that we have made

Thanks Sean
The Old Brewery

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)L_{max} 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)L_{max}. 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)L_{max}. 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)L_{max} 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.

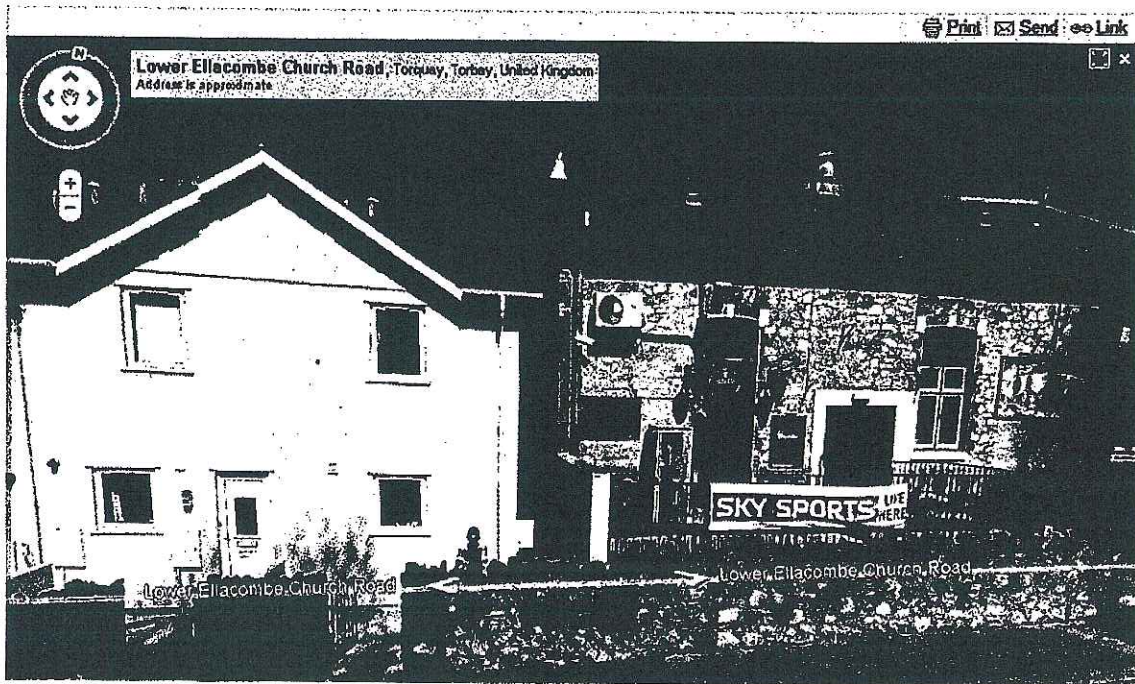
I met with Mr Sean Martin on site to discuss his application, he indicated that he intended to block the single door into the bar and add an acoustically treated lobby to the double doors to control noise breakout into the street in support of his application.

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

Video footage of the Old Brewery