

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Premises Licence in respect of Flour Flower, 40 Middle Street, Brixham, TQ5 8ER

Wards Affected: **Brixham**

To: **Licensing Sub Committee** **19 August 2021**

Contact Officer: **Lisa Wright**

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## 1. Key points and Summary

- 1.1 To consider and determine an application for a new Premises Licence, in respect of the Premise detailed above.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 The matters raised relate to the Licensing Objectives the “Prevention of Public Nuisance” and “Prevention of Crime and Disorder”.
- 1.4 The matter must be considered on its merits having received details of the issues arising either at a hearing or by written Representation. A decision must be made, having considered the Representations, either:-
  - (a) to grant the licence subject to
    - (i) such conditions as are consistent with the submitted operating Schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
    - (ii) any condition which must under Section 19, 20 or 21 be included in the licence;(Such conditions may differ in respect of different parts of the Premises and/or different activities).
  - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
  - (c) to refuse to specify a person in the licence as the Premises Supervisor;
  - (d) to reject the application.

- 1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Applicant, Responsible Authorities and all Interested Parties, following the determination of the matter.

## **2. Application**

- 2.1 An application has been made under Section 17 of the Act for a Premises Licence to permit licensable activities at the Premise detailed above. Details of the relevant pages of the application are shown in Appendix 1.

A brief description of the application, as follows:-

Recorded Music both indoors and outdoors from 09:00 until 00:00 Monday to Wednesday. 09:00 to 01:30 (the following day) Thursday to Sunday.

The Supply of Alcohol for consumption both on and off the premises from 09:00 until 00:00 Monday to Wednesday. 09:00 to 01:30 (the following day) Thursday to Sunday.

Late Night Refreshment from 23:00 until 00:00 Monday to Wednesday. 23:00 to 01:30 (the following day) Thursday to Sunday.

Premises opening hours from 08:00 until 00:30 Monday to Wednesday. 08:00 to 02:00 (the following day) Thursday to Sunday.

The Applicant has given the following description of the premises: -

“The Premises is a daytime café/restaurant & florist with occasional evening service & events. Located on a busy road with no residential accommodation on the floor directly above the shop. The floor above the shop is occupied by another business. The building is of concrete construction and noise does not travel excessively through the building. The site has been a restaurant or café since the 1960’s and previous businesses have been licensed. There is no rear access to the premises. The sale of alcohol for consumption on the premises will be when food is available to eat and is expected to be incidental to the main business. The sale of late-night refreshment will mainly be at ticketed or private events as opposed to an open door. The licence will also be useful to sell alcohol via our web shop where age confirmation will be required”.

The plan accompanying the application is shown as Appendix 2.

- 2.2 The Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 17(5) but is unable to issue the Licence, as relevant Representations have been received. The Licensing Authority is also satisfied that the Representations have been received within the appropriate time scale and have not been subsequently withdrawn.

We have received 2 Representations. One from Brixham Town Council, outlining their objection in relation to “The Prevention of Public Nuisance”. This is shown as Appendix 3.

The second from Responsible Authority, Devon and Cornwall Police, outlining their objection in relation to "Prevention of Crime and Disorder". This is shown at Appendix 4.

There have been no other Representations received from any other Responsible Authority or any other Interested Party, other than those mentioned above.

- 2.3 The Authority is required to conduct a hearing under the provisions of Section 18(3) unless all parties agree that this is not necessary.
- 2.4 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representation and the procedure to be followed at the hearing.
- 2.5 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.
- 2.6 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 2(1) of Schedule 5 to :-
  - (a) The holder of the licence against any decision
    - (i) to impose conditions on the licence, or
    - (ii) to take any step to exclude a licensable activity or refuse to specify a person as Premises Supervisor.
  - (b) Any person who made a relevant Representation who desires to contend
    - (i) that the licence ought not to have been granted, or
    - (ii) that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or taken any step to exclude a licensable activity or refuse to specify person as Premises Supervisor.
- 2.7 Following such Appeal, the Magistrates' Court may:-
  - (a) dismiss the appeal,
  - (b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
  - (c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,and may make such order as to costs as it thinks fit.

**Steve Cox**  
**Environmental Health Manager (Commercial)**

## **Appendices**

Appendix 1 Relevant sections of the application form

Appendix 2 Plan of the Premises

Appendix 3 Representation from Brixham Town Council

## Appendix 4 Representation from Devon and Cornwall Police

### **Documents available in Members' rooms**

None

### **Background Papers:**

The following documents/files were used to compile this report:

Torbay Council Licensing Policy 2021-26