

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of Hyde Dendy, 18 Esplanade Road, Paignton, TQ4 6BD

Wards Affected: **Roundham with Hyde**

To: **Licensing Sub-Committee**

On: **07 October 2021**

Contact Officer: **Carrie Cottell**

☎ Telephone: **01803 207079**

✉ Email: Licensing@torbay.gov.uk

1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a Variation to a Premises Licence.
- 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 Crime and Disorder”, “The Prevention of Public Nuisance”, “Public Safety” and “The Protection of Children from Harm”.
- 1.4 The matter must be considered on its own merits having received details of the issues arising either at a hearing or by written Representations if all parties have agreed that a hearing is not necessary. Having regard to the Representations and issues arising, a decision must be made to take such steps as are appropriate for the promotion of the licensing objectives. These are:-
 - (a) to modify the conditions of the licence, or
 - (b) reject the application in whole or in part, or
 - (c) to grant the application as applied for

For this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

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

2. Introduction

- 2.1 An application has been made under Section 34 of the Licensing Act 2003 (hereinafter referred to as 'the Act') for a Variation to a Premises Licence. Details of the application are shown in Appendix 1. Only the relevant pages of the application are shown.

A brief description of the proposed Variation is as follows:-

To increase the hours that the premises is open to the public on New Years Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day. Currently the premises is open to the public from 07:00 to 01:30 seven days a week.

To vary the plan of the premises, increasing the licensed area to include the ground floor section of the premises known as No 18.

The Applicant has proposed to remove the following conditions:-

Annexe 2, General, condition 1

"There shall be no entry or re-entry to the premises after 2am except for those customers who have left to use the designated smoking area."

Annexe 3, The Protection of Children from Harm, Condition 2

"No persons under the age of 18 years shall be on the premises after 21.00 hours except when attending a private party in a function room at the premises, when that part of the premises is not open to the general public."

The Applicant has proposed to amend the following conditions:-

Annexe 2, The Prevention of Crime and Disorder, Condition 7

From "Between the hours of 00:00 and 02:00 there shall be a maximum of 40 people allowed in the designated outside area."

To "From midnight there shall be a maximum of 60 people allowed in the designated outside area."

Annexe 2, The Prevention of Public Nuisance, Condition 2

From "The placing of refuse, such as bottles, in receptacles outside the premises must take place at times that will prevent disturbance to nearby properties."

To "The placing of refuse, such as bottles, in receptacles outside the premises must not take place between 22.00 and 07.00 hrs to prevent disturbance to nearby properties."

Annexe 3, The Prevention of Crime and Disorder, Condition 11

From "All drinks shall be served in toughened or strengthened glasses, or plastic/polycarbonate vessels, and no alcohol shall be served in glass bottles after midnight from which it is intended or likely that a person shall drink."

To "No alcohol shall be served in glass bottles after 23.00 hours from which it is intended or likely that a person shall drink."

The Applicant proposes the following additional conditions, in relation to the licensing objective "The Prevention of Crime and Disorder."-

All full-time staff in premises selling alcohol after midnight shall be trained and hold, within three months of the commencement of their employment, BIIAB Level 1 Award in Responsible Alcohol Retailing or similar qualification.

When the premises are open for the sale of alcohol after midnight, in the absence of the DPS a suitably trained personal licence holder will be on duty. Written authorisations of the DPS to all staff will be kept on their training records.

All staff will be made aware of the Ask for Angela/Clive Campaign or similar initiative. Posters will be displayed on the premises for customer awareness.

All patrons entering the ground floor premise (No 18) after 8pm must check any bag over 40 cm by 30 cm into the cloakroom.

SIA Licences will be checked using the SIA Company Licence Checker facility.

The premises maintains a door supervisors' policy. A copy of this policy shall be available for inspection on demand by a police officer, a police licensing officer or officers of the local authority.

The premises has a dispersal policy which will be reviewed regularly. A copy of this policy shall be available for inspection on demand by a police officer, a police licensing officer or officers of the local authority.

Premises will join and meet the standards of the Best Bar None scheme.

The Applicant has written the following description of the proposed variation which is shown on page 3 of the application form:-

"To extend the ground floor section of the premise known as No 18. To amend and or include additional conditions to promote the licensing objectives."

- 2.2 A copy of the current premises licence showing the licensable activities, timings and conditions is shown at Appendix 2 of this report.

The exemptions under the Live Music Act 2012 apply to this licence.

- 2.3 Torbay Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 35(1) of the Act but is unable to issue the Variation to the Premises Licence, as relevant Representations have been received from Responsible Authorities. The Licensing Authority is also satisfied that the Representations were received within the appropriate time-scale, have not been subsequently withdrawn and are not vexatious or frivolous.

We have received a Representation from the Police in relation to the Licensing Objective "The Prevention Crime and Disorder" and "The Protection of Children from Harm". This is shown as Appendix 3.

We have received a Representation from Public Protection in relation to the Licensing Objective “The Prevention of Public Nuisance” and “Public Safety”. This is shown as Appendix 4.

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

- 2.4 The Licensing Authority is required to conduct a hearing by the provisions of Section 35(3) unless all parties agree that this is not necessary.
- 2.5 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representations and the procedure to be followed at the hearing.
- 2.6 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.
- 2.7 If the application is granted, a Right of Appeal to the Magistrates’ Court is granted by Section 181 of the Act and, by Paragraph 4(2) of Schedule 5 to :-
 - (a) The applicant for the variation of the licence against any decision to modify the conditions
 - (b) Any person who made a relevant representation in relation to the application who desires to contend
 - (i) that any variation made ought not to have been made, or
 - (ii) that, when varying the licence, the Licensing Authority ought to have modified the conditions of the licence or ought to have modified them in a different way.
- 2.8 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	Copy of the Premises Licence and Plan.
Appendix 3	Representation from the Police.
Appendix 4	Representation from Public Protection.

Documents available in members' rooms

None

Background Papers:

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

The current Premises Licence for the above Premise.

Torbay Council Licensing Policy 2016-2021.