



Devon & Cornwall
POLICE

Licensing Department

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Licensing Team
Torbay Council
Town Hall
TORQUAY
Devon

3 February 2022

Dear Sir/Madam

Hennessey Cocktail Lounge, 2 King Street, Brixham, TQ5 9TF

This application seeks a premises licence at Hennessey Cocktails, 2 King Street, Brixham.

This premises previously held a licence with the premise licence holder and DPS being Mr [REDACTED]. However, in June 2021 the licence was revoked following a review hearing. The grounds for review related to public nuisance issues, breaches of conditions, alleged after hours sales, covid breaches, and Mr [REDACTED] repeatedly and deliberately failing to provide CCTV, which we believe to be an attempt to avoid further action being taken against him by the police or Torbay Council in the form of prosecution or fines. Mr [REDACTED] subsequently appealed against the revocation of the licence, but on 17 December 2021 Plymouth Magistrates Court upheld the Licensing Sub-Committee's decision and the licence was revoked.

Between April 2017 and October 2018 this premises traded as a cocktail bar. It attracted a wide age range of customers and provided a relaxed atmosphere, with strong management in place. Throughout this time the premises only came to the attention of the Licensing Department on one occasion when a police officer advised Mrs SMART that he had asked to view the CCTV in relation to an offence of drink driving, where the suspect had been drinking in the premises earlier in the evening. After visiting the premises, the officer sent Mrs SMART an email advising her that he was impressed with the level of assistance he received from staff at this premises. During this period the police did not receive any complaints from members of the public concerning the operation of this premises and no logs or crimes were recorded.

In October 2018 Mr [REDACTED] took over the premises and from the outset Mrs SMART was regularly contacted by members of the public in relation to public nuisance issues such as noise from music, anti-social behaviour outside, alleged drugs use/supply, littering and lack of control and management of customers. On two occasions Mrs SMART visited the premises during the late evening and witnessed breaches of the premises licence, provision of licensable activities after permitted hours and poor customer management causing public nuisance issues.

From these visits it was apparent that Mr [REDACTED] was operating the premises as a bar/nightclub type premises, with loud music, and this was attracting a much younger customer base, with most appearing to be between 18 and 30 years old.

On Friday 21 January 2022 Sgt CURTIS and Mrs SMART met with Mr RALPH at Jackz Bar, Brixham, which is also owned by Mr [REDACTED]. Mrs SMART asked Mr RALPH if he had written the application and he initially stated that he and Mr [REDACTED] had written it together. However,

when further questioned by Sgt CURTIS he admitted that he had been working in another premises when he and Mr [REDACTED] had spoken on the phone, with Mr [REDACTED] reading out various conditions which they discussed. Mr RALPH indicated that Mr [REDACTED] then submitted the application. Mrs SMART asked Mr RALPH what the capacity of Hennessey Cocktails is, and he stated he did not know. Mrs SMART told him that Mr [REDACTED] had previously stated the capacity is 150.

Mrs SMART advised Mr RALPH that the application states the premises will operate as a cocktail bar and asked what he meant by that term, explaining that in her opinion a cocktail bar provides a chilled, relaxed atmosphere with the majority of customers seated, with subtle background music and attracting all age ranges. Mr RALPH then gave a description of how he wishes to operate the premises and it was clear that he intends to run the premises as a bar or pub.

Sgt CURTIS informed Mr RALPH that the police have concerns regarding his application, as it does not sit comfortably with us that the previous licence was revoked by a Magistrates Court and his application seeks to reinstate the licence allowing the premises to again operate as a bar with the same hours, which had caused previous local community tension.

Sgt CURTIS suggested that to satisfy responsible authorities and the public, a closing time of 11.00 pm or 11.30 pm, in line with planning consent, may be more desirable. Mr RALPH indicated that he wished to sell alcohol until midnight, closing at 12.30 am, and said that Mr [REDACTED] is addressing the planning consent issue. Sgt CURTIS asked Mr RALPH if he would consider conditions that all customers must be seated and served by waiter/waitress service, more like a cocktail or wine bar, but Mr RALPH stated this would not work with the customers he hopes to attract and it would be difficult to manage.

For your information, imposing a condition requiring all customers to be seated within a premises significantly decreases the capacity of the premises which in turn reduces concerns in respect of the likelihood of crime and disorder, management of customers in relation to queuing, dispersal, and other issues associated with large volumes of intoxicated customers. When Covid restrictions required alcohol only to be provided with substantial food, Mr [REDACTED] advised Mrs SMART that 60 could be seated in the premises. The police consider this number of customers would be more appropriate for the location of this premises and may alleviate some residents' concerns.

Under Mr [REDACTED] management, Hennessey Cocktails mainly opened during the evenings, however Mr RALPH indicated that he intends to also open throughout the day providing alcohol, teas and coffees. In addition, he stated that he will be working as a manager for Mr [REDACTED] with responsibility for overseeing the management of Jackz Bar and the Lounge Bar (another late night licensed premises owned by Mr [REDACTED] which is closed at the moment due to refurbishment).

As it was clear that our views on how we feel the business should operate if this application is granted are significantly different to Mr RALPH's intended use of the premises, no further discussions took place.

In respect of Mr RALPH, we are aware that his wife was the DPS of the Bullers Arms, Brixham between July 2020 and January 2022 and during this time he was employed as a manager. The licence holder of the Bullers Arms is Star Pubs & Bars Limited, who lease the premises to Mr [REDACTED]. Mr [REDACTED] currently runs 6 pubs in the Torbay and Teignbridge area, including some difficult premises due to the customers they attract, with the Bullers Arms being one of the less problematic. Mr [REDACTED] has a strong management team, consisting of about 4-5 personal licence holders who oversee the running of these premises, and they regularly visit them, and provide training, advice

and guidance to the managers as appropriate. Therefore, Mr RALPH has had significant support whilst working as a manager at the Bullers Arms.

We are also aware that Mr RALPH was previously employed as a bar manager for Shearings Hotel, in Paignton for approximately 10 years. The Torbay Council Licensing Public Register indicates that Mr RALPH has never been the DPS of that premises. As Shearings Hotels is a national company, again Mr RALPH would have been well supported in his role as bar manager and would have had to adhere to various company policies and training and support would have been provided

Mr RALPH states he previously owned and managed a pub called The Tern Inn in Chipping Sodbury. Mrs SMART has been in contact with Avon and Somerset Police Licensing. They advised her that their records show that Mr RALPH applied for a personal licence and his wife was the licensee of the Tern Inn in 2003. As this is almost 20 years ago they hold no further information.

Mr RALPH also states he owned and run a pub called the Woodbine in Cirencester. Enquiries with Gloucestershire Police Licensing confirm that this was his home address in 2005 but they hold no other information.

In respect of both of these premises, it is apparent that Mr RALPH was involved with them about 20 years ago, either before or around the time the Licensing Act 2003 came into effect (November 2005). Therefore, whilst having some experience at managing pubs, it does not appear that Mr RALPH has been a DPS or premises licence holder, where he has experience of being solely responsible for the management of a licensed premises under the Licensing Act 2003, and in his roles since that time he has had significant support from others. This raises concerns in respect of Mr RALPH's suitability to run a premises with a poor track record.

Furthermore, Mr RALPH in his roles as premises licence holder and DPS will be employed by the leaseholder of the premises, Mr [REDACTED]. The police note that conditions have been included within the application prohibiting Mr [REDACTED] to be in the premises when they are open and prohibiting him from being involved or influence the management of the premises. These conditions were not formulated by Mr RALPH but have been copied from the premises licence of Jackz Bar, having been imposed on that licence by the licensing sub-committee following a review in October 2021.

The police have concerns regarding the interpretation and enforcement of the condition prohibiting Mr [REDACTED] being involved in or influencing the operation of the premises. From recent experience with Jackz Bar (January 2022), despite this condition on the licence, it is evident that Mr [REDACTED] is still actively involved in matters contained within the operating schedule of the premises licence. For example, the Jackz Bar licence contains a condition regarding the premises meeting the standards of Best Bar None. As Mr [REDACTED] is prohibited from being involved in or influencing the operation of the premises, it is the expectation of the police that the premises licence holder or a delegated and trusted member of staff, other than Mr [REDACTED], should be responsible for matters contained within the licence. On 13 January 2022 the Chair of Best Bar None sent Mrs SMART a text message advising that Mr [REDACTED] had contacted her concerning Jackz Bar signing up to Best Bar None.

A further example is that on Sunday 19 December 2021 an incident of criminal damage (CR/110236/21) occurred at Jackz Bar where a heavily intoxicated male was refused re-entry to the premises and subsequently picked up a beer barrel and threw it at a window. As Mr [REDACTED] is the business owner of this premises he is also the 'victim'. The crime record contains updates as follows:

19/12/21 Officers attending premises indicate CCTV covers the incident and will be burnt off for collection

23/12/21 The officer in the case (OIC) tried to contact Mr [REDACTED] but he did not answer his phone

24/12/21 OIC again rang Mr [REDACTED], but he did not answer.

04/01/22 Mrs SMART updated the crime stating that the premises licence holder is legally responsible for supplying CCTV and provided her contact number, with a request that officers contact her and Mrs SMART advised the OIC that she had sent an email to the licence holder on 23 December 2021 in relation to the prompt provision of CCTV.

05/01/22 OIC again spoke to Mr [REDACTED] who informed her that CCTV would be ready for collection on Friday 7 January 2022 or Saturday 8 January 2022.

It therefore appears that on 5 January 2022 CCTV had still not been downloaded. The CCTV condition on the licence for Jackz Bar states that CCTV must be provided “with absolute minimum delay” and therefore the police consider that this condition has not been complied with.

Furthermore, in respect of Jackz Bar, despite a review of the licence where additional conditions were imposed on the licence, together with a suspension period in order that these could be implemented, during a visit in the early hours of 9 January 2022 Mrs SMART and Mr MARTIN identified various breaches of conditions. As a result of this a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001 was served on the premises licence holder.

On 12 January 2022 Mrs SMART advised the premises licence holder in an email that it is her responsibility to ensure the requirements of the licence are met at all times and if she is satisfied that she can comply with all the conditions on the licence she can carry out licensable activities whenever she wishes, but if she is not satisfied that she can comply with the conditions, then she should not carry out licensable activities. Sgt CURTIS also gave similar verbal advice to the premises licence holder on 14 January 2022.

At 2230 hrs on 15 January 2022 and 0100 hrs on 16 January 2022, PC HONEYBALL attended Jackz Bar and established that alcohol was being sold and music was being played.

On Friday 21 January 2022 Sgt CURTIS and Mrs SMART met with the premises licence holder and Mr RALPH at Jackz Bar. Whilst at the premises Sgt CURTIS and Mrs SMART had concerns about various safety matters, which were discussed at length. Mrs SMART then went through each condition on the premises licence (with the exception of those in relation to public nuisance) to check their compliance. Numerous breaches of conditions were identified, including the lack of staff training records and a fire safety risk assessment. As alcohol had not been sold in the 24 hrs preceding this meeting, a Section 19 Closure Notice could not be served on the PLH on this occasion.

As a result of this meeting, Sgt CURTIS and Mrs SMART were concerned that despite a review and subsequent appeal which was withdrawn, various conditions that the premises licence holder agreed to on 7 October 2021, and were not subject of the appeal, had not been implemented when the premises re-opened on 7 January 2022. Furthermore, regardless of advice from Mrs SMART and Sgt CURTIS, licensable activities had taken place over the weekend of 14/15/16 January 2022. Despite the current premises licence holder and DPS being appointed on the morning of the review hearing in an attempt to alleviate police concerns, this has had no impact on the management of the premises or compliance with the requirements of the Licensing Act, and it is evident that the premises licence holder is merely fronting for Mr [REDACTED].

On 2 February 2022 the police applied for a further review in respect of Jackz Bar, a copy of the application is attached for your information.

In respect of police concerns in respect of Hennessey Cocktails and Jackz Bar, the common denominator is the business owner, Mr [REDACTED]. As the applicant Mr RALPH, will be employed by Mr [REDACTED], he will be working as a front for Mr [REDACTED].

In respect of this application I would draw your attention to the following:

- Page 4 – Description of premises. The applicant describes the premises as a cocktail bar but has confirmed the premises will operate as a bar/pub. The description states there is an additional outside seating area directly in front of the premises but the plan does not show this area. The application does not contain any reference to this area, such as suitable measures to ensure it is managed in a responsible manner. For your information, the road outside this premise does not contain a pavement but some parking spaces along the harbour edge have had bollards placed along them to prevent vehicles parking there.
- Page 13 - Late Night Refreshment. The applicant seeks late night refreshment both indoors and outdoors between 2300 and 0030. Guidance note 3 of the application on page 24 states “Where taking place in a building or other structure please tick as appropriate (indoors may include a tent)”. As the applicant has indicated he wants late night refreshment outdoors this means he is seeking to provide hot food and drink, such as takeaways, outside the premises between the hours requested. The application does not contain any measures to satisfy the police that this activity will be managed in a responsible manner and the lack of appropriate measures will have a negative impact on public nuisance, such as litter, noise and queue management, particularly in the absence of a pavement outside.

The Prevention of Crime and Disorder

- Condition 2 - CCTV (page not numbered). This is an outdated condition which is no longer acceptable to the police. A further CCTV condition is contained further within the application.
- Condition 3 - Door stewards (page not numbered). Part of this proposed condition is irrelevant as it only applies if the premises close after 0030 hrs. As the application seeks the premises to close at 0030 hrs door stewards would not be required on a Friday or Saturday night. The condition proposes that a risk assessment will be carried out, but this relies on the premises licence holder and DPS to carry out an appropriate assessment.
- Condition 5 - Mr [REDACTED] shall not be involved in or influence the operation of these premises. As already highlighted police have concerns regarding interpretation, enforcement and compliance with this condition.
- Conditions 7-18 - CCTV. No mention of recording media. Police recommend a condition stipulating that storage media (USB's/memory cards etc) will be provided by the premises, with a quantity of these to be kept on the premises at all times, and also for a CCTV monitor behind the bar in order that staff can monitor parts of the premises not visible from the bar and customers outside.
- Condition 19 - Staff and door stewards shall ensure that customers leave the area in a quiet and orderly manner (page 17). There is no condition requiring door stewards other than by a risk assessment.

Public Nuisance

- Condition 12 - The supply of alcohol shall be permitted until midnight on Sunday; supply of alcohol shall be permitted from 10.00 am to midnight 7 days a week (page 19). The police see no purpose of this condition as the timings are already stated within the appropriate section of the application.
- Condition 14 - Supervision of designated smoking area (page 20). Door stewards will not be required at the premises, other than by risk assessment. Again as there is no pavement outside the premises, these individuals will be positioned on the highway.
- Condition 15 - Noise limiter (page 20). This is duplicated at condition 27 on the same page.
- Condition 16 - E and G both refer to SIA door stewards.
- Condition 31 - Noise management plan must contain procedures to ensure the lobby is used. The premises does not have a lobby.
- Condition 36 - The placing of refuse. The condition proposes it “ must not take place before 8pm Mon-Sat and 9pm Sun and not later 10pm on any day”. This might be a typing mistake and the applicant may mean am.

The application does not contain any proposed conditions in relation to incident records, the premises joining Best Bar None or a written drugs policy, despite concerns about drug use and supply being raised at the review hearing and these being recommended within your Licensing Statement of Principles.

The operating schedule within the application has clearly been completed by copying conditions contained within the previous premises licence at this premises, and from other premises licences. The operating schedule contains conditions which are irrelevant, duplicated or serve no purpose and make several references to door stewards, when there is no requirement for door stewards to be employed at any time other than by a risk assessment. It is evident that whoever prepared this application has not given appropriate consideration as to the content of the operating schedule but has merely submitted an application which they believe will be acceptable to the responsible authorities. This is of great concern to the police due to the earlier revocation of the premises licence, as it shows the new applicant does not comprehend or has not given the required consideration this application warrants. It also raises concerns about the suitability and the style of his proposed management.

CONCLUSION

The police are concerned that Mr RALPH will be fronting for Mr [REDACTED], who is unable to hold the premises licence himself. Recent dealings with Jackz Bar have demonstrated that the current and previous licence holders and DPS' of that premises have failed to take responsibility for the premises leading to two review applications being served within a 6 month period and the service of a Section 19 Closure Notice. It is also apparent that Mr [REDACTED] is still involved in the operation of that premises. The current situation at Jackz Bar demonstrates that regardless of additional conditions being imposed on the licence, they do not guarantee that there will be any improvement in the way a premises is managed if the controlling mind is not appropriate or responsible. Despite the proposed condition within the application that Mr [REDACTED] will not be involved or influence the operation of this premises, we have no confidence that this will be complied with.

In respect of Mr RALPH, whilst we have had no concerns with his management of the Bullers Arms, in the last 10 years he has been employed by Shearings Hotels and Mr [REDACTED], who will have provided support and guidance to him. However, he has no proven track record or experience of being a

premises licence holder or DPS, where he will have sole responsibility for managing a problematic premises and putting policies into place to deal with any concerns arising.

In respect of Jackz Bar, Mr [REDACTED] applied to be the premises licence holder and DPS but these applications were refused by your licensing committee in June 2021. Since that time he has selected existing members of staff who hold a personal licence to take on these roles when they do not have the experience and knowledge to do so, and they have been reactive to issues raised, rather than proactive. In respect of Jackz Bar the current premises licence holder does not possess any problem solving skills, and therefore she is not able to identify and resolve issues without significant support from ourselves. This has a detrimental impact on workloads for police staff and officers. In respect of Hennessey Cocktails, Mr [REDACTED] has not advertised a vacancy for a manager, sought applications from suitable candidates and interviewed to select the best person for the role, but has merely approached Mr RALPH, due to him being a friend with a personal licence, and has given him the role. These issues cause concern for the police as we are not confident that, should this licence be granted, the situation will be any different from that already being experienced at Jackz Bar.

Furthermore, Mr RALPH has indicated that he will be responsible for Hennessey Cocktails but will also oversee the management of Jackz Bar and the Lounge Bar, although he has no legal position at these premises. This causes concern as all three premises are classed as high risk by the police due to on-going issues, previous concerns and the late licences at Jackz and the Lounge Bar. As Hennessey Cocktails is a high risk premises the police expect any future DPS to be present at the premises for a large amount of the working week, particularly during key trading periods, such as Friday and Saturday nights, and with their mind focused on the management of this premises.

In relation to this premises, the police and members of the public had no concerns when it operated as a chilled, relaxed cocktail bar, but the premises had a detrimental impact on residents when operating as a bar/nightclub. The police have tried to negotiate the terminal hour and conditions that all persons will be seated within the premises and served by waiter/waitress service, with the applicant but he indicated he would not agree to these.

Whilst Mr [REDACTED] remains the leaseholder and controlling mind of this premises, the premises licence holder and DPS will be employed and directed by him and the police have no confidence that the premises will be managed in a way that promotes the licensing objectives.

Yours faithfully

D Curtis

Sgt D Curtis
Police Licensing Sergeant for Devon

J Smart

J Smart
Police Licensing Officer Torbay



LICENSING ACT 2003

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE

NOTIFICATION

Information held by Torbay Council complies with and is held in accordance with the UK Data Protection Act 1998. The information that you provide on this form will only be used for this application form and will only be disclosed where necessary under any applicable legislation.

Information may also be shared for the prevention and detection of crime, for example with the police and other agencies as required by law, such as the Audit Commission under the National Fraud Initiative data matching exercise.

You have a right of access to your personal information. If you wish to access your personal information or exercise any of your rights under the legislation then please contact Torbay Council's Information Governance team on 01803 20 7467. Further information can be found on the Information Governance pages on Torbay Council's Internet site at, www.torbay.gov.uk

Completed forms should be returned to:

**Environmental Health Manager (Commercial)
Torbay Council
Community Safety
C/O Torquay Town Hall
Castle Circus
Torquay
TQ1 3DR**

Contact Details:

Tel: 01803 208025

Web: www.torbay.gov.uk

Email: licensing@torbay.gov.uk

**Application for the review of a premises licence or club premises certificate
under the Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Sgt Dave CURTIS, Licensing Sergeant for Devon and Julie SMART, Police Licensing Officer Torbay
(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Jackz Bar Parkham Road	
Post town Brixham	Post code (if known) TQ5 9BU

Name of premises licence holder or club holding club premises certificate (if known) Mrs XXXXXXXXXX

Number of premises licence or club premises certificate (if known) PL0878

Part 2 - Applicant details

I am Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority
(please read guidance note 1, and complete [A] or [B] below)
- 2) a responsible authority (please complete [C] below)
- 3) a member of the club to which this application relates
(please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

MRS SMART am 18 years old or over

Please tick ✓ yes

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Devon and Cornwall Police Police Station South Street TORQUAY Devon
Telephone number (if any)
E-mail address (optional) Julie.smart@devonandcornwall.pnn.police.uk

This application to review relates to the following licensing objective(s)

- | | |
|---|-------------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | |

Please state the ground(s) for review (please read guidance note 2)

- 1) Concerns in respect of Mrs [REDACTED] suitability to hold a premises licence.
- 2) Failure to comply with the conditions imposed on the premises licence following a previous review, leading to the service of a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001.
- 3) Further breaches of conditions identified following service of Closure Notice despite advice provided by police.
- 4) Premises in a poor state of repair, with public safety concerns identified by the police.
- 5) No improvement in the management of the premises as a result of the review.
- 6) The PLH/DPS is fronting for the leaseholder, who is unable to hold the licence himself.
- 7) The premises are not meeting the licensing objectives the Prevention of Crime and Disorder and Public Safety.

Please provide as much information as possible to support the application (please read guidance note 3)

This premises has had the benefit of a premises licence issued by Torbay Council since November 2005. Between 2005 and June 2021, despite the premises being authorised to sell alcohol until 0230 hrs, the premises did not regularly come to police attention due to the robust management in place. The premises is classed as High Risk by the police due to the lateness of the licence.

On Thursday 24 June 2021, applications to transfer the licence and vary the DPS to Mr [REDACTED] were refused by the Licensing Authority following objections by the police. At the hearing in relation to this matter Mr [REDACTED] produced two documents, a Door Stewarding Policy and a Bar Staff policy, which he stated would ensure all his premises were managed in a responsible manner. Within these documents Jackz Bar is referred to as Hennessey Sports Bar. The refusal of these applications has resulted in Mr [REDACTED] being the leaseholder of this premises but with him being unable to hold the licence or be the DPS. Copies of these policies are attached at pages 1-7.

Later that day, applications to transfer the licence and vary the DPS were received in the name of Miss [REDACTED], who was a current member of bar staff at the premises and employed by Mr [REDACTED] with both applications to have immediate effect. These applications were subsequently granted by the Licensing Authority.

Throughout the time that Miss [REDACTED] was responsible for the premises, police had concerns in relation to her availability to meet, her failure to respond to phone calls, alleged drug supply at the premises, an increase in recorded crime including an incident where a door steward assaulted a male, the use of an unlicensed door steward, drunkenness, failure to provide CCTV and it appeared that Miss [REDACTED] was not in control of the premises but acting as a front for Mr [REDACTED]

On 4 August 2021 the police applied for a review of the premises licence at Jackz Bar, and a copy of that application is attached at pages 8-17.

The review hearing was subsequently arranged for 7 October 2021. The day before the review hearing, Mrs [REDACTED], who was a current member of bar staff at the premises and employed by Mr [REDACTED], applied for the transfer of the licence and nominated herself as designated premises supervisor.

Mrs [REDACTED] attended the review hearing and confirmed that she was aware of the police concerns raised within the review application. She read a statement outlining the action that she would take to ensure the police concerns were alleviated, and she sought to reassure the licensing sub-committee that she would be in control of the premises. She indicated that she was willing to undertake further training and would be grateful for any advice or assistance from responsible authorities. Mrs [REDACTED] stated that the statement she read had been prepared by herself and Mr [REDACTED] and she agreed to all the conditions proposed by the police and Mr MARTIN. At the conclusion of the hearing the Licensing Sub-Committee resolved to add the conditions proposed by Mr MARTIN and the police to the licence, a condition proposed by Mrs [REDACTED] that Mr [REDACTED] be prohibited from entering the premises when open to the public, together with a further condition that Mr [REDACTED] should not be involved in or influence the operation of the premises. The licence was suspended for 3 months to 7 January 2022, and Mrs [REDACTED] was advised that this suspension period was to allow her time to implement the measures outlined in the new conditions.

On 17 October 2021 police were informed by the Ambulance Service that they had been called to the premises by an irate female who stated that her drink had been spiked and she had been sexually assaulted. (Log 133 17/10/21 and CR/90544/21 refer). The log indicates that the female alleges she went into the toilet with a male who sexually assaulted her. The female said that she told others in the premises about the incident after it took place and then collapsed, losing consciousness. An ambulance attended and took the female to hospital prior to police arrival at the premises. Officers spoke to witnesses and asked to see the CCTV, but no one present could work it. The log indicates that the female admitted to ambulance staff that she had had a lot to drink and had taken cocaine. At hospital the female was fitting and had to be intubated. The crime report in respect of this incident

indicates the female was spoken to by officers, and although she could not remember much about the night, she stated she went out for lunch in Brixham and continued to drink all afternoon, drinking in another licensed premises until 0030 hours when she then attended Jackz Bar, Brixham, arriving shortly before 0100 hrs. The female told officers that she did not wish to pursue her complaints of drink spiking or sexual assault and would not support a police investigation. The crime was subsequently filed, with no criminal investigation taking place.

On 16 November 2021 Sgt CURTIS and Mrs SMART met with Mrs ██████ at Jackz Bar. They discussed the review of the premises licence and Mrs ██████ responsibilities as premises licence holder and DPS. The appeal process was discussed and Mrs SMART explained to Mrs ██████ that she had until Friday 19 November 2021 in which to apply for an appeal. Mrs ██████ stated that she had not discussed the matter with Mr ██████, so was not aware if he wanted to appeal. Mrs ██████ was informed that as she is the PLH/DPS, it was for her to decide if she wished to appeal. She was further advised that if an appeal was lodged in her name, she would be liable for any costs awarded by the court. Sgt CURTIS recommended that she should discuss the matter with Mr ██████ and an appeal should only be lodged with her consent. Mrs ██████ asked whether she would have to attend court if there was an appeal and she was told that she would. She stated that she would not apply for an appeal as she did not wish to attend court and was satisfied with the conditions imposed on the licence.

As Mrs ██████ had indicated at the review hearing that she was willing to undertake further licensing training, and would be grateful for advice and assistance, Mrs SMART gave her a list of courses provided by the British Institute of Innkeepers (BII), these being Level 1 Award in Responsible Alcohol Retailing, Level 2 Award in Conflict Management for Licensed Premises Staff, Level 2 Award in Drugs Awareness for Licensed Hospitality Staff and Level 3 Award for Designated Premises Supervisors. Mrs SMART also gave her the email address and telephone number for the Chairperson of Torbay Best Bar None, a Torbay Council Age Verification Policy, a document containing details of the Trading Standards Age Related Sales Sign-up Scheme, and an ACPO/Home Office document in relation to CCTV requirements.

Whilst Mrs SMART was sat talking to Mrs ██████, Mrs SMART noticed that there was a cold draught coming from a window she was sat next to, which had a hole in it. Mrs SMART pointed this out to Mrs ██████ and said that she was aware of an incident some time ago (before Mrs ██████ took over as PLH/DPS) where a mobile phone had been thrown through a window. Mrs SMART advised Mrs ██████ that as she could feel a draught through this window it may be possible for noise to escape through it. Mrs SMART advised Mrs ██████ that the licence contains a condition that there must be secondary glazing in the premises and recommended that the window is fixed as soon as possible, as it may constitute a breach of the condition. At the time of this meeting, builders were working in the premises downstairs, and Mrs ██████ stated that she would speak to them and ask them to board the window up.

The drink spiking/sexual assault incident was then discussed. Mrs ██████ stated she was not working on the night and did not know why police were not contacted despite a female being unconscious at the premises or immediately outside. Sgt CURTIS and Mrs SMART watched the CCTV, which showed a male go into the female toilets followed by a female at approximately 0109 hrs. This couple were in the toilet for about 10 minutes, with other females entering, in total there were approximately 5 or 6 persons within the toilet area. Mrs ██████ commented that there are only 2 cubicles and the area is very small so she was surprised to see so many people go in there.

The couple then left the toilet and stood outside the door for a couple of minutes talking, and, although the CCTV did not show their heads, it did not appear that they were having an argument. The couple then sat down, talking and drinking. They then got up and made their way towards the bar, in the process dancing and talking to people. The female did not appear upset or distressed and was seen touching and cuddling the male.

Whilst viewing the CCTV, a CCTV engineer arrived at the premises at the request of Mr ██████, and Mrs SMART and Sgt CURTIS had a brief discussion with him. He informed them that his company provide a 24 hr telephone assistance service to deal with any enquiries and should a member of staff or

police officer be unable to operate the system, they can ring the number displayed on a sticker attached to the hard drive and will be talked through the process. The engineer stated his company will also be able to assist with the downloading of footage. Mrs SMART asked him to check that the CCTV system at the premises met the requirements outlined in the ACPO/Home Office document that had been handed to Mrs [REDACTED].

Due to the attendance of the CCTV engineer, Mrs SMART and Sgt CURTIS felt it inappropriate to continue discussing the CCTV further and, coupled with the fact they had seen the male and female enter the toilet unchallenged in relation to this incident, they concluded the meeting with Mrs [REDACTED]. However Mrs [REDACTED] was advised to ensure that staff and door stewards regularly monitor all areas of the premises, including the toilets, as no staff or door stewards had been seen in the left hand side of the premises throughout the CCTV footage viewed, which covered at least 30 minutes.

On 30 November 2021 Mrs SMART was advised that Mrs [REDACTED] had appealed against the decision of the Licensing Sub-Committee and was forwarded the Notice of Appeal dated 18 November 2021.

In November 2021 Mrs SMART asked Torbay Council to provide her with a copy of the plan for the premises and on receipt of this Mrs SMART noticed that the plan shows some male toilets to the left of the bar. As Mrs SMART did not recall seeing any toilets in that location during her visit on 16 November 2021, on 7 December 2021 Mrs SMART sent Mrs [REDACTED] an email and the plan, requesting her to confirm whether the plan was accurate. Copy attached at pages 18-19.

On 15 December 2021, on behalf of Torbay Council Licensing Team, Mrs SMART sent an email to all bars/nightclubs that could sell alcohol after midnight in relation to the guidance for vaccine passports. Mrs SMART followed this up with a further email in respect of the documentation those premises were required to keep. Both emails were sent to Mrs [REDACTED]. Copy attached at pages 20-21.

At 0045 hours on Saturday 18 December 2021 Sgt CAYLESS attended Jackz Bar in order to ascertain if the premises was providing music or dancing, and whether they were carrying out any vaccine passport checks. At that time Mrs [REDACTED] was present and informed Sgt CAYLESS that as no music or dancing was being provided, and as the premises were operating as a bar and not a nightclub, she did not believe they were required to undertake vaccine passport checks. At the time of this visit Sgt CAYLESS noted that a smashed window on the first floor was still broken. Copy email attached at page 22.

On 19 December 2021 an incident occurred at Jackz Bar where a heavily intoxicated male left the premises at closing time but tried to re-enter and was refused. He assaulted a female outside and picked up a beer barrel which he threw at a window, smashing it (log 129 19/12/21, CR/110236/21 criminal damage and CR/110239/21 assault refer).

In respect of the crime complaint of assault, the aggrieved person did not wish to pursue the matter so the crime was filed, however enquiries in respect of the complaint of criminal damage are progressing.

In respect of the criminal damage, the crime report was updated on 19 December 2021 indicating that officers who attended shortly after the incident, confirmed that CCTV covers the incident and will be burnt off for collection. On 23 December 2021, the officer in the case tried to contact Mr [REDACTED] (as he owns the business, he is the 'victim') but he did not answer his phone.

On 22 December 2021 Mrs SMART was advised that Mrs [REDACTED] had withdrawn her appeal and that the premises was closing with immediate effect, in order to serve the remainder of the suspension period, with the premises not able to re-open until 7 January 2022.

On 23 December 2021 Mrs SMART sent Mrs [REDACTED] an email in which she advised Mrs [REDACTED] that she was aware that the broken window had not been fixed, that Mrs [REDACTED] had not responded to her email of 7 December 2021 in relation to the plan, and that Mrs SMART trusted the CCTV footage of the incident on 19 December 2021 would be downloaded and provided to the police as soon as possible.

Copy email attached at pages 22-25.

On 24 December 2021, whilst on leave, Mrs SMART received an email from PC Chris SMOOTHY in relation to an assault at Jackz Bar on 10 October 2021 where a male was knocked unconscious (CR/89906/21). His comments in respect of the CCTV were positive in that the quality of the images was good and captured the incident in full. On her return to duty in January 2022, Mrs SMART looked at the crime report which contained the below updates:

- 15/10/21 Mr [REDACTED] was contacted by police. He stated he was in Wales on a course but said CCTV would be downloaded and he would drop it to Brixham Station on Sunday.
- 20/10/21 USB stick received.
- 20/10/21 OIC (officer in case) unable to access CCTV as it required a bitlocker password. Email sent to Mr [REDACTED] re this.
- 25/10/21 No response received from Mr [REDACTED] so voicemail message left
- 28/10/21 OIC spoke to Mr [REDACTED] who said he would download CCTV again and drop at Brixham, and will email OIC to inform her when this has been done
- 03/11/21 OIC not received contact from Mr [REDACTED] re CCTV so further voicemail left
- 04/11/21 USB stick received. Channel 5 covers incident and provides good image of suspect.
- PC Smoothy reviews CCTV and is satisfied that the suspect has a defence of self-defence so the crime was been filed.

On this occasion it took 24 days from the date of the incident for the footage to be provided in a viewable format.

On 4 January 2022 Mrs SMART viewed the crime report in respect of the criminal damage on 19 December 2021 (CR/110236/21) and noted that on 24 December 2021, the officer in the case again rang Mr [REDACTED], but he did not answer. Mrs SMART updated the crime stating that Mrs [REDACTED], as premises licence holder, is legally responsible for supplying CCTV, requesting that officers contact her, and Mrs SMART indicated that she had sent Mrs [REDACTED] an email on 23 December 2021 advising her to download the CCTV immediately and provide to the police.

On 4 January 2022 a post on Facebook indicated that Jackz Bar would be open on Friday and Saturday nights throughout January and that customers must provide their vaccine passport or proof of a negative lateral flow test on entry.

On 7 January 2022 Mrs SMART again viewed crime report CR/110236/21 and noted that an officer spoke to Mr [REDACTED] on 5 January 2022 when he advised the officer that the CCTV would be ready for collection on either Friday 7 or Saturday 8 January 2022. It therefore appears that the CCTV had not been downloaded on 5 January 2022, which was 17 days after the incident occurred despite Sgt CURTIS and Mrs SMART being aware that the CCTV Company could support staff with downloading footage 24 hrs a day. The CCTV condition on the premises licence states that CCTV must be provided "with absolute minimum delay" and therefore the police consider that this condition has not been complied with.

On 7 January 2022 Jackz Bar could re-open following the suspension of the premises licence.

At 2345 hrs on Saturday 8 January 2022 Mrs SMART and Mr Karl MARTIN attended Jackz Bar in order to check that the conditions imposed on the licence following the review were being complied with. Mrs SMART parked the car in Parkham Road in a position enabling them to view the front door of the premises, from a distance of about 20+ metres. Whilst in the car with the doors and windows closed Mr MARTIN and Mrs SMART could hear music and Mr MARTIN opened the car door. They discussed the music and formed the opinion that it was probably coming from Jackz Bar. Whilst watching the premises they noted a door steward outside. During the time they were observing the premises they saw a mature couple enter the premises without showing anything to the door steward. The door steward briefly went inside the front door but this was only for a couple of seconds. A group of 4 males then approached the premises, the first male showed the door steward something but the other 3 did not. The door steward again briefly followed these males into the front door but exited again a few

seconds later. In their opinion the door steward did not have time to check vaccine passports/negative lateral flows of all the individuals who entered the premises.

At 0005 hrs on Sunday 9 January 2022 Mrs SMART rang PC RANDALL who stated he would meet them at the premises in a few minutes. Mr MARTIN and Mrs SMART got out of the vehicle and walked to New Road where we were stood about 5m from the front door of the premises and could clearly hear music coming from the front door of Jackz Bar.

PC RANDALL arrived and Mr MARTIN and Mrs SMART then spoke to two door stewards. They asked the stewards what they had been told about their responsibilities for the night. The stewards responded that they had to make sure there were no incidents and deal with individuals. They asked the stewards what checks they had been asked to carry out and one said "Challenge 25". Mrs SMART asked whether they were carrying out vaccine passports/negative lateral flow checks and the stewards said they were. Mrs SMART informed them that she and Mr MARTIN had been watching the premises for about 20 mins and during this period one male showed the door steward something before entering, but 5 other persons did not. One door steward stated that the customers showed him their vaccine passports just inside the front door so it would be covered by the CCTV. Mrs SMART informed this steward that in her opinion he was not inside the front door long enough for this to have taken place. Mr MARTIN asked the stewards what documents they were accepting and although the stewards were saying the correct things, Mrs SMART saw one female show a door steward a photograph of a lateral flow device and Mrs SMART immediately advised him that a photograph was not acceptable. This female immediately entered the premises but Mrs SMART did not hear the steward ask for an appropriate document, although Mrs SMART accepts that she was distracted talking to the other steward so may have missed this. Whilst stood talking to the one of the stewards, Mrs SMART noticed that it took the other steward several minutes to check vaccine passports/negative lateral flows of customers who arrived, which tended to confirm her suspicions that they had not been requested from the customers seen to enter the premises earlier.

Mr MARTIN or Mrs SMART asked the stewards how many persons were inside and one steward said "About 30". Mrs SMART asked if they had clickers and they stated they did not. Mr MARTIN asked the stewards how they were going to monitor numbers within, pointing out that the licence requires them to have 2 stewards for the first 100 customers and an additional steward thereafter. The stewards said they would guess or estimate the numbers inside. Mr MARTIN and Mrs SMART told them that this was unacceptable.

Mr MARTIN asked the stewards what they had been requested to do in respect of noise issues. One of the stewards said that when customers leave or are smoking outside they have to try to get them to move away from the premises and not cause a noise. Mr MARTIN asked what the stewards had been told in relation to monitoring noise from music, such as carrying out checks from different locations around the premises and logging this, but they said they did not know anything about that.

Mr MARTIN and Mrs SMART then entered the premises and were met by Miss [REDACTED], who was the personal licence holder on duty. Mrs SMART asked Miss [REDACTED] to produce the premises licence and she took the licence summary off the wall. Mrs SMART told her that she wanted to see the whole licence and Miss [REDACTED] went and looked in a folder located in the small room behind the bar but could not find it. Miss [REDACTED] then rang Mrs [REDACTED] to establish its location. Miss [REDACTED] told Mr MARTIN and Mrs SMART that Mrs [REDACTED] had not received an updated licence as a result of the agreement reached before Christmas, ie when Mrs [REDACTED] withdrew her appeal. Mrs SMART advised Miss [REDACTED] that Mrs [REDACTED] would have received a copy of the premises licence after the review hearing and said that she would like to see that copy. Miss [REDACTED] again rang Mrs [REDACTED] who told her it was in an orange box-folder. Whilst Miss [REDACTED] was speaking to Mrs [REDACTED], Mrs SMART and Mr MARTIN compared the plan of the premises against the layout, and it was apparent that the male toilets shown next to the bar on the plan are no longer there. This was discussed with Miss [REDACTED], who stated that the toilets are now a store cupboard. Mr MARTIN and Mrs SMART noted that the walls in this area do not reflect the plan but agreed that this was a minor issue that should be addressed to ensure the plan is accurate.

Mrs SMART, Mr MARTIN, Miss [REDACTED] and PC RANDALL then went to a quieter area of the

premises and Miss [REDACTED] went through the folder but there was no premises licence in there. However the folder did contain policies in respect of door stewards and bar staff, and a written drugs policy, which Mrs SMART identified as those produced by Mr [REDACTED] at a hearing in respect of his applications for the transfer/vary DPS of this premises in June 2021.

Using the internet on her mobile phone, Mrs SMART looked at the premises licence and discussed several conditions with Miss [REDACTED]. Mrs SMART asked to see some staff training records. Miss [REDACTED] stated that they had not carried out any training yet but would start the following week and she was unable to produce any training records. Mrs SMART asked if she had completed the BIIAB Level 1 Course but Miss [REDACTED] did not know what it was and said she had not done it. Mrs SMART asked to see the first aid box, which she produced, however it did not contain equipment in relation to needles, blood and body fluids as required by the condition on the licence. Mr MARTIN asked if there was a sharps box and she said "No".

Mr MARTIN asked to see the noise management plan and other documents, but these could not be produced. Mrs SMART asked Miss [REDACTED] if she had any noise monitoring log sheets but she did not know anything about these.

Mrs SMART asked Miss [REDACTED] about vaccine passports checks and whether they were being carried out from the time the premises opened or some other time. Miss [REDACTED] said they were being checked from the time they opened and that everyone was checked. Mrs SMART asked to see the premises vaccine passport statement, but Miss [REDACTED] did not know what that was. Mrs SMART asked to see the logs of how many people had entered the night before but Miss [REDACTED] was not aware that they had to keep these records and stated she did not work the previous night.

Mr MARTIN and Mrs SMART advised Miss [REDACTED] that they were not satisfied that the premises were complying with the requirements of the licence. Mrs SMART advised Miss [REDACTED] that the penalty for failing to comply with the licence is an unlimited fine, up to 6 months imprisonment, or to both, and that they would contact Mrs [REDACTED] regarding the visit. They then left the premises.

At approximately midday on Sunday 9 January 2022, Mrs SMART rang Sgt CURTIS and advised him of the issues identified at Jackz Bar during the visit that morning. As a result of their discussions, Sgt CURTIS instructed Mrs SMART to serve a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001 on Mrs [REDACTED] on his behalf. Mrs SMART subsequently prepared the notice and served it on Mrs [REDACTED] later that day. Copy of email, Closure Notice and Explanatory Notes is attached at pages 26-29.

During the week following the service of the Closure Notice Mrs SMART received several emails from Mrs [REDACTED], in respect of a request to meet with her at the premises on Friday 14 January 2022 to go through her documents and requesting advice on various matters referred to within the Closure Notice. Copies of these emails are attached at pages 30-46.

On 12 January 2022, Mrs SMART emailed Mrs [REDACTED] advising her that she and Sgt Curtis were unable to meet with Mrs [REDACTED] on 14 January 2022 due to other commitments. Within this email Mrs SMART advised Mrs [REDACTED] that if she was satisfied that she could comply with all the conditions contained on the premises licence then she could carry out licensable activities whenever she wishes, however if Mrs [REDACTED] was not satisfied that she could comply with the licence requirements she should not carry out any licensable activities until she is satisfied that she can comply. Copy email attached at pages 47-48.

On 14 January 2022 Mrs [REDACTED] rang Sgt CURTIS and asked if she could open that night. She was advised she should read her licence and if she could put a tick beside all the conditions as being met then she could resume licensable activities. She was also advised by Sgt CURTIS that any conditions that had been actioned but had not yet been completed due to a third party not being available to assist, like the Best Bar None assessment, would be acceptable.

At 2230 hrs on Saturday 15 January and 0100 hrs on Sunday 16 January 2022 PC HONEYBALL attended Jackz Bar. His email to Mrs SMART states two door stewards were on duty at the front of the

premises checking vaccine passports, another member of staff was positioned upstairs recording details of persons entering, and the premises were open until 0230 hrs with music and dancing taking place.

At 1245 hrs on Friday 21 January 2022 Sgt CURTIS and Mrs SMART attended Jackz Bar for an arranged meeting. At 1255 hrs, as Mrs [REDACTED] and Mr RALPH were not present, and the premises were locked, Sgt CURTIS and Mrs SMART began to walk down to the harbourside and met them en-route. They then returned to Jackz Bar, but neither Mrs [REDACTED] or Mr RALPH had a key and all persons waited outside for approximately 20 minutes until a key could be delivered to the premises.

On entering the premises both Mrs SMART and Sgt CURTIS needed to use the toilets. On advising Mrs [REDACTED] of this, she immediately advised Mrs SMART that there was no electric in the ladies toilets and she switched on a free-standing lamp positioned within the toilet, which was plugged into an extension lead and then into a socket within the main bar area, with the cable running across the entrance to the ladies, thus causing a trip hazard. Within the ladies toilet the lamp was situated between the electric hand drier and the sink, meaning the portable electrical lamp could potentially come into contact with the water in the sink or wet hands. The ceramic sink was broken, with a large hole in the front which was plugged with paper towels and had sharp edges. The sink was held together with silver tape and cellotape. Mrs SMART also noticed that there are 2 steps within the ladies toilet and the door of one cubicle opens directly over the top of these steps. These steps are a potential hazard, particularly if customers are wearing heels and/or under the influence of alcohol. On entering a cubicle and closing the door, Mrs SMART stated that the cubicle was pitch black and she was unable to see anything. Mrs SMART also noted that there were no facilities for drying hands.

Sgt CURTIS raised concerns with Mrs [REDACTED] in relation to the state of the male toilets. He pointed out that the cistern was not connected to the urinals and therefore no water flushes through the urinals. There was a strong smell of urine within the male toilet area. Mrs [REDACTED] indicated that the cistern had been like this for some time and prior to Mr [REDACTED] taking over the premises. Sgt CURTIS also showed Mrs [REDACTED] that the electric hand dryer was not fixed to the wall the wall and was lying on a shelf but was still connected to the mains electricity above the sink, and the paper towel dispenser was also on the shelf, both appearing to have been pulled from the wall, and again there were no facilities for customers to dry their hands. Mrs [REDACTED] indicated that she was not aware that the hand dryer and towel dispenser had been removed from the wall as she had not been in the premises since the week before, staff had not advised her of this matter and there was no record of the damage being recorded in the incident records for the previous weekend.

Photos of the above issues are attached at pages 49-55.

Within the main bar area, Sgt CURTIS raised concerns about the number of wires hanging from walls in at least 3 different locations, and the number of extension leads being used with sockets potentially being overloaded. He advised Mrs [REDACTED] that he had serious concerns about the safety of the premises and asked when the premises last had an electrical safety check. Mrs [REDACTED] indicated that she did not know. Sgt CURTIS then advised Mrs [REDACTED] that if it was his business he would not open until electrical safety checks had been completed but that was not something he could enforce. Mr RALPH and Mrs [REDACTED] agreed the premises was not safe and Mrs [REDACTED] said she would not open until an electrician had checked all the wiring to ensure it is safe and provides her with a certificate to this effect.

Sgt CURTIS asked Mrs [REDACTED] about staff training and any guidance given to the door stewards before their shift, using fire safety and escape routes as an example. He said "Do you show staff where the fire extinguisher is if in case it is required?" Mrs [REDACTED] stated that she did not know if there was a fire extinguisher, but if there was she did not know where it was located. Mr RALPH went and looked around behind the bar and he eventually located a fire extinguisher. Mrs SMART asked Mrs [REDACTED] if she had provided any fire safety training to staff and Mrs [REDACTED] stated that she had not provided any such training. Mrs SMART pointed out that in the case of an emergency customers under the influence of alcohol would expect to be directed to emergency exits by staff and stewards and therefore she has a duty to ensure all persons employed at the premises know where the fire escape routes, fire extinguishers and alarms (if installed) are located.

Mrs SMART then went through every condition contained on the premises licence (with the exception of those listed under public nuisance) to check that they were being complied with. Mrs SMART identified 8 conditions that were not being complied with in respect of the display of posters x 2, emergency exits, safety checks, accident records, training records, a fire risk assessment and failure to provide CCTV with absolute minimum delay. In addition to these breaches, Sgt CURTIS and Mrs SMART raised concerns in relation to Mr [REDACTED] still being involved in the operation of the premises due to his involvement in the provision of CCTV and contacting the Chairperson of Best Bar None. Whilst going through the premises licence Mrs SMART also identified a number of conditions which were duplicated, or have been updated with more comprehensive conditions, and Mrs SMART recommended that these could be removed to condense the content of the licence, thereby making it easier to read and comply with.

On 25 January 2022 Mrs SMART emailed Devon and Somerset Fire & Rescue Service and various members of Torbay Council staff advising them of the concerns identified on 21 January 2022. Mrs SMART subsequently received an email from Mr Gary STEER of the Fire Service advising her that he had arranged to visit the premises on Friday 28 January 2022 in order to carry out an audit.

On 26 January 2022 Mrs SMART sent an email to Mrs [REDACTED] outlining the discussions that took place during the meeting on Friday 21 January 2022. A copy of this email is attached at pages 56-60.

On Friday 28 January 2022 Mrs SMART received an email from Mr STEER, in relation to his visit to Jackz Bar that morning. Within his email he indicated that Mr [REDACTED] had decided to close the premises for a couple of months, that an audit had not taken place but advice was given in relation to several fire safety matters. Mr STEER stated Mrs SMART could contact him for further information.

On Monday 31 January 2022 Mrs SMART rang Mrs [REDACTED] to discuss the Fire Officers visit on Friday 28 January 2022. Mrs [REDACTED] stated that Mr [REDACTED] and Mr RALPH had been present during this visit, that she was not aware of the full details of the visit but knew the Fire Officers were not happy with what they had found, and that the premises had to close for another weekend. Mrs SMART asked Mrs [REDACTED] if she was present during the visit and Mrs [REDACTED] stated that she was not. Mrs SMART asked Mrs [REDACTED] why she was not present and she said "I had another job I had to go to". Mrs [REDACTED] told Mrs SMART that Mr [REDACTED] was going to arrange for a fire assessment to take place and Mrs SMART advised her to ensure that she is involved in this process and obtains copies of any documentation provided. Mrs SMART asked Mrs [REDACTED] when the premises were likely to re-open and Mrs [REDACTED] stated she did not know.

Mrs SMART then asked Mrs [REDACTED] when the electric in the ladies toilet stopped working. Mrs [REDACTED] stated she did not know. Mrs SMART asked her if the electric had been working over the weekend of 14/15 January 2022 when the premises had been open to the public, again Mrs [REDACTED] stated she did not know. Mrs SMART asked her how and when she became aware that the electric was not working and Mrs [REDACTED] stated she did not know when she first became aware, but it was when she noticed that someone had put a lamp in the toilets.

Mrs SMART then reminded Mrs [REDACTED] that she had given her a list of courses in November 2021 and asked whether she had completed any of this training. Mrs [REDACTED] stated she had completed the BIIAB Level 1 Award in Responsible Alcohol Retailing but none of the others. Mrs [REDACTED] further said that she will do some training at some point in the future, but said that she has a lot on at the moment due to personal issues.

On Monday 31 January 2022 Mrs SMART also rang Mr STEER to discuss his visit to Jackz Bar. He stated that he rang Mrs [REDACTED] twice in order to arrange the visit with her, but she did not answer her phone. As he wished to visit the premises as soon as possible, he therefore contacted Mr [REDACTED]. Mr STEER stated that he had not completed an audit at the premises, as it was not open and there were no staff to speak to, but he advised Mrs SMART of the below concerns he had identified:

- 2 final escape doors/gates open inwards and not outwards.
- Rear escape path in poor condition – steps need making good and path clearing

- Staircase not suitable as an escape route due to low head height
- Travel distance from garden to final escape may be problematic and may need a management plan
- Bolts on final exit doors to be removed completely when premises open to public with a management plan in place
- Ceiling in premises underneath has been removed and additional linked warning system needs to be in place until this has been rectified
- Warned re overuse of electric sockets and extension leads which need to be minimised
- Widths of escape route not suitable for more than 110 persons

Mr STEER advised Mrs SMART that he and Mr [REDACTED] discussed the intended opening of the premises that night. Mr STEER informed Mr [REDACTED] that there were a number of matters that needed addressing immediately and if they failed to do so, he would have stopped them from opening. As a result of this Mr [REDACTED] stated that the premises would not open for at least a couple of months. Mr STEER advised Mr [REDACTED] to employ the services of a competent fire risk assessor and provide him with copies of all documents prior to the premises re-opening.

As a result of the recent visits by Mrs SMART, Sgt CURTIS and the Fire Safety Officers, Sgt CURTIS discussed the concerns identified at this premises with Inspector Martin TREGASKIS, who instructed him to apply for a review of the premises licence.

On 1 February 2022 Mr RALPH sent Mrs SMART an email with various electrical safety documents attached. Copies of all those documents are attached at pages 61-92.

On 1 February 2022 Mrs SMART also received an email from Mrs [REDACTED], copy attached at page 93.

As other responsible authorities are now dealing with the public safety matters, further updates will be provided at the hearing.

Sgt CURTIS and Mrs SMART suspect that prior to the review hearing, it is likely that Mrs [REDACTED] will resign from her positions as premises licence holder and DPS, as did the former PLH/DPS Miss [REDACTED], in an attempt to avoid the necessity for a review hearing. Should this be the case, further transfer and vary DPS applications will be submitted. However, these will not alleviate our concerns as we have no confidence in Mr [REDACTED] selection process and any further persons appointed in these positions will again be fronting for Mr [REDACTED], who has ultimate control over the management of this premises. Therefore should any applications be received, whilst they will be considered on their merits, it is likely that the police will object to them.

[Empty rectangular box for application details]

Have you made an application for review relating to the premises before

Yes - different PLH

If yes please state the date of that application

Day	Month	Year
0	4	08
2	0	2
		1

If you have made representations before relating to the premises please state what they were and when you made them

Application for Review on 04/08/21 in respect of below matters

- PLH/DPS works 25 hrs per week in alternative employment and due to this she has stated that she is unable meet with the police, or other responsible authorities, during normal working hours and she does not answer her phone whilst at her other employment.
- Failure by PLH/DPS to contact Police Licensing Officer when requested, return telephone calls or respond to emails.
- PLH/DPS appointed on 24 June 2021, since that time the police have received information in relation to the following matters:
 - a) Drug supply and taking
 - b) Males brandishing knives and threatening customers
 - c) Assault by a door steward and use of unlicensed door steward
 - d) Females fighting outside the premises and group outside very intoxicated
 - e) Drunk male alleges he was glassed and assaulted by a door steward
- PLH/DPS fronting for Mr [REDACTED] who was refused transfer/vary DPS of licence.

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate **x**
- I understand that if I do not comply with the above requirements my application will be rejected **x**

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature Sgt D Curtis and J K Smart
.....

Date 01/02/22
.....

Capacity Police Licensing Sergeant for Devon and Police Licensing Officer for Torbay
.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Julie Smart Police Licensing Officer Torquay Police Station South Street	
Post town Torquay	Post Code TQ2 5AH
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) julie.smart@devonandcornwall.pnn.police.uk	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Memorandum

To: Licensing and Public Protection Team **From** : Mr Karl Martin
c.c **Contact** :
c.c. **Ext** : 01803 208025
c.c **My Ref** : [REDACTED]
For the attention of: **Your Ref** :
[REDACTED] **Date** : 4th February 2022

Subject: New application, Hennessey Cocktails, 2 King Street, Brixham.

- 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

1. The Section 182 Licensing guidance on p71 states an application must be considered on its merits. This is reflected In Torbay Councils published Licensing Statement of principles 2021-2026.
2. This is a new application, but a near identical application for a premises licence that was revoked by Torbay Councils Licensing Sub-committee on the 24th June 2021.
3. The Licence Holder at the time, Mr [REDACTED] appealed the decision and on the 17th December 2021 at an appeal hearing held by Plymouth Magistrates court the Magistrates concluded the decision made by Torbay Councils Licensing Sub-committee was not wrong.
4. The Responsible Authority has considered the background to the premises when considering the merits of this new application but also Jacks Bar, also owned by Mr [REDACTED] and managed by Mr Ralph.

Relevant background

5. 4th May 2021 Devon and Cornwall Police constabulary called a review of the premises. Stated Grounds:-

1. Noise complaints from numerous residents living in the vicinity of the premises.
 2. Non-compliance with permitted hours for licensable activities.
 3. Non-compliance with conditions contained within the premises licence.
 4. Failure of the PLH/DPS to produce CCTV footage on a numerous occasion.
6. The Licensing Sub-Committee unanimously resolved at the review hearing on the 24th June 2021 that:-

Mr ██████████ conduct fell well below the standards reasonably expected by them of a Premises Licence Holder and for the reason given, they has no confidence in him operating the premises in the future and therefore determined that revocation was in their view, an appropriate and proportionate outcome of this review.

7. The Licensing Sub-committee considered conditions and removal of Mr ██████████ as DPS but decided that revocation was the only option as additional conditions would not remedy the problems at the premises.

Jackz bar – New Road, Brixham

8. Mr ██████████ purchased the lease and sought to transfer the Licence and DPS to his ownership. Both applications were refused on the 24th June 2021.
9. Shortly afterwards an application to transfer the Premises Licence and DPS was received by Torbay Council to transfer these functions to ██████████.
10. Problems soon occurred and the management of the premises was seen as so poor Devon and Cornwall Police that they had no option but to call a review of the premises licence.
11. Shortly prior to the review hearing in October 2021 ██████████ resigned as the DPS and Licence Holder and ██████████ was appointed. ██████████ presented at the review hearing where the Licensing Sub-committee deemed it was reasonable and proportionate to apply further Licensing conditions and suspend the Premises Licence for 3 months. The intention of a 3-month suspension was to facilities an opportunity to get their 'house in order'.
12. ██████████ appealed the decision but withdrew her appeal in January 2022 following an agreed consent order.
13. At the appeal for Hennessy Cocktails in December 2021 a confusing and often contradictory account was given of the role Mr Andrew Ralph was to play in the business operation of both Hennessey Cocktail and Jackz. Mr Ralph has applied for this new application.
14. In Relation to Jackz the Councils and the Police put forward Mr ██████████ was presenting ██████████, ██████████ and Mr Ralph as fronts to circumnavigate the conclusion drawn by licensing Sub-committee hearing held in 2021 and at the appeal hearing in December 2021.
15. The Responsible Authority will not document the evolution of Mr Ralphs involvement in the two Business owned by Mr ██████████ other than to offer reassurance the Responsible Authority is reasonable satisfied Mr Ralph appears bonefede in his position of a manager/overseer of both businesses. But, doubt remains in regard to the extent and reach of the freedoms Mr Ralph has in gift to fully manage both businesses as he see fit. Mr Ralph is employee and not a co-owner of the business.

16. Mr Ralph, the applicant, has formally identified himself as the manager at Jackz since the beginning of January 2022, but not yet in capacity of the licence holder or DPS. Though it is understood this is his intention.

But in this time the Police have served a Section 19 Closure Notice for failure to comply with a significant number of licensing conditions. And at the end of January 2020 parts of the premises were discovered to be in such poor repair that advice issued following an audit from a Torbay Council Environmental Health Officer and separately an Officer of Devon Fire service was the premises should remain closed until improvement works are completed. Mr Ralph indicated to the Environmental Health Officer the premises will remain closed until the relevant authorities are satisfied the necessary works have been completed.

17. Devon and Cornwall Police on the 2nd February 2021 submitted an application to Review the premises Licence of Jackz. The stated grounds are :-

- Concerns in respect of Mrs ██████ suitability to hold a premises licence.
- Failure to comply with the conditions imposed on the premises licence following a previous review, leading to the service of a Closure Notice under Section 19 of the Criminal Justice and Police Act 2001.
- Further breaches of conditions identified following service of Closure Notice despite advice provided by police.
- Premises in a poor state of repair, with public safety concerns identified by the police.
- No improvement in the management of the premises as a result of the review.
- The PLH/DPS is fronting for the leaseholder, who is unable to hold the licence himself.
- The premises are not meeting the licensing objectives the Prevention of Crime and Disorder and Public Safety.

18. ██████ and Mr Ralph will have an opportunity to give an account for why improvements during the three months suspension were not undertaken.

New Premises application for Hennessey Cocktails submitted by Mr Ralph.

19. Confidence that noise outbreak will not occur again remains low. This was a significant point made by the responsible Authority at the review hearing in June 2021. For the last 24 months the premises has either been closed, open but subject to restrictions on music due to Covid restrictions or subject to an appeal.
20. Had the Licensing Sub-committee decided in June 2021 not to revoke the licence weight would be given to the removing the Live Music Act exemption. The exemption can only be imposed at a review hearing.
21. As the licence was revoked and this is a new application the exception cannot be requested and therefore Live and recorded music can be played between the hours of 9pm and 11pm without authorisation or conditions imposed by a premises licence.
22. Concern remains about the likelihood of noise nuisance occurring again and this is reflected in representations made by members of the public. To an extent there are geophysical factors which cannot easily be controlled by good management alone.
23. One cause of the noise breakout has specifically been attributed to the single door in operation at this premises. If a lobby was installed the likelihood of outbreak will be greatly reduced. The owner appears resistant to installing a lobby and the suggest by way of a condition is absent from the new applicant.

24. Part 3 of the operating schedule the applicant make reference to an 'outside seating area' at the front of the premises. The road in front the premises is public highway and requires a Pavement Licence from Torbay Council. The premises has not attained a Pavement Licence. Whilst this is not impossible the operator needs to consult with Highways and harbours to develop a scheme works to allow safe use of an area previously used for car parking. Though this area is not included on the licence plan attached with application but the applicant has no right to occupy the highway, at this time.
25. At the Appeal hearing it was presented to owner, [REDACTED], the premises is subject to a planning consent which caps an operational hour at 23:00. However, the applicant has applied for midnight with the premises being vacated by 00:30 in contradiction to the planning consent.

Conclusion

26. The premises under Mr [REDACTED] as the Licence Holder and DPS caused noise nuisance. Under his leadership his actions led to a review resulting in revocation of the premises licence. A magistrate at a re-hearing concluded the decision to revoke was not wrong.
27. The application for a new licence is largely the same except for a number of conditions imposed on the 'Jackz' premise licence have been inserted into the operating schedule by the applicant.
28. Specifically for noise nuisance all the conditions in the operating schedule are not enforceable until after 11:00pm and it is not within the Licensing committees' gift to impose the Live Music Act exemption.
29. Whilst Mr Ralph integrity or ability to manage a licenced premises is not being questioned, it is the relationship between him and his employer, Mr [REDACTED] where doubt remains.

Therefore, the only reassurance residents and the Responsible Authority have if the owner is granted a new licence rest on an employee and the applicant Mr Ralph is able to manage to a standard expected of licensees free of interference from his employer.

30. To state in the operating schedule there will be an outside seating area shows a significant lack of understanding of the steps required to secure a seating area this location and cast doubt into how thought has been given to the drafting of the application.
31. Previously the premises has operated with a terminal hour of midnight. Complaints though not exclusively, tended to relate to noise outbreak occurring after 23:00hrs. It not prohibited for a premise licence to attain different operating hours to that stated by a planning consent.

However, there is a clear and justifiable argument that premises licence should align to consents issued by the Planning Authorities

32. The operating schedule is not proposing the premises will be operated any differently to the revoked licence. Its focus is still a bar which aim to attract those wishing to largely consume alcohol and provide music as the main form of ancillary entertainment. Indeed, the application is broader by the inclusion of an outside seating area.
33. In other words, the applicant does not appear to accept the findings of the review and appeal hearing. Except a few additional conditions largely preventing Mr [REDACTED] involvement in licensing matters. The application for the most part is the same premises

that lost its licence in June 2021, though the applicant is asking for more rather than offering reassurance the premises has a different direction.

Recommendations

34. Refuse as applied for or
35. If the Premise Licence is granted, give consideration to setting the terminal hour for alcohol at 11:00pm, 7 days a week.
36. Requiring the installing of an effective lobbied entrance.



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