

Memorandum

To: Licensing and Public Protection Team **From** : Mr Karl Martin
c.c **Contact** :
c.c. **Ext** : 01803 208025
c.c **My Ref** : 1ZV SRU/KJM/ReviewJK/2
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For the attention of: **Your Ref** :
██████████ **Date** : 2nd March 2022

Subject: Review application, Jackz Bar, New Road, 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 Review application submitted by Devon and Cornwall Police sets out the licensing history of the premises and therefore not repeated in this representation.
 2. This is the second Review application for this premises. During Review hearing on the 7th October 2021 Members of the licensing Sub-committee imposed a number conditions but decided to suspend the licence for a period of 3 months, the reason being:-

'Members determined that a three-month suspension was appropriate and proportionate, to enable Ms Trust to undertake necessary training for herself and where appropriate, staff too, to implement practices, procedures and policies to improve the management of these premises going forward, for all staff involved in the sale of alcohol to be aware of their responsibilities, all relevant staff to be fully aware of the conditions of the premises licence and their responsibilities in ensuring compliance is maintained, including employed SIA Door Stewards and to put in place the actions required, arising out of the new conditions proposed by both the Police and Public Protection Officers. Only then, could Members be assured that the Licensing Objectives would be promoted, and the concerns raised by the Responsible Authorities and formed by themselves on the evidence before them, be alleviated'
 3. The PLH appealed the decision, but this was withdrawn by the PLH in December 2021 following an agreed consent order. The 3-month suspension expired on the 7th of January 2022 and the premises re-opened on the same day.

4. On the evening of the 8th January 2022 the Public Protection Officer accompanied Mrs Julie Smart, Devon and Cornwall Police Licensing Officer to a visit of the premises. The review application gives a full and detailed account and therefore not reproduced in this representation. Except for the following additional comments: -

- i. The Public Protection's observations and conclusion are the same as Mrs Smart in relation to the Door Stewards checking for Vaccine Passports, a legal requirement at the time. On the balance of probabilities, it is unlikely the Door Stewards were making appropriate checks as once we had made ourselves know the 'checks' appeared to take much longer.

This is not a criticism of the stewards as it was felt they had not been clearly informed of exactly what they should be asking and checking. For example, they accepted a photograph of a negative LFT believing this was an acceptable means of proving a negative result.

The door stewards were also not using door clickers and therefore unable with any accuracy beyond a best guess to know what the capacity is at any given time. Without this knowledge the licence holder is in the dark and may not be able to comply with a licensing condition requiring an additional door steward once capacity is at 100 or greater.

- ii. What became evident very quickly during the visit was the premises had opened to the public the night before, but very little paperwork was available to confirm the suite of conditions added at the review hearing on the 7th October 2021 were being complied with. This was very disappointing as a reason for the suspension of the licence was to give time to the PLH to organise herself so the premises could trade without contravention of licensing conditions.
- iii. On Monday 10th January 2022 Mrs Julie Smart informed the Council a closure notice had been served on the premises in respect of non-compliance with Licensing condition following the visit to the premises on the 7th January 2022.

5. I refer members of the Licensing Sub-committee to events detailed in the review application that took place at visit to the premises by Mrs Julie Smart and Sgt Curtis on the 21st January 2022.

The primary legislation in matters relating to safety is the Health and Safety Act and Police findings were referred to the Council as the Council in case of nightclub is the enforcing body of the Health and Safety at Work Act 1974.

However, the 'Promotion of Public Safety' is one of the four Licensing objectives. In short, Mrs Trust in her capacity as the PLH allowed the nightclub to open to the public when the premises was not fit for purpose.

This was a serious error of judgement to believe it was acceptable that members of the public should use toilets where the conditions present on the 21st January 2022 could result in serious injury.

Had the premises not voluntarily closed a Health and Safety at Work Act 1974 Prohibition notice would have been served on the Premises owner, Mr Hennessey.

6. In the past nightclubs have been associated with fire related incidents resulting in preventable loss of life. For this reason there was a special licensing scheme know as Public entertainment Licence (PEL) and on the introduction of the Licensing Act in 2004 the PEL regime was effectively incorporated into the Licensing Act. The point being made is the nightclub owners/operators are a responsible for a type of premises which is high risk in relation to emergency situations. Jackz Bar is not a large club but the risk and need to plan for emergency is no less than a club 10 times the size.

During the visit on the 21st January 2022 Mrs trust was asked about staff training in relation to emergency. Mrs Trust replied no training had been given. Mrs Trust did not know where the fire extinguishers were. Should she know as the PLH the location of each fire extinguisher is debatable but what can safely be inferred from the conversation between Mrs Smart, Sgt Curtis and Mrs Trust is that no thought, planning or even a basic awareness exists on how they might deal with a potential emergency which could, as in the past in the UK, led to the loss of life in nightclub settings.

7. Regrettable as argued by the Responsible Authorities and accepted by members of the Licensing Sub-committee on the 7th Octobers 2021 the confidence in the owner, management and employees to manage these premises remains low, as it was in October 2021. The 3 month suspension has not been used wisely by either the owners or those operating the premises on his behalf. To open premise on the 7th January in breach of licensing conditions and parts of the premises in an unsafe condition was irresponsible and this reinforces the view of the Responsibility Authority that those charged to run the premises are unable to do so without undermining the Licensing Objectives.

At the time of writing the premises is closed to the public whilst necessary remedial works are undertaken to comply with the owners duty of care under Section 2 and 3 duties of the Health and Safety at Work Act 1974. A Council Environmental Health Officer is working with Mr Ralph to ensure the works are completed.

8. Please note the following condition of the premises Licence has not fully been complied with at this time as it requires co-ordination between the operator and the Responsible Authority: -

'A noise limiter shall be installed and used at the premises, with set levels agreed by Torbay Council's Licensing Team.'

During the visit on the 7th January 2022 it was noted low frequency noise (ie bass) was breaking out the premises. It should not be if noise nuisance complaints are to be prevented. In email from Mrs Trust on the 11th January 2022 she offered reassurance the limiter has been recalibrated and the breakout resolved. This cannot be independently verified at this time and the limiter still needs to be signed by the Reasonability Authority.

9. The Responsible Authority will withhold making recommendations to the Licensing Sub-committee at this time as it appropriate for the respondent to make their oral and written representation that might offer a reasonable defence to the statements in the Review application and those contained in this representation.

