



Devon & Cornwall
POLICE

Licensing Department

Police Station, South Street, Torquay, TQ2 5AF

📞 101 Non-urgent

📞 999 in an emergency

🌐 www.devon-cornwall.police.uk

✉️ 101@dc.police.uk

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Licensing Team
Torbay Council
Town Hall
TORQUAY
Devon

14 April 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.

BACKGROUND OF PREMISES:

A premises licence application for this premises was granted in April 2017. 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 HENNESSEY was appointed premises licence holder and DPS, and immediately after this Mrs SMART was contacted by members of the public, on a regular basis, 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, together with representatives of responsible authorities, visited the premises during the late evening and witnessed breaches of conditions contained in 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 HENNESSEY 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. During discussions with Mr HENNESSEY, on more than one occasion, he stated he wished to obtain a later licence to complete with Jackz Bar.

In June 2021 the premises licence was revoked following a review hearing.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 HENNESSEY failing to provide CCTV. In respect of the last request for CCTV in December 2020, he appears to have deliberately failed to produce it to avoid further action being taken against him by the police or Torbay Council in the form of prosecution or fines. This failure to produce CCTV was the trigger for the review process, but not the sole grounds for it. Mr HENNESSEY subsequently

appealed against the revocation of the licence, but on 17 December 2021 Plymouth Magistrates Court upheld the Licensing Sub-Committee's decision.

THE APPLICANT – MR ANTHONY PETER RALPH:

Mrs SMART first became aware of Mr RALPH's intended involvement with Hennessey Cocktails on 29 September 2021, when Mr HENNESSEY suggested that Mr RALPH could take on the roles of premises licence holder and DPS of Hennessey Cocktails to avoid the necessity for the appeal hearing. At that time Mrs SMART made some enquiries into Mr RALPH's background, which are outlined below. She also discussed him with his employer, [REDACTED]. A statement outlining Mrs SMART's discussions with Mr RALPH and [REDACTED] is attached for information.

Mr RALPH states he previously owned and managed a pub called The Tern Inn in Chipping Sodbury. Records held by Avon and Somerset Police Licensing show that Mr RALPH applied for a personal licence and his wife was the licensee of the Tern Inn in 2003, but 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.

Mr RALPH states he was previously employed as a bar manager at the Esplanade Hotel, Paignton for approximately 10 years. The Torbay Council Licensing Public Register indicates that Mr RALPH has never been the DPS of that premises. The Esplanade Hotel is owned by Shearings Hotel, a national company and therefore Mr RALPH would have been well supported in his role as bar manager, having to adhere to various company policies, and training and support would have been provided.

Between July 2020 and January 2022 Mr RALPH was employed as the manager of the Buller's Arms in Brixham. His wife was nominated as DPS, however, Mr RALPH states that she left employment at the premises after 6 months. Despite Mr RALPH being aware of this, and the need for every licensed premises to have a DPS, it appears that he took no action to address this situation and the police only became aware of this in December 2021.

In respect of the Buller's Arms Mr RALPH was employed by [REDACTED]. [REDACTED] currently runs 6 pubs in the Torbay and Teignbridge area, including some difficult premises due to the customers they attract, with the Buller's Arms being one of the less problematic. [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, 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 Buller's Arms.

Mr RALPH has no recent experience of being the premises licence holder with sole responsibility for the management of a licensed premises, or a DPS. In his roles at the Esplanade Hotel and Buller's Arms he has had significant support from others. This causes concern in respect of Mr RALPH's suitability to run a high-risk premises.

On or around 10 January 2022 Torbay Council received an application for the grant of a premises licence at this premises in the name of Mr Anthony Peter RALPH. The police, Mr MARTIN (Public Protection Officer) and several residents made representation. A hearing was subsequently held on 10 March 2022, at the conclusion of which the licensing sub-committee refused the application. A copy of the Police Representation and Decision Notice in respect of that application is attached.

On 14 January 2022 Mr RALPH commenced employment with Mr HENNESSEY as a general manager overseeing the management of Hennessey Cocktails, Jackz Bar and The Lounge Bar (currently closed due to refurbishment). All three premises are deemed high risk by the police due to the revocation of the licence at Hennessey Cocktails, with the other two premises both selling alcohol until 2.00 am and closing at 3.00 am and 2.30 am respectively.

On Friday 21 January 2022 we met with Mr RALPH at Jackz Bar, Brixham. Discussions took place concerning his application for Hennessey Cocktails. At that time Mr RALPH stated that he had been working at the Buller's Arms when he and Mr HENNESSEY had talked the application on the phone, with Mr HENNESSEY reading out various conditions with they discussed. Mr RALPH indicated that Mr HENNESSEY then submitted the application.

Sgt CURTIS informed Mr RALPH that the police had concerns regarding his application, as it did not sit comfortably that the previous licence was revoked by a Magistrates Court, yet his application sought to reinstate the licence with the same hours, allowing the premises to again operate as a bar, despite those hours and that type of premises causing 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 HENNESSEY 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 HENNESSEY 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 HENNESSEY's management, Hennessey Cocktails mainly opened during the evenings, however Mr RALPH has indicated that he intends to also open throughout the day providing alcohol and food, despite the premises not having a kitchen.

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 February 2022 Mr RALPH submitted a Temporary Event Notice for Hennessey Cocktails. A few days later Mrs SMART received an email from a Brixham officer who informed her that he had witnessed a drunk female attempting to sweep up vomit outside the premises, but she was using the broom in a hopeless manner and said to him "I'm too fucking pissed to be cleaning up sick". The officer's email is attached. Mrs SMART has viewed the CCTV of this incident and is satisfied that the officers account is accurate.

It appears that there were at least two people at the premises who were drunk that night, and one of these was given a bucket of water and a broom to clear up the mess. She subsequently deliberately dropped the broom in the harbour. When Mrs SMART discussed the matter with Mr

RALPH, he indicated that this female was a former member of staff, but he did not say when her employment at the premises ceased. He said that this female volunteered to clean up another person's vomit. This raises questions as to why a bucket of water and broom would be given to a heavily intoxicated customer to clean up vomit outside the premises unsupervised. We believe it is more likely that this female was a member of staff at the premises on the night in question, and if this is the case, it raises further concerns regarding staff consuming alcohol whilst on duty and their ability to carry out their duties. Offences under Section 141 of the Licensing Act may have been committed on this occasion.

This temporary event notice provided an opportunity for Mr RALPH to demonstrate that he could manage Hennessey Cocktails in an appropriate and responsible manner, but he failed to do so, which does not improve our confidence in terms of his suitability to manage this premises.

Mr RALPH, in his capacity of manager of Jackz Bar, attended a meeting at that premises on 21 January when various health and safety, fire safety and breaches of conditions were identified. Following that meeting Mrs SMART sent an email to ██████████ in which she recommended that ██████████ applies for a variation of the licence to modify the conditions on the licence and submits an updated plan of the premises. This email is attached.

Due to the safety concerns identified by the police, on 28 January 2022 two fire officers visited Jackz Bar, where they met with Mr HENNESSEY and Mr RALPH. As the officers were informed that the premises would be closed for at least 8 weeks, they did not carry out a full audit but raised concerns and provided advice about various issues they identified. On 2 February 2022 ██████████ Fire Officer, received an email from Mr RALPH in which he stated he was intending on re-opening the premises on 4 February 2022. A letter from the Fire Service and Mr RALPH's email is attached.

In respect of Jackz Bar, a second review application was served on the premises licence holder on 1 February 2022. Within a couple of days, Mr RALPH rang Mrs SMART and asked whether she could delay the review, but Mrs SMART told him that she could not. He asked whether he could attend the hearing and Mrs SMART told him that he could. Mrs SMART explained to Mr RALPH that the hearing would not take place for about 6 weeks, so he should use that time to ensure all the concerns referred to in the application had been addressed. Although Mrs SMART's email of 26 January was not sent to Mr RALPH, he was clearly aware of the review application and was provided with appropriate advice. Despite this, no variation application has been submitted in respect of Jackz Bar.

On 21 February 2022 Mrs SMART received an email from ██████████ requesting the police attend Jackz Bar to carry out an inspection. Within this email she states she and Mr RALPH had worked tirelessly over the last couple of weeks to address the concerns raised by the police and other responsible authorities. This email is attached. On 4 March Mrs SMART sent ██████████ and Mr RALPH an email advising that we could visit on 9 March, copy attached. However, neither of them responded to this email, and Mrs SMART only found out that Mr RALPH was attending this meeting having been advised of this by Inspector TREGASKES.

On 22 February 2022 an officer sent Mr RALPH an email in relation to a criminal damage incident that occurred at Jackz Bar on 19 December 2021, requesting the contact details of the suspect and cost of repairs to a damaged window. Over a month later, the officer updated the crime report on 25 March 2022 to advise that she had now received a response to her email with the cost of repairs.

On 9 March 2022 we met with Mr RALPH at Jackz Bar. Inspector TREGASEKES was also present. On that day Mr RALPH informed us that he would be applying for a transfer within the next couple of days, but these were not forthcoming.

Mr RALPH advised us that since being employed by Mr HENNESSEY he has not been paid for his work and he now lives at Mr HENNESSEY's address. It therefore appears that there is no formal contract of employment in place and, at a hearing on 31 March 2022, Mr RALPH confirmed this is the case.

Mr RALPH showed us physical improvements he had made to the premises, but the premises still looked like a building site. Mr RALPH was advised that the police are not the responsible authority in relation to safety matters and that he should inform the appropriate authorities of the action he had taken in that respect. When he was asked what action had been taken to ensure the licence conditions could be complied with, he stated he did not know. When we explained that we were there at the request of ██████████ to carry out an inspection in respect of the licence conditions, he said he was unaware that that was the purpose of our visit, despite Mrs SMART having forwarded him ██████████ email a few days prior to our visit.

Mr RALPH showed Mrs SMART a fire risk assessment and she noted that this had been prepared by him. Mrs SMART informed Mr RALPH that ██████████ had told her that he had recommended Mr HENNESSEY and Mr RALPH employ a competent risk assessor to carry out a fire risk assessment. Mr RALPH claimed to have no knowledge or recollection of that advice, despite being present during the fire officers' visit.

The police visit on 9 March took 10 ½ hrs of police time but served no useful purpose. The section 19 closure notice could not be cancelled, so remains in place.

On 10 March 2022 Mr RALPH attended a hearing in respect of his first application for this premises. At that hearing he made alarming comments in that he did not feel that the conditions suggested by Mr HENNESSEY were required, but he just went along with what Mr HENNESSEY said, and that he would prefer a licence with no conditions or strings attached. Mr RALPH assured the licensing sub-committee that he would not tolerate Mr HENNESSEY being involved or influencing the operation of the premises. He stated that if Mr HENNESSEY did not co-operate with him, he would leave his employment as he did not wish to put his licence at risk. At the conclusion of the hearing, his application was refused.

On 23 March 2022, the day before the review hearing for Jackz Bar, Torbay Council accepted applications from Mr RALPH to transfer the premises licence of Jackz Bar to himself, with him also being nominated as DPS. Both applications were submitted with immediate effect. The police have objected to these applications and a hearing has been arranged for 28 April 2022.

On 24 March 2022, at the review hearing in respect of Jackz Bar, Mr RALPH's legal representative provided statements from Mr RALPH, Mr HENNESSEY and two other individuals. Due to this, the hearing was adjourned to 31 March 2022. Mr RALPH's statement is attached.

On 31 March 2022 Mr RALPH attended the review hearing of Jackz Bar in the company of his legal representative. During that hearing Mr RALPH stated that he did not send the email to the Fire Officer on 2 February 2022 but Mr HENNESSEY had done so purporting to be him. Mr RALPH further stated that between commencing employment as a manager of Jackz Bar on 14 January 2022 until the date of the Fire Officers visit on 28 January 2022, he had not identified any concerns in respect of fire safety matters, despite having completed Fire Awareness training in March 2021.

It appears that Mr RALPH has been proposed as premises licence holder and DPS of Hennessey Cocktails and Jackz Bar purely due to his personal relationship with Mr HENNESSEY with no assessment of his suitability or experience to carry out this role having taken place. In respect of Jackz Bar, two previous premises licence holders and DPS' appointed by Mr HENNESSEY were clearly not suitable for these roles and we have little confidence in Mr HENNESSEY's selection and recruitment processes.

THE APPLICATION:

The police have compared Mr RALPH's first application to the current application, and note the following:

Page 4 of the current application indicates that the premises will operate as a bar. Mr RALPH's first application for this premises stated that the premises was a cocktail bar with an outside seating area. It therefore appears that this section has been amended, and the police are satisfied that Mr RALPH has noted previous concerns about the management of an outside area and has not included this area within the current application.

Recorded music – the current application seeks the provision of recorded music from 0900 to 0000 hrs daily, whereas Mr RALPH's first application sought recorded music from 1000 to 0000 hrs daily.

Late night refreshment – the current applications seeks the provision of late night refreshment from 0900 to 0030 hrs daily, indoors only. The first application sought the provision of late night refreshment from 2300 to 0030 hrs daily, both indoors and outdoors. The police are satisfied that the applicant has removed the provision of late night refreshment outdoors. However, we would point out that late night refreshment is only applicable from 2300 hrs.

Supply of alcohol – the current application seeks the supply of alcohol from 0900 to 0000 hrs daily, and on New Years' Eve from the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. Mr RALPH's first application sought the supply of alcohol from 1000 to 0000 hrs daily, with no additional hours on New Years Eve/Day.

Opening hours – the current application seeks opening hours from 0900 to 0030 hrs daily, and on New Years' Eve from the end of permitted hours of New Years' Eve to the start of permitted hours on New Years' Day. The previous application sought opening hours from 1000 to 0030 hrs daily, with no additional hours on New Years Eve/Day. In respect of Mr RALPH's first application, the police and Mr MARTIN raised concerns within their written and oral representations in relation to the sale of alcohol and provision of recorded music after 2300 hrs, with a closing time of 0030 hrs. Mr RALPH has not addressed the concerns raised within those representations.

The Prevention of Crime and Disorder:

Conditions 1-4 of the current application are identical to those within Mr RALPH's previous application. This CCTV condition is outdated, however more appropriate conditions are referred to later within the application. In respect of the door steward condition, as the premises will only be permitted to sell alcohol after 0000 hrs on New Years' Eve, this is the only time that door stewards will be required at the premises, other than when determined by a risk assessment. Page 5 of the police representation dated 3 February 2022 refers to this condition and concerns about the lack of an appropriate door steward conditions were also raised verbally at the hearing on 10 March 2022. This application does not address the matter and we have little confidence in Mr RALPH's ability to carry out a suitable risk assessment.

Condition 6 in relation to Mr HENNESSEY being prohibited from being involved or influencing the operation of these premises – Mr RALPH has already been influenced by Mr HENNESSEY in respect of his first application as he stated he agreed to conditions that he did not feel are appropriate. Despite admitting this, Mr RALPH has submitted a substantially similar application. Mr RALPH has also stated that he did not send the Fire Officer an email purportedly from himself on 2 February 2022, indicating that Mr HENNESSEY sent it. The police have serious concerns in Mr RALPH's ability to ensure this condition will be complied with in the future.

Conditions 7 to 18 within the current application are identical to those within Mr RALPH's first application. In respect of Mr RALPH's first application, page 5 of the police representation dated 3 February 2022, indicates that the 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 a CCTV monitor behind the bar in order that staff can monitor parts of the premises not visible from the bar/customers outside. These recommendations have not been included within the current application

Condition 19 – staff and door stewards shall ensure that customers leave the area in a quiet and orderly manner. This condition is identical on both the current and previous application. As already stated door stewards will not be required at this premises other than on New Years Eve and when deemed appropriate by a risk assessment. This condition is referred to on page 5 of the police representation dated 3 February 2022, but has not been addressed within this application.

Conditions 20 to 24 – these are identical on both the current and previous application.

Conditions 25 to 31 of the current application were not included in the previous application. The police consider that these conditions are appropriate. However we note that there are duplicate conditions in relation to staff training, which is also referred to at conditions 20, 21 and 22.

Public Nuisance:

Conditions 11 to 15 of the current application are irrelevant as the activities and hours are reflected within the appropriate sections of the application.

Condition 17 of the current application is identical to condition 14 of the previous application, stating that after 10.00 pm the designated smoking area shall be monitored at all times by either an SIA door steward or member of staff. As already stated SIA door stewards will only be required on New Year's Eve or when determined by a risk assessment. This condition is referred to on page 6 of the police representation dated 3 February 2022.

Conditions 18 and 27 of the current application in relation to a noise limiter are almost identical. Condition 18 indicates the level must be set in agreement with Torbay Council's Public Protection Officer, whereas condition 27 indicates the level must be set in agreement by Torbay Council Licensing Team.

Condition 31 of the current application relates to a written noise management plan which must contain procedures to ensure the lobby is used effectively. We note that the applicant proposes (within condition 40) that a lobby will be installed within 2 months of the licence being granted. This is a matter for Mr MARTIN to deal with. However we would point out that the plan of the premises does not show a proposed lobby and, should this application be granted, the applicant will need to apply for a variation and submit an amended plan in order for a lobby to be installed.

Condition 36 in respect of the placing of refuse, proposes "... must not take place before 8pm Mon-Sat and 9pm Sun and not later than 10pm on any day". This condition is identical to condition 36 of the previous application. Despite the police drawing the applicant's attention to a potential error within this condition on page 6 of our representation dated 3 February 2022, the matter has not been addressed. The proposed condition means that the placing of refuse can only take place between 8pm and 10pm on Mondays to Saturdays, and between 9pm and 10pm on Sundays which may not be practical for the smooth operation of the business.

This application does not contain any condition in relation to the premises having a written drugs policy despite concerns about drug use and supply being raised at the review hearing and on page 6 of the police representation dated 3 February 2022. Your Licensing Statement of Principles also recommends a written drugs policy.

The operating schedule within the application has 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. There are several references to door stewards, but the applicant does not intend to have door stewards at any time other New Years' Eve or when determined by a risk assessment. When Mr HENNESSEY was the premises licence holder he employed SIA door stewards on Friday and Saturday nights from approximately 2200 hrs until closing, but complaints about the management of customers outside and drugs issues were still forthcoming. The lack of an appropriate door steward condition remains a serious concern for the police.

CONCLUSION:

The police are concerned that Mr RALPH will be fronting for Mr HENNESSEY, who has been deemed unsuitable 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 apparent that Mr HENNESSEY 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 licence holders are not suitable or responsible. Despite the proposed condition within the application that Mr HENNESSEY will not be involved or influence the operation of this premises, we have little confidence that Mr RALPH will be able to comply with this requirement.

In respect of Mr RALPH, 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 high premises and putting policies into place to deal with any concerns arising.

In respect of Jackz Bar, Mr HENNESSEY 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 did not have the experience and knowledge to do so, and they have been reactive to issues raised, rather than proactive. This has a detrimental impact on the licensing objectives and the workloads of responsible authorities.

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 significant 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 HENNESSEY 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 little 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

Witness Statement

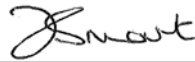
Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

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Statement of: **Julie Karen SMART**Age if under 18 (if over insert "over 18"): **Over 18**Occupation: **Police Licensing Officer**

This statement (consisting of3..... Pages(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: **J K Smart**Date: **09/12/21**

I make this statement further to my statement dated 28 October 2021.

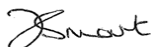
I have been forwarded an email sent by [REDACTED] to [REDACTED] on 7 December 2021 and asked to comment on the content of that email. I produce this email as exhibit JKS/5.

I confirm that at 1504 hrs on Friday 3 December 2021 I received a telephone call from Mr Anthony RALPH, manager of The Bullers Arms, Brixham. The call lasted just under 9 minutes.

Mr RALPH informed me that he had been advised he was being referred to at a forthcoming court hearing and he expressed concerns in relation to what was going to be discussed in relation to him and potential data protection breaches. I informed Mr RALPH that I had written a statement in relation to the appeal for Hennessey Cocktails, in which I make reference to him, but that the statement does not contain any personal details and he had no need to be concerned in relation to data protection.

I informed Mr RALPH that Mr HENNESSEY had indicated that he might apply to become the premises licence holder and DPS of Hennessey Cocktails. I therefore contacted Mr HENNESSEY requesting Mr RALPH's date/place of birth, personal licence details and details of licensed premises he had managed in the last 5 years.

Mr RALPH then told me that he had ran 2 pubs and a hotel and I confirmed that Mr HENNESSEY had informed me of those premises. I told Mr RALPH that I then conducted our usual enquiries in relation to him, which we complete in respect of every application received, and assured him that he had not been treated any differently.

Signature: **J K Smart**Signature Witnessed by: **N/A**

Witness Statement

Continuation of Statement of Julie Karen SMART


I told Mr RALPH that some time after Mr HENNESSEY had supplied me with details of his experience, I became aware that he is currently the manager of The Bullers Arms in Brixham, but that Mr HENNESSEY had not provided me with that information. I told Mr RALPH that during a telephone discussion with [REDACTED], his employer, I asked if Mr RALPH worked at The Bullers Arms. Mr [REDACTED] told me that he is a manager at the premises, he works between 70-80 hours a week, they had discussed the fact that Mr RALPH had been approached by Mr HENNESSEY to take on the roles of premises licence holder and DPS, he was not intending on leaving his employment at The Bullers Arms and he had told [REDACTED] that he was to be premises licence holder and DPS of Hennessey Cocktails in name only, stating that it would not impact on his work at The Bullers Arms for 5 minutes. Mr RALPH did not dispute any of this information.

I informed Mr RALPH that my statement refers to the telephone conversation I had with [REDACTED], as I had just outlined to him. E32-34 of my statement of 28 October 2021 refers to this matter.

Mr RALPH again raised concerns that he was being mentioned in court, in that he was under the impression that the police did not think he was suitable to run a licensed premises and he asked whether he would be able to run a pub on his own in the future. I assured him that I had not found anything to his detriment during my checks and that the police would have no concerns with him being a premises licence holder or DPS in respect of other premises. However in respect of Hennessey Cocktails, due to the review and concerns in relation to Mr HENNESSEY's involvement with licensed premises, the police would expect any new premises licence holder or DPS of Hennessey Cocktails to be present for most of the working week and key trading periods such as Friday and Saturday nights, and I told Mr RALPH that as he was not intending to leave his role at The Bullers Arms he would not be able to meet our requirements. Mr RALPH did not comment on this.

Mr Ralph confirmed to me that he works at The Bullers Arms for 70-80 hours a week, stating that he only gets paid for 40, and he told me that he had been helping Mr HENNESSEY out over the last couple of months. He did not say whether this was paid employment or on a voluntary basis, and he did not state whether this was regular weekly hours or on a casual basis.

During our discussions I reassured Mr RALPH that the police have no concerns with him and that the only reason he had been mentioned is due to the fact that Mr HENNESSEY had failed to inform me that he is currently working at The Bullers Arms and my opinion that he would work as a front for Mr HENNESSEY due to the comments he made to [REDACTED].

Signature: **J K Smart**Signature Witnessed by: **N/A**

Witness Statement

Continuation of Statement of Julie Karen SMART

At one point Mr RALPH did say that he had asked Mr HENNESSEY to keep the matter quiet as he did not want everyone to know what was going on, but I told Mr RALPH that Mr HENNESSEY should have told me that he is the manager of The Bullers Arms to assist me with my enquiries.

In respect of the appeal, I advised Mr RALPH that if the premises licence was transferred to him prior to the appeal, he would have to attend court and could be liable for any costs awarded by the court. I told him that the hearing was to take place on 10 and 17 December 2021 and that Mr HENNESSEY may inform him of the decision of the Magistrates at the conclusion.

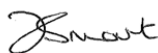
At no point during the telephone discussion did Mr RALPH indicate that he was, or is, intending on leaving The Bullers Arms, and at the conclusion of our discussions he appeared satisfied and reassured with what I told him.

In respect of [REDACTED] email in reference to Mr RALPH explaining that "Mr HENNESSEY was not lying about employing him". I do not recall Mr RALPH using these words, but I am certain that no mention was made of 'employment' or Mr RALPH being paid by Mr HENNESSEY. However Mr RALPH did say that he had been 'helping Mr HENNESSEY out'.

[REDACTED] email indicates that Mr RALPH had not told his employer, [REDACTED], that he was intending to leave. At no time during my conversation with Mr RALPH did he mention that he was, or is intending, on leaving his employment at The Bullers Arms. Surely, if this is the case, he would have mentioned this during our discussions to reassure me that he would be in day to day management and control of Hennessey Cocktails?

[REDACTED] email makes reference to Mrs RALPH working only a few hours per week at The Bullers Arms and that she could increase her hours to make up for her husband reducing his and that they intend to stay living above The Bullers Arms.

During the course of writing this statement, at 1446 hrs on Thursday 9 December 2021, I rang [REDACTED] and told him that I had one quick question that I wished to ask him, that being how many hours a week does [REDACTED] works at The Bullers Arms. He told me, without any prompting, questions or further information from myself, that she does not currently work at the premises, despite being the DPS. He said that during one of the lockdowns she obtained employment as a carer in a care home where she works 60 hours a week and she has not worked at The Bullers Arms since then. [REDACTED] said "Let me

Signature: **J K Smart**Signature Witnessed by: **N/A**

Witness Statement

Continuation of Statement of **Julie Karen SMART**

guess she is applying for the licence of Hennesseys". I said I could not comment any further and the call ended, lasting a total of 52 seconds.

It therefore appears that the information provided within Ms CAVANDER's email is incorrect. Should Mr RALPH leave his employment at The Bullers Arms, Mrs RALPH would have to give up her employment as a carer to work at The Bullers Arms for 70-80 hours a week, or their accommodation at the premises will be at risk.

This again supports my opinion that whilst Mr HENNESSEY remains the leaseholder of Hennessey Cocktails, any individual to whom the licence is transferred, or who is appointed as the DPS, will be employed by Mr HENNESSEY and working as a front, which will not remove the root cause of concerns in respect of this premises.

Signature: **J K Smart**Signature Witnessed by: **N/A**



Devon & Cornwall
POLICE

Licensing Department

Police Station, South Street, Torquay, TQ2 5AF

☎ 101 Non-urgent

☎ 999 in an emergency

🌐 www.devon-cornwall.police.uk

✉ 101@dc.police.uk

📘 DevonAndCornwallPolice

🐦 @DC_Police

📍 dc_police.999

📺 DCPolice

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 Ross HENNESSEY. 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 HENNESSEY 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 HENNESSEY 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 HENNESEY 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 HENNESSEY 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 HENNESSEY. Mrs SMART asked Mr RALPH if he had written the application and he initially stated that he and Mr Hennessey 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 HENNESSEY had spoken on the phone, with Mr HENNESSEY reading out various conditions which they discussed. Mr RALPH indicated that Mr HENNESSEY 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 HENNESSEY 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 the 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 HENNESSEY 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 HENNESSEY 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 HENNESSEY's 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 HENNESSEY, with responsibility for overseeing the management of Jackz Bar and the Lounge Bar (another late night licensed premises owned by Mr HENNESSEY 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 [REDACTED]. [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. [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 HENNESSEY. The police note that conditions have been included within the application prohibiting Mr HENNESSEY 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 HENNESSEY 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 HENNESSEY 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 HENNESSEY 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 HENNESSEY, 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 Ross HENNESSEY 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 HENNESSEY 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 HENNESSEY but he did not answer his phone
24/12/21	OIC again rang Mr HENNESSEY, 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 HENNESSEY 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 HENNESSEY.

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 HENNESSEY. As the applicant Mr RALPH, will be employed by Mr HENNESSEY, he will be working as a front for Mr HENNESSEY.

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 HENNESSEY 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 HENNESSEY, 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 HENNESSEY 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 HENNESSEY 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 [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 HENNESSEY 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 HENNESSEY 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 HENNESSEY 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

TORBAY COUNCIL

Please reply to: [REDACTED]
Community Safety, Town Hall
Castle Circus, Torquay, TQ1 3DR

Mr A Ralph
79 Goodrington Road
Paignton
TQ4 7HZ

My ref: SRU/267548
Your ref:
Telephone: 01803 208025
E-mail: licensing@torbay.gov.uk
Website: www.torbay.gov.uk
Date: 25 March 2022

Dear Mr Ralph

**Re: Notice under section 23 (1) & (3) Licensing Act 2003 – Application for a Premises Licence
Hennessey Cocktail Lounge, 2 King Street, Brixham, TQ5 9TF**

I am writing to you with respect to the committee hearing on 10 March 2022 to consider an application for a premises licence for Hennessey Cocktail Lounge.

Decision:

That the application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham, be refused.

Reasons for Decision:

Having carefully considered all of the written and oral representations, it was clear to Members that the Applicant had not completed or submitted the application form for a Premises Licence himself. In coming to that decision, Members noted the Applicant's oral submissions, and resolved that he was not familiar with the content of the application, nor did he fully comprehend the extensive list of conditions contained therein when asked questions about them, nor did he appear to have in person, the due diligence required to ensure all conditions would be complied with.

Members were alarmed and concerned to hear from the Applicant when pushed, that it was the previous Premises Licence Holder, Mr Ross Hennessey, who had drafted and submitted the application in the Applicants name, and when consulted on its contents over the telephone, the Applicant stated to Mr Hennessey that he did not agree with certain conditions but was told by Mr Hennessey, as his intended employer, to agree them. Members therefore had no confidence that the Applicant would comply with all conditions set out in the application form, having not agreed with them in the first place.

On the evidence before them, Members were of the opinion that the suite of conditions submitted, was no more than an attempt to get the application through. Furthermore, Members could not be satisfied that the conditions had been considered individually against the intended operation, in a way which ensured that the Licensing Objectives would be promoted. Instead, it appeared to Members that conditions had merely been lifted from another Premises Licence and a Consent Order, drafted by Torbay Council, with an expectation that these would be accepted, and the application granted.

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



On the evidence before them of the operational history of this premises and its geographical location, Members resolved that careful consideration of each condition was required to mitigate noise nuisance emanating from the premises, along with strong management to uphold compliance of those conditions. In Member's opinion, this application nor the Applicant in person, demonstrated the attributes required.

Members noted that the application contained the following two conditions:

'Mr Ross Hennessey, the previous Premises Licence Holder and Designated Premises Supervisor, be prohibited from entering the premises during operational hours.

Mr Ross Hennessey, the previous Premises Licence Holder and Designated Premises Supervisor, shall not be involved in or influence the operation of these premises.'

In doing so and on the evidence before them, Members were extremely concerned to learn that Mr Hennessey's previous licence for these premises had been revoked by a Licensing Committee in June 2021 and on appeal of that decision in December 2021, his application was dismissed by the Court. Therefore, forming the opinion that Mr Hennessey in making this application, was seeking to circumvent the decision of the Licensing Committee and the outcome of his appeal and was using the Applicant, who is his employee, as a front to enable him to continue operating these premises.

Given the sequence of events leading to this application coming before them, Members were of the strong opinion that the Applicant would not, or would not be able to, comply with these conditions, despite what may be his best efforts and therefore unanimously concluded, that granting this application would inevitably lead to the Licensing Objectives being undermined.

In addition to the above, Members resolved that the following specific examples also cemented their unanimous decision to refuse this application. The application itself was poorly drafted, in that it was littered with contradictory and duplicated condition, some of which could not be complied with, as the necessary measures were not in place. Such as a lobby, and when asked about this, the Applicant said he had a builder working on their other nearby premises who he could bring down to build this. Again, of concern, it appeared to Members that there was no real thought or understanding by the Applicant in this off the cuff proposal, other than to provide a reactive response, having had the oversight brought to his attention. In Members opinion, to be an effective lobby which prevented noise outbreak, the input of an acoustic engineer may be necessary and without knowing the qualifications of the builder, what was being proposed as a build, whether the owner's permission would be required or granted in changing the layout of the premises, Members could not be satisfied that this proposal would be permitted or effective. Furthermore, it was of concern to Members to note that the application sought to include an outside seating area but on the evidence before them, no steps had been taken to engage the appropriate authorities to enable this provision and no conditions were proposed in the application, as to its operation which ensured that the Licensing Objectives would be promoted. Instead, the Applicant said they thought they would throw it in as they saw that a nearby premises had it. Hearing from the Responsible Authority Public Protection Officer, it was clear that Officers with that Premises Licence Holder had undertaken extensive work, to enable this provision. This in Members opinion, further showed a lack of experience and foresight in what was required to operate a premises in a responsible manner and understanding the impact an outside area could have on nearby residents and the necessity to mitigate this.

A further concern for Members which highlighted one of many contradictions, was Applicant's submission that the premises would operate with a focus upon families and food. Yet this appeared to be contrary to what was contained within the application. Also being impeded by the premises not having a kitchen. Combined with this, Members noted the Police's oral and written representation, that they tried to negotiate with the Applicant a terminal hour and that all persons would be seated within the premises and served by waiter/waitress service but the Applicant indicated he would not agree to this as it would not work for them, instead wanting to run the premises as a pub/bar.

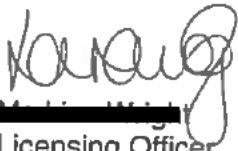
Members also noted the submissions of the Applicant and that of the Police, that the Applicant will be responsible for these premises and that he will also oversee the management of two other premises owned by Mr Hennessey, one of which is subject to a second licensing review, within a short period. Noting that all three premises are classed by the Police as a high risk, due to ongoing issues and previous concerns and the late licences of the two other premises, Members unanimously resolve that to grant this licence would in their opinion, certainly undermine the Licensing Objectives, as the Applicant would not have the capacity nor capabilities to operate these premises in the manner required.

In concluding and as an alternative to refusal, Members carefully considered what if any modifications could be made to the application, such as adding or removing conditions, along with granting the application but refusing to appoint the Applicant as the Designated Premises Supervisor. However, after careful consideration of all options available to them, they unanimously resolved that such modifications could ultimately result in them changing the business model in a way which was not agreeable to the Applicant and for the reasons outlined above, an outright refusal was in their opinion, the only way to ensure that the Licensing Objectives would not be undermined.

I enclose a sheet advising you of your appeal rights, if you are unhappy with the determination made by the Licensing Sub Committee.

If you have any queries then please do not hesitate to contact me.

Yours sincerely


PP [REDACTED]
Licensing Officer
Community Safety

Encl – appeals schedule 7DL

c.c. Licensing Department, Devon & Cornwall Constabulary, Launceston Police Station,
Moorland Road, Launceston, PL15 7HY
Public Protection Officer, Torbay Council, Town Hall, Castle Circus, Torquay, TQ1 3DR

Licensing Act 2003 – Appeals Guidance

Guidance for Interested Parties and Applicants

Appealing Licensing Decisions

This guidance describes the process for appealing a Licensing Authority's decision about an application for a new premises licence or club premises certificates or for a variation to an existing licence or certificate, or a provisional statement. It also contains information about the Court hearings process. Unless stated otherwise, references to 'licences' in this text also apply to club premises certificates.

Who can appeal a Licensing Authority decision?

In relation to premises licences, "interested parties", that made relevant representations during the application stage, have the right to appeal against a Licensing Authority's decision in the Courts, if they think:

- The licence should not have been granted
- The Licensing Authority should have imposed different or additional conditions on the licence
- A licensable activity should have been excluded from the licence
- The Licensing Authority should not have agreed to the named "premises supervisor" (not relevant for club premises certificate)
- There was a procedural irregularity, and this affected the decision (e.g. the licensing committee had failed to comply with the hearings regulations)

Any appeal must address the likely impact that granting the application may have on any of the four licensing objectives:

- The Prevention of Crime and Disorder;
- Public Safety;
- The Prevention of Public Nuisance; and
- The Protection of Children From Harm

How do I make an appeal?

Appeals should be made in writing to the designated officer for the Magistrates' Court for the area where the premises is situated. Appeals have to be made within **21 days** from the day the Appellant is notified of the Licensing Authority decision about the application. Appellants may want to check the exact "cut-off" date with Torbay Council's Licensing Department.

The Court does charge a fee and it is recommended an Appellant contacts the court directly of the current fee. For all general enquires please phone 01803 617880.

Please write to:

HMCTS South & West Devon
Nicholson Road
Torquay
TQ2 7AZ

Alternatively you can email:

Licensing Act 2003 – Appeals Guidance

de-torquaymcadmin@hmcourts-service.gsi.gov.uk

What happens once an appeal has been made?

On receiving an appeal, a Magistrates' Court has three options. It can:

- Dismiss the appeal
- Substitute the decision being appealed against for any other decision the Licensing Authority could have made
- Send the case back to the Licensing Authority and tell them how to deal with it in accordance with directions of the Court.

The Court may also make such costs orders as it considers fit.

There will normally be an "initial hearing" at the Magistrates' Court at least 28 days after the '21-day' period for making appeals. This is when the Court will decide whether there is a case to hear, and whether it will hear the case itself or send it back to the Licensing Authority to deal with. In doing this, the Court will consider whether the appeal is valid and whether the case outlined in the appeal has been contested. Where a Court decides to hear the matter itself, it will normally adjourn to a separate "full hearing" date to decide the case, when sufficient Court time can be allowed.

As the Licensing Authority is always a party to an appeal, it is suggested that concerned interested parties should contact their Licensing Authority to establish whether another party or the applicant has lodged an appeal.

[NB – If applicants appeal Licensing Authority's decisions, Responsible Authorities such as the Police, and interested parties, such as local residents, that made representations about the application, will not, by the terms of the Licensing Act be "responding parties" at appeal hearings. However, in such cases, an interested party could request that the Court make it a responding party, or the Licensing Authority could call upon them as a "witness" to back up the decision they made].

Procedure at an appeal hearing

Appeal hearings will take place at the Magistrates' Court for the area where the premises is situated. The Licensing Authority and the applicant will be the "responding parties" (respondents) to appeals from interested parties and will normally be present at appeal hearings. Interested parties should contact their Court to find out whether they need to appear at a hearing. It may be possible in some cases for written evidence to be given to the Court instead, however, Magistrates Courts aren't obliged to accept written evidence and can insist that parties attend in person, so prior agreement must be sought. At a hearing the person appealing would normally open the case and call his / her witnesses. However, in licensing cases, the Court may invite the respondents (i.e. the licence or certificate holder) to speak first, if everyone agrees, as this will enable the Court to understand how the Licensing Authority came to its decision. All parties at an appeal hearing can call upon witnesses to provide evidence to support their position (e.g. other local residents or Responsible Authorities, such as the police).

Costs

If you appeal against a Licensing Authority's decision, and you are unsuccessful, the Magistrates' Court can award costs against you, if it sees fit. This would mean that you would have to pay other parties'

Licensing Act 2003 – Appeals Guidance

legal costs as well as your own. However, the Magistrates Association and the Justices' Clerks Society has advised that awarding costs for a licensing appeal should be an exception and not a rule, and any resident with reasonable grounds for appeal should not be penalised.

What happens after an appeal?

After an appeal hearing, the Court will normally notify the licensing authority and other parties of its decision, and the reasons for it, either immediately or usually, within three working days.

The Licensing Act 2003 does not provide for a further appeal against the decision of the Magistrates' Court. Accordingly, the usual rules for challenging decisions of Magistrates' Courts will apply.

NB - Courts will not issue orders suspending the effects of any Licensing Authority decision, whilst an appeal is waiting to be heard. The Licensing Authority's decision will not take effect immediately, until the outcome of any appeal is known.

This guidance does not detail matters such as the nature of the Court hearing with regard to standard of evidence, role of licensing policy etc. Applicants should contact the relevant Court for further advice.

Schedule 5 to the Licensing Act 2003 and Chapter 10 of the Secretary of State's Guidance to Licensing Authorities deal with appeals. For further information about the appeals process, contact the local Magistrates' Court.

From: [COPIK Karl 30544](#)
To: [SMART Julie 50403](#)
Cc: [HONEYBALL Daniel 17442](#); [RANDALL Peter 17113](#)
Subject: RE: Hennesseys
Date: 28 February 2022 15:36:57

Good afternoon, All noted [REDACTED] if there is CCTV covering the front entrance this would have been caught on it. The broom was being swept from road height and then to head level in a swinging motion due to the females intoxicated state and anything on within the broom would have come straight into my face but I think she was missing what ever was on the floor I didn't look. I walked home thinking what a cowboy town and what a terrible impression I had just witnessed and to anybody visiting my town.

Kind regards

Karl

From: SMART Julie 50403 [REDACTED]
Sent: 28 February 2022 15:28
To: COPIK Karl 30544 [REDACTED]
Cc: RANDALL Peter 17113 [REDACTED]; HONEYBALL Daniel 17442 [REDACTED]
Subject: Re: Hennesseys

Hi Karl

Many thanks for your email.

As you may be aware Mr Ralph, who used to work at The Bullers, has applied for a licence at Hennesseys. Myself and numerous residents have objected to the application and a hearing is being held on Thursday morning when the Licensing Authority will have to decide to grant or refuse it.

Last week Mr Ralph was permitted to open for 3 days as he put in a temporary event notice, and therefore the sale of alcohol was legal at the time you passed the premises.

[REDACTED]

[REDACTED]

Thank you for your diligence in bringing this matter to my prompt attention.

I'll update you on Thursday once the committee have made a decision.

Kind regards
Julie

From: COPIK Karl 30544 [REDACTED]
Sent: Monday, February 28, 2022 2:29:55 PM
To: SMART Julie 50403 [REDACTED]
Cc: RANDALL Peter 17113 [REDACTED]; HONEYBALL Daniel 17442 [REDACTED]
Subject: Hennesseys

Sorry to trouble you Julie, [REDACTED], are there any currently rules regarding the above premises at the moement, I walked past off duty 24/02/2022 at approximately 22:15 hrs and there were people inside, alcoholic drinks appeared to be on the bar but I cannot confirm this as I did not enter, what I was disgusted with to be quite frank is as walking past with my little dog, a female outside the address brush in hand was sweeping something away from the front entrance area on the road, she was clearly heavily intoxicated and due to her stood there with a brush I took it that she was an employee.

She was staggering whilst holding the brush, sweeping it hopelessly practically missing the ground and I heard her say " IM TOO FUCKING PISSED TO BE CLEANING UP SICK"

The brushing motion if anything was on the brush would have just come straight towards my face, ive written down the word disgusting which is my impression of what I saw.

[REDACTED]

Kind regards

Karl

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From: [SMART Julie 50403](#)
To: [REDACTED]
Subject: JACKZ BAR MEETING ON 21 JANUARY 2022
Date: 26 January 2022 13:20:00
Attachments: [image001.png](#)
[image005.png](#)
[image007.png](#)
[image009.png](#)

Hi [REDACTED]

I'm emailing you in connection with the meeting at Jackz Bar on Friday 21 January 2021 between yourself, Sgt Curtis, Mr Andy Ralph and I.

On entering the premises both myself and Sgt Curtis needed to use the toilets. You immediately advised me that there is no electric in the ladies toilets and you switched on a standard lamp, 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 held together with silver tape and cello tape. I noticed that the broken edges appeared very sharp. I 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. In my opinion 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, the cubicle was pitch black and I was unable to see anything. There were no facilities for drying hands.

Sgt Curtis raised concerns with you in relation to the state of the male toilets. He pointed out that the cistern is not connected to the urinals and therefore no water flushes through the urinals. You indicated that the cistern has been like this for some time and prior to Mr Hennessey taking over the premises. He also showed you that the electric hand drier was hanging from the wall and lying on a shelf but still was connected to the mains electricity, 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. You indicated that you were not aware that the hand drier and towel dispenser had been removed from the wall as you had not been in the premises since the week before. There was no record of the damage being recorded in the incident records over the previous weekend.

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 you that he had serious concerns about the safety of the premises and asked when you last had an electrical safety check, you indicated that you don't know. Sgt Curtis then advised you that if it was his business he would not open until things were checked electrically but that was not something he could enforce. Mr Ralph and yourself agreed it was not safe and said you would not open until an electrician had checked all the wiring to ensure it is safe, and provides you with a certificate to this effect. You agreed to stay closed until this has been completed.

I would take this opportunity to point out that our concerns in relation to the above matters sit under the Promotion of Public Safety licensing objective, which the police are not the primary

authority responsible for enforcing. However I have informed the Torbay Council Health and Safety Officers of our concerns.

We then went through the premises licence with you, and identified the below issues:

Annexe 2, Conditions Consistent with the Operating Schedule

General:

1. *There shall be no entry or re-entry after 1.00 am.* There is another condition on the licence in respect of this, so this condition can be removed.
2. *Drinks shall be served in shatterproof glasses .* You didn't seem confident that safety glasses are being used. I recommend that this condition is removed as a more specific condition is contained later within the licence.
3. *No bottles shall be served when open after midnight.* Again a further condition on the licence relates to this, so this condition can be removed.

The Prevention of Crime and Disorder:

1. *CCTV must be in good working order.* Again this condition can be removed as an updated CCTV condition is included within Annexe 3 of the licence.
2. *There shall be posters displayed regarding responsible drinking.* No posters about responsible drinking within premises and therefore this condition was not being complied with.
3. *There shall be promotions against drink driving.* No posters on display, condition not being complied with.
6. *SIA trained doorman shall be present at the premises.* This condition can be removed.

Public Safety:

1. *There must be 4 exits available in case of emergency, 3 of which are on the ground floor.* There is only one exit on the ground floor and therefore this condition cannot be complied with and should be removed. Advice was given to [REDACTED] concerning this matter prior to the review hearing but it still has not been addressed.
2. *All safety checks and systems shall be maintained.* It is not clear what safety checks this relates to, however Sgt Curtis and I were not satisfied that a fire risk assessment was in place, and had concerns in relation to electrical safety within the premises. I recommend you remove this condition and add an additional condition to the licence that "All relevant Health and Safety requirements and legislation will be complied with".
3. *SIA door supervisors shall be present to control and look after customer welfare.* This can be removed as a further condition relates to door stewards.
4. *Accident records shall be present and maintained.* You indicated that you do not keep

any accident records, and therefore this condition was not being complied with.

We did not discuss any conditions in relation to Public Nuisance.

The Protection of Children From Harm

2. *Identification in the form of ID cards with 'PASS' hologram must be produced by anyone who appears to be under 21.* This condition can be removed as there is a further condition re Challenge 25.
3. *There shall be no children after 9pm and no under 18's after midnight.* This condition can be removed as further conditions relate to this matter.

Annexe 3, Conditions attached after a Hearing by the Licensing Authority.

The Prevention of Crime and Disorder

2. *On every occasion that the premises sells alcohol after midnight and then closes after 12.30 am, SIA door staff shall be employed from 10.00 pm until closing.* This condition can be removed as a new condition was added to the licence on withdrawal of your appeal.
3. *A CCTV system of an evidential standard shall be installed to the satisfaction of the police, and the system to be in operation at all times the premises are open to the public. All recordings from that system to be kept for a period of 14 days and the police to have access to recording at any reasonable time.* This condition can be removed.
4. *All drinks shall be served in toughened or strengthened glasses and no alcohol shall be served in glass bottles from which it is intended or likely that a person shall drink.* You indicated that drinks in glass bottles are decanted into glasses, but did not appear confident that toughened/strengthened glasses are being used. I recommend you either check all glasses to determine if they are toughened, purchase new toughened glasses from a reputable supplier or serve drinks in plastic/polycarbonate vessels to ensure you can comply with this requirement.

Again we did not go through any of the public nuisance conditions.

Conditions attached after a review hearing by the Licensing Authority

General

2. *That Mr Hennessey shall not be involved in or influence the operation of these premises.* I informed you that I am aware Mr Hennessey had been requested by the police to provide CCTV in respect of an incident and that it had taken about 20 days for this to be provided. The condition on the licence in relation to CCTV requires footage to be provided "with absolute minimum of delay" and therefore 20 days is unacceptable. I also informed you that I have been advised by the Best Bar None co-ordinator that Mr Hennessey had contacted her concerning joining Best Bar None. I pointed out that Mr Hennessey is prohibited from being involved in the operation of the premises and as the part of the licence containing the conditions is referred to as the operating schedule, he should have no involvement in any matters contained within the

licence. I advised you to discuss this with Mr Hennessey and instruct him to refer any enquiries regarding CCTV or matters in respect of the licence to you.

8. *All persons employed at the premises in the sale and supply of alcohol, shall attend and successfully complete the BIIAB Level 1 Award in Responsible Alcohol Retailing within 2 months of commencing employment.* I have previously given you advice re this and I am satisfied that you are progressing this matter.

9. *All staff shall receive training regarding their responsibilities under the Licensing Act at the commencement of employment, with refresher training being provided at least once a year. Records of all training, including BIIA Certificates, shall be maintained and kept at the premises for a minimum period of 12 months. These records shall be made available to the police or Local Authority Licensing Officers for inspection on demand.* You were unable to provide any training records, although [REDACTED] indicated during my visit on 9 January 2021 that training was to take place the following week. When discussing this matter, you indicated that staff were undertaking the BIIAB and I informed you that, as a minimum, we would expect all staff to be trained in relation to Challenge 25, Fire Safety, Health and Safety, and your drugs policy. I would take this opportunity to recommend that you also provide training to your staff in respect of your noise management and monitoring policy, the recording of incidents and accidents, first aid and any other matters falling under your responsibility as Premises Licence Holder.

11. *The premises shall sign up to a licensing support scheme such as Best Bar None and ensure that they meet the standards required by that scheme at all times.* We have previously discussed this matter, and the Best Bar None co-ordinator has advised me that she will meet with you before the end of February 2022 to progress this as a matter of urgency.

12. *The Premises Licence Holder shall ensure that the Regulatory Reform (Fire Safety) Order 2005 is complied with an up to date fire risk assessment shall be kept on the premises for viewing by responsible authorities at all times. The fire risk assessment shall be amended whenever any changes are made to the premises which may affect emergency evacuation.* You were unable to produce a fire risk assessment and stated that you didn't know if one had been completed, despite advice having been given to [REDACTED] and Mr Hennessey during a meeting at the premises in September 2021, although I appreciate you were not responsible for the premises at that time. I asked you what fire safety training had been provided to staff, and you indicate no training has been provided. I asked you if staff know where to locate a fire extinguisher and you indicated that you didn't know if there was one at the premises and you and Mr Ralph went to look for one. Sgt Curtis thinks that Mr Ralph might've said that he found one, but I do not recall that. This condition was not being complied with.

At 2000 hrs on the evening of Saturday 15 January 2022 and 0100 hrs on the morning of Sunday 16 January 2021, PC Honeyball visited Jackz Bar and established that alcohol was being sold, with music playing and dancing taking place. Your staff/door stewards indicated that these activities would cease at 0230 hrs.

I would now draw your attention to my email of 12 January 2022 in which I state:

However, I would take this opportunity to remind you that it is the responsibility of the Premises Licence Holder (yourself in this case) to ensure that the requirements of a

premises licence are complied with at all times when licensable activities take place. Therefore, if you are satisfied that you are now able to comply with all the licence conditions, you can open and carry out licensable activities whenever you wish, but if you do not think that you can comply with the licence requirements, you should not carry out any licensable activities until you are satisfied that you can comply.

Myself and Sgt Curtis are therefore extremely disappointed that you were open and carried out licensable activities over the weekend of 14/15/16 January 2022 when it is apparent that various conditions on the licence were not being complied with.

I would again take this opportunity to remind you that failure to comply with the terms and conditions of a premises licence is an offence under Section 136 of the Licensing Act 2003, and a person found guilty of such an offence is liable on summary conviction to an unlimited fine, up to 6 months imprisonment or to both. As you have already been served a S19 Closure Notice, we do not intend to serve you with a further notice on this occasion but I would remind you that we can seek a Closure Order from a Magistrates Court at any time within 6 months of the issue of the notice if alcohol is sold and the licence conditions are not complied with. One of the conditions outlined in the Closure Notice is in respect of training records not being produced, and this breach was again identified on Friday 21 January 2022. I must warn you that should further breaches of the premises licence come to my attention, I shall consider seeking a prosecution for any offences committed, or a review of your premises licence, but I hope that this will not be necessary.

In respect of the approved plan of the premises, as advised in my emails of 7 December 2021, 23 December 2021, and 9 January 2022, this does not reflect the layout of the premises as there are no male toilets next to the bar, and this area is now used for storage. As discussed on Friday 21 January 2022 I recommend that you apply for a variation of your premises licence to remove the conditions identified above and submit an amended plan. Please contact Carrie Carter of Torbay Council ([REDACTED]) if you require any advice or assistance in relation to this.

Kind regards

Julie Smart

Alcohol Licensing Officer - Torbay

Tel: [REDACTED]

Prevention Department

Devon and Cornwall Police, Police Station, South Street, Torquay, TQ2 5EF

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**DEVON &
SOMERSET**
FIRE & RESCUE SERVICE

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

**Protection Delivery
Torquay Headquarters
Newton Road
Torquay
TQ2 7AD**

Your Ref: BL969366/645429
Our Ref: BL969366/645429
Website: www.dsfire.gov.uk

Date: 04 February 2022
Please ask for: [REDACTED]
Email: [REDACTED]

Telephone: [REDACTED]

Dear Sir or Madam

**Licensing Act 2003
Fire and Rescue Authority Response to Police Representation
Premises: Jackz Bar, Parkham Road, Brixham, TQ5 9BU**

I refer to the application received on 02 February 2022 for the above premises, in this regard the Fire Authority would offer the following observations: -

At the request of the Police, who raised concerns in relation to fire safety matters at the above premises, I telephoned [REDACTED] to arrange a fire safety audit. No contact was made so I telephoned Mr Ross Hennessey and made an appointment to conduct a short notice audit.

On Friday 28th January 2022 at 1100hrs, I attended the property with my colleague Watch Manager (WM) [REDACTED]. We met with Ross Hennessey, the owner, and a gentleman called Andy.

We explained our reason for the visit and were informed by Mr Hennessey that the building was closed and would not be trading for about 8 weeks.

As the building was closed and the ground floor area was under refurbishment myself and [REDACTED] decided that an audit was not appropriate at this time as the Regulatory Reform (Fire Safety) Order 2005, enforced by the Fire Authority, was not applicable.

Instead, to assist Mr Hennessey and work with him to achieve compliance, we chose to conduct a brief inspection of the premises and provide suitable advice and guidance as to the steps necessary to meet the requirements of the legislation.

Tel [REDACTED]

Chief Fire Officer Lee Howell QFSM FIFireE

Our inspection highlighted the following issues: -

- A suitable and sufficient fire risk assessment should be undertaken to include a capacity for the premises. The existing assessment not being appropriate due to the change of ownership and interim measures would have needed to be taken into consideration with regards to the refurbishment taking place at the property. This assessment should evaluate the travel distances to a final exit, the external exit route (as the gate opens inward). This assessment should take into account both the width and the direction of opening of the final exit doors and the available floor space for safe occupancy on each level. The first-floor exit routes merge together externally and this needs to be addressed within the assessment. The access stair would also need to be assessed due to the low head clearance.
- The escape route to the rear of the first floor should be maintained and kept clear of all storage and the damage to the steps repaired.
- With no door being present to the ground floor bar that was under refurbishment at the time of our visit, steps needed to be taken to prevent unauthorised access. Building materials were present and parts of the ceiling in the ground floor bar area were missing as the floorboards were clearly visible. A fire in the ground floor bar area would spread quickly into the stair and through the ceiling.
- An appropriate fire detection and warning system should be provided for the premises. Such system to provide a suitable sounder to alert persons present in the first-floor garden area of the property.
- A management procedure to be introduced for the removal of all draw bolts from the first-floor exit doors whilst the public are on the premises.
- Consideration within the fire risk assessment should be taken regarding reducing the risk from extension leads and cables.
- All staff to be trained in procedures to be taken in the event of a fire.

The above list of works was not exhaustive and was provided verbally to Mr Hennessey at the time of the inspection. Discussions were had regarding the remedial works needed but, as the premises was not trading, no consideration was given to issuing a formal Notice regarding immediate closure of the building. For your information neither myself or [REDACTED] are authorised to make that decision and it would require the attendance of a Group Manager. It was agreed that a full inspection of the premises would take place during the week prior to re-opening at which time a formal letter or Notice would be provided detailing any requirements.

Tel. [REDACTED]

Chief Fire Officer Lee Howell QFSM FIFireE

On Tuesday 01 February I received an e mail from Andy, who was present at our inspection, advising me that it was not possible to alter the doorways for the premises as it had listed status and it would be deemed to be altering the look of the building, which is protected, I was also asked if I could visit the property and conduct another inspection as it was intended that the premises would be re-opening this weekend (04 February 2022).

I telephoned Andy and advised him that due to the current workload I would not be in a position to attend as I had been told that the premises is closed and would not be re-opening for 8 weeks. During the call to him I confirmed the matters raised from our previous visit which are listed above and he wrote them down for his reference.

The timeframes Andy has now introduced are not ones that can be fulfilled by us. We are unable to check on any works carried out before the premises may reopen. The licensee will be able to confirm with you what works, if any, have been undertaken.

Yours faithfully

[Redacted signature]

[Redacted name]

Business Safety Officer

c.c. [Redacted]

From: [SMART Julie 50403](#)
To: [REDACTED]
Subject: Re: Jackz
Date: 04 March 2022 08:31:54

Morning [REDACTED]

As you're probably aware I've been on leave and I'm now trying to catch up.

Myself and Sgt Curtis could meet with you and Andy at 1.00pm on Wednesday 9 March at Jackz if that is convenient for you.

We also need to discuss a matter with Andy in respect of Hennessey's so would like to go there after.

Please let me know if this is convenient to you both.

Thanks
Julie

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From: [REDACTED]
Sent: Monday, February 21, 2022 5:36:25 PM
To: SMART Julie 50403 [REDACTED]
Subject: Jackz

Dear Julie,

Me and Andy have been working tirelessly over the past few weeks to go above and beyond recommendations from yourselves, the fire department and environmental health.

We would appreciate it if you and Sargeant curtis could meet with us on Thursday or Friday this week to come and have an inspection, and if required you are welcome to bring any other relevant authorities along too.

Kind regards

[REDACTED]

JACKZ BAR

-v-

TORBAY COUNCIL

STATEMENT OF ANTHONY PETER RALPH

I, Mr Anthony Peter Ralph ["Andy"], Area Manager for Hennessey Sports Bar Limited (incorporating both bars) will say as follows:

Background and history in the licensing industry

1. I am making this statement in relation to the premises licence review of Jackz Bar, due to be heard on 24 March 2022,
2. I am 66 years and have around 20 years experiencing in the licencing industry. I am used to running bars with a history of doing so in a brewery backed environment and a corporate environment.
3. In 2003, my wife and I ran the Tern Inn, in Chipping Sodbury. I was named as DPS for a second pub between around 2004 and 2007, namely the Woodbine in Cirencester. I Acquired BIIAB Level 2 NCL 02/05/2003, this was a 3 day Pub Management course covering all aspects of pub management. A copy of the certificate is attached and marked as exhibit **APR/1**.
4. did the personal licence qualification course and enjoyed around 3 years running two pubs. My wife and I then moved on in or around 2007 after the introduction of the smoking ban had an immediate impact on business.
5. After a short while out of the industry, I returned to a role as a bar manager and duty manager at the Esplanade Hotel in Paignton. Whilst I was not named DPS on this licence I effectively held the role of a DPS. I had responsibility for a large number of staff and guests (45 staff and 144 guests). I received a lot of on job training, to include fire safety, health and safety,

COSHH, ALPS (Award for Licenced Premises Staff, Risk Assessments for Licenced Premises. I believe that this environment was an invaluable part of my education in the licensing trade. We were very often subject to snap inspections from internally employed Environmental Health Officers who held us to extremely high standards. This has taught me to work to an extremely high standard. I enjoyed 10 years working at the Esplanade. The impact of Covid 19 led to the closure of the Esplanade. Given that we lived in the staff accommodation we had to find alternative accommodation and alternative employment.

6. We were introduced to the owner of the Buller's Arms, in Brixham, by a mutual friend. I was appointed as General Manager. I was not initially named as DPS, my wife was. She, however, left the role after around 6 months and the owners neglected to nominate me as the DPS. I effectively took that responsibility until leaving in January 2022.
7. I implemented a number of systems and procedures during my time there. I ensured that I undertook regular refresher training and produce the following certification:
 - a) E-learning course certification in Age Verification (dated 14 April 2021) – marked as exhibit **APR/2**;
 - b) E-learning course certification in Allergen Awareness (dated 10 May 2021) – marked as exhibit **APR/3**;
 - c) E-learning course certification in Drugs Awareness (dated 11 April 2021) – marked as exhibit **APR/4**;
 - d) E-learning course certification in Fire Safety Awareness (dated 28 March 2021) – marked as exhibit **APR/5**;
 - e) E-learning course certification in Health and Safety (dated 28 March 2021) – marked as exhibit **APR/6**;
 - f) E-learning course certification in Manual Handling (dated 11 April 2021) – marked as exhibit **APR/7**; and
 - g) E-learning course certification in Slips, Trips and Falls (dated 29 March 2021) – marked as exhibit **APR/8**.

Involvement with Jackz Bar to date

8. My daughter, [REDACTED] is friends with Ross' sister. I have known of him for a number of years although I have only recently got to know him. After my shift at the Buller's Arms, my wife and I would often go to Jackz for a night cap. It was there that I met Ross and got to know him.
9. When Ross told me of his first problems back in the summer of 2021, I agreed to help him out. I was happy to move on from the Buller's Arms and saw that Ross needed my help. At first I became involved to try and help out with Hennessy Cocktails. I attended the premises

licence review hearing for that bar as a witness. I stated that I was prepared to leave my job there and then to step in for Ross as DPS should that assist, such is my faith in him. The Sub-Committee did not accept this assertion after hearing from my then employer, ██████████, owner of the Buller's Arms, who stated that "I had to work 28 days notice". This was a false statement as I had no written terms of employment, I was paid weekly. I had only worked for him for a year and a half and no verbal agreement for notice period. I was not made aware that this notice period was given as evidence until after the hearing and feel that this false statement heavily impacted on the decision of refusal of me becoming the DPS for Hennessey's.

10. I feel that Ross has been unfairly treated and was happy to share my expertise. I always found Ross very receptive to the advice I was able to offer given my decades of experience in the industry. I believe him to be a genuine businessman who seeks to do things the right way. I also feel comfortable in the knowledge that he respects my opinion and accepts my judgement in relation to matters that I am more experienced than him with. I am not scared to tell him when I feel he is overstepping. I am aware that he is to have no active part in the management of the licence.
11. A major part of the reason I was eager to help Ross was because, in my view, Jackz has improved since Ross took over. Ross has engaged with the local authority and all relevant authorities to ensure compliance. My vision for Jackz is to push this customer base towards an older demographic. I firmly believe that there is the relevant customer base there to be catered for by Jackz and that moving towards this customer base brings with it less disorder.
12. After leaving the Buller's Arms I started working with Ross on or around 14 January 2022. I have played a big role in overseeing the renovations. I have worked alongside Ross in his capacity as leaseholder and business owner. He has not made any decisions about the licence since I came on board.
13. My role was initially to be involved as an 'Area Manager' of both Hennessey Cocktails and of Jackz Bar. ██████████ was to continue as DPS and licensee of Jackz with me offering my support and experience in a management role. I have worked with ██████████ since 14 January 2022 until she recently made the difficult decision to step away from her role as DPS. Given that the decision was made to keep the bar closed until the refurbishments and corrective actions were resolved, ██████████ has had to find alternative employment. She will remain as a member of staff but will no longer have the capacity to act as DS and licensee.
14. I did not hesitate to agree to being out forward as licensee and DPS in ██████████ absence. That is not a decision I would take unless I was absolutely confident in the establishment, its

systems and in the ownership. I am confident that I will have full responsibility in relation to how the bar is run and Ross is confident in my ability to do so.

15. I have recently applied to be DPS and Licence holder on a new application for Hennessey Cocktails and as recently as 21 March 2022, I submitted an application for the same responsibilities with Jackz Bar.
16. I believe that these are roles that can co-exist and my capacity will not be stretched. Whilst these are separate establishments, they open at different times and share a lot of staff resources. My overall aim is to be supported by a strong management team beneath me with a view to training them to the extent that they could eventually apply to replace me as DPS.
17. I have discussed the possibility of me being named as DPS for both places with Julie Smart, licensing officer, who was very enthusiastic and suggested there would be no issue with this.
18. I have had a very recent meeting on 7 March 2022 with Inspector Martin Tregaskis. I felt that it was a very productive meeting and we were together at the premises of Jacks Bar for around 1 and half hours and we discussed the history of the issues with the premises. Ross was present with me at the meeting with me. Ross is the business owner of Jackz and of Hennessey Cocktails and felt it was appropriate to provide a history to Martin Tregaskis given he had not been involved up until that point. This was for context only and not an indication of Ross' ongoing involvement with the management of the licence. We discussed the history of licensing issues relating to Hennessey Cocktails and Jackz Bar and overall, I felt that it was a very positive meeting and felt energised and confident that I could enjoy a good working relationship moving forwards.
19. My understanding from Ross' approach as a business owner is that he does not cut corners and that if something needs to be dealt with then it will be. If the licensing officers had informed Ross that restorative and corrective works needed to be done on a closure notice would be issued then the works would have been done. I understand that Ross was reliant on safety inspections relating to the electrics and previous visits failing to raise any serious concerns as reassurance that the building was safe. That said, I also know that it was always part of Ross' business plan to redevelop the building and that would have addressed many of the issues that appear to have been longstanding issues from the time of the previous owner of Jackz Bar.

Renovation work carried out

20. Much has been done to renovate the property to deal with the concerns outlined with respect to health and safety. I engaged a local contractor to oversee the works and I have assisted where necessary. I have a history as a sound engineer and a general builder. An example of the works carried out is outlined below:

- a. We have ripped out over a mile of old cables that have been there since the previous owner. It is apparent that over the years new cables were put in but old ones left unremoved. Although it should be stressed that they were not live wires, it should be said that this issue has been rectified;
- b. The lights in the male and female toilets have been restored, with each cubicle being fitted with safety lights;
- c. Hot running water has been added to the male and female bathrooms;
- d. The sink has been replaced in the female bathroom;
- e. Old ceramic urinals have been removed from the male bathroom and replaced with stainless steel urinals;
- f. A noise pollution system has been installed. There is a default setting to cut off the power in the event that the sound exceeds a certain level;
- g. The emergency exit door has been widened. Push bars have been fitted to allow the doors to open outwards;
- n. An old lukebox has been removed and minor works carried out to restore the way behind it;
- i. We have re-situated a fuse board and ensured it is concealed;
- j. We have completed secondary glazing to the windows outside. Laminate glass is now in place;
- k. We have dug out and removed a concrete step outside to extend the width of our fire exit;
- l. We have re-concreted external steps in our fire exit; and
- m. We have replaced and renewed the hand dryers in both toilets.

21. Whilst continued improvements are ongoing, I am content that the bar is in a much better condition and is certainly in a safe state to be opened to the public.

Alleged breaches

22. I understand that some of the reasons of the Review application being made relate to alleged breaches of agreed conditions to include the following:

- a. Continued involvement of Ross Hennessey in the control and management of the premises licence. I can categorically say that since I started in place on 14 January 2022, all decisions and management relating to the premises licence have been dealt with by ██████████ and me, until ██████████ very recently stepped away from that role. Ross has been on hand to assist with practical issues relating to restorative works, given his responsibility as a leaseholder and business owner. He has not overruled any of my efforts and has largely afforded me the authority to deal with all matters related to the licence;

- d. All staff that are returning now have BIIA certificates. I understand that Ross had misunderstood the timescales involved with ensuring those were in place. I exhibit a copy of those to this statement marked as APR/9;
- c. We are in the process of obtaining accreditation by Best Bar None. I understand that there is a waiting period pending the relaunch of the organisation at the end of March 2022. That will be followed up as soon as allowable; and
- d. Posters regarding responsible drinking and challenging ages were apparently not properly displayed. I can assure the licensing authority that they will be properly displayed under my tenure.

MY INVOLVEMENT

23. I have reassured Ross that I will be available for Jackz Bar for as much as is needed. I have an appetite and desire to ensure the smooth operation of Jackz Bar and have the capacity to do what is needed. I will likely be on site between 5 and 7 nights a week if needed. I am 5 – 7 minutes away by car. We have cameras to assess what is going on when I am not there. I am very confident that I can exercise proper control of the management of the licence.

I certify that the contents of this statement, consisting of 5 pages, are true and I understand that it will be used as evidence in the case.

SIGNED: A. Ralph
Anthony Peter Ralph

DATED: 22/03/22

TORBAY COUNCIL

Please reply to: Ms [REDACTED]

Licensing & Public Protection, Community Safety
c/o Town Hall, Castle Circus, Torquay, TQ1 3DR

Mr Anthony Ralph
[REDACTED]

My ref: SRU/268115

Your ref:

Telephone: 01803 208025

E-mail: [REDACTED]

Website: www.torbay.gov.uk

Date: 21 April 2022

Dear Mr Ralph

**Re: Notice under section 52 (10) Licensing Act 2003 – Review of a Premises Licence
PL0878, Jackz Bar, Parkham Road, Brixham, Devon, TQ5 9BU**

I am writing to you with respect to the sub-committee hearing on 31 March 2022 to consider a review of the premises licence for Jackz Bar.

I can confirm that the sub-committee's decision was as follows:

Decision

That in respect of the application for a Review of a Premises Licence of Jackz Bar, Parkham Road, Brixham, Members resolved unanimously to revoke the premises licence with immediate effect.

Reasons for Decision

Having carefully considered all the oral and written Representations, Members resolved unanimously to revoke the Premises Licence, as they could not be satisfied on the evidence before them, that the Premises Licence Holder, Mr Ralph, an employee of Mr Ross Hennessey, had autonomy, capacity nor capabilities to operate these premises in a manner which ensured that the Licensing Objectives would be promoted, and patrons would be kept safe.

In coming to that decision, Members noted the history of events leading to this Review and the continued involvement of Mr Hennessey in these premises, despite conditions in place to prohibit this.

In doing so, Members noted that Ms Harley, an employee of Mr Hennessey, was appointed as the Premises Licence Holder and Designated Premises Supervisor, on the afternoon of the 24 June 2021, following a Licensing Committee decision earlier that same day, to refuse the transfer of these licences to Mr Hennessey. Furthermore, on the 7 October 2021, Members noted under the licences of Ms Harley, these premises were subject to a Review hearing called by the Police, for the reasons outlined in the report before them. Furthermore, on the morning of the Review hearing, Members noted that Ms Harley had resigned from these positions and a Ms Trust, also an employee of Mr Hennessey, took up these positions and attended the hearing, stating that she was aware of the concerns raised within the Review application and agreed to modify the premises licence, to include the conditions proposed by the Police and Public Protection Officers, along with the following two conditions:

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



- 1) That Mr Ross Hennessey be prohibited from entering the premises during operational hours.
- 2) That Mr Ross Hennessey shall not be involved in or influence the operation of these premises; and

In addition to that modification, Members noted that the premises licence was suspended for a period of three months, until 7 January 2022, allowing Ms Trust time in the intervening period, to implement the measures outlined in the new conditions. Members also noted that this decision was appealed two days after Ms Trust's initial submissions to the Police, during their visit to the premises on the 16 November 2021, whereby she stated that she did not want to appeal the decision, that she was satisfied with the conditions and that she did not want to go to Court. It was therefore of great concern to Members to learn that during this discussion, Ms Trust also stated that she had not discussed the matter with Mr Hennessey, so she was not aware if he wanted to appeal. Notwithstanding that Ms Trust was the Premises Licence Holder. This evidenced to Members, operational control by Mr Hennessey, despite him having no legal standing in respect of the premises licence and his influence in this, was in their opinion, a direct breach of the second of the two conditions set out above.

Whilst the appeal was subsequently withdrawn by Ms Trust on the 22 December 2021, in lodging the appeal, Members noted that the premises were permitted to continue trading, as the decision to suspend the premises licence did not take effect until its withdrawal. During that period of operation, Members further noted with grave concern that the Police continued to raise issues of concern with Ms Trust in respect of the premises operation and non-compliance with conditions. This further alarmed Members and demonstrated to them that Ms Trust was out of her depth in managing these premises, especially as this was a period where Members could reasonably have expected full compliance with its conditions and strong management in place, given the high stakes associated with an appeal and the risk that Ms Trust could lose her licences.

Despite Ms Trust being afforded the opportunity of a suspension to implement change, it was also of great concern to Members to note that late on the 8 January 2022, a day after the suspension was lifted, leading into the early hours on the 9 January 2022, Responsible Authority Officers visited the Premises and noted concerns in respect of covid passport compliance checks, likely noise outbreak emanating from the premises, non-compliance with conditions of the premises licence and the premises layout, not being in accordance with its plan. During this visit, Members were alarmed to note that the personal licence holder on duty, was Ms Harley, the previous Premises Licence Holder and Designated Premises Supervisor who had resigned from these positions. In Members opinion, placing Ms Harley in this position of responsibility was a fundamental misjudgement by Ms Trust, especially noting her submissions at the Review hearing on the 7 October 2021, that she was aware of the concerns raised within the Review application and as such, would have been aware of Ms Harley's failings in compliance with licensing conditions, alleged drug supply, increase in recorded crime, drunkenness, and use of unlicensed SIA door stewards at the premises. This again cemented the opinion of Members, that Ms Trust was out of her depth and did not have the capabilities required to operate this premises licence or to hold positions of responsibility. In doing so, Members formed the clear opinion on the evidence before them, that Ms Trust had been put into these positions, following the resignation of Ms Harley, as a front for Mr Hennessey which enabled him to continue operating these premises, as he had done so.

Members also noted that on the 9 January 2022, the Police served a Closure Notice under Section 19 Criminal and Justice and Police Act 2001 on the outcome of the visit referred, and that this Notice remains in force. Additionally, Members noted following further visits and communication with Ms Trust, the Police submitted a Review of the Licence on 1 February 2022.

Members further noted that Mr Ralph had been engaged by Mr Hennessey, to oversee the management of his three leased licensed premises which have all been identified by the Police as being high risk premises, including this one, from the 14 January 2022. This engagement coincided with Mr Trust's emails to the Police to reopen these premises, where she was advised that if she

was satisfied that she could comply with the conditions, she could carry out licensable activities whenever she wished. Members noted that a Police Officer observed the premises being open and operating on the Saturday 15 January 2022, into the early hours of Sunday 16 January 2022.

Noting the dates, Members were satisfied that Mr Ralph would have had oversight of this opening, and this was significant to them, when considering Mr Ralph's suitability in operating these premises and determining if a further suspension was the right decision, to that of a revocation of the premises licence. In doing so, Members noted during a scheduled visit to the premises on the 21 January 2022, at the request of Ms Trust in respect of the Closure Notice, to which Mr Ralph was also present, Police Officers found breaches of the premises licence which in Members opinion, would have also taken place when the premises were noted to be open and operating on the 15 and 16 January 2022, at a time when Mr Ralph was engaged. Furthermore, and of great concern and significant worry to Members, Officers found that the premises itself was of such a poor state of repair which in Members opinion, was likely to have been the state of the premises on the 15 January 2022, some six days earlier, when it was open to the public. Such was the disrepair, the premises was found to have no electric in the ladies toilet, a free standing lamp placed inside the toilet, between the electric hand drier and sink which could have resulted in it coming in to contact with water in the sink or wet hands, the use of an extension lead for this which was plugged in to the main bar area which in Members opinion, was wholly unacceptable for this type of premises and would have been a trip hazard, cubicle in complete darkness when in use, a crack to one of the sinks which was plugged with paper towels and had sharp edges and was held together with silver tape and cello tape and no facilities to dry hands.

In respect of the male toilets, Officers noted that the cistern was not connected to the mains and therefore no water flushes through the urinals which on the admissions of Ms Trust, had been like this for some time but concerningly to Members, no action had been taken to address this, a strong smell of urine, likely to be attributable to this defect, an electric hand drier was not fitted properly to the wall and was lying on a shelf but still connected to the mains electricity above the sink and in respect to a paper towel dispenser being pulled off the wall, Ms Trust response was to stay staff had not informed her. In a position of responsibility, it was reasonable to expect the Premises Licence Holder, along with Mr Ralph, having been appointed for management oversight, to be aware of all aspect of the premises and this response showed in Members opinion, the irresponsible attitude of Ms Trust and a failing of them both to allow the premises to open in this state.

In the main bar area, it was noted by Officers that a number of wires were hanging from the from walls in at least three different locations and the number of extension leads being used with sockets potentially being overloaded.

When advised of the serious safety concerns and asked when the premises last had an electrical safety check, Ms Trust indicated that she did not know which was of serious concern to Members and again echoed the irresponsible attitude and lack of professional oversight required. Whilst Mr Ralph and Ms Trust agreed that the premise was not safe and that Ms Trust would not be opening again until an electrician had checked all wiring to ensure it is safe and provides her with a certificate to this effect, Members were of the opinion that this was a reactionary response to the serious safety concerns brought to their attention and had the visit not taken place, Members were absolutely certain that the premises would have continued to operate, as it had done so on the 15th and early hours of the 16th January 2022, placing patrons at a serious risk of harm and even death.

This was further compounded by the horrifying response given by Ms Trust and subsequent action taken by Mr Ralph, when asked about staff training and any guidance given to the door stewards before their shift, using fire safety and escape routes. To say she had not provided any staff training, did not know if there was a fire extinguisher, but if there was, she did not know where it was located and then for Mr Ralph to have to go and look for it, was woefully unacceptable to Members and filled them with absolute dread and fear that these two individuals were operating and overseeing the operation of this late licence. In the case of an emergency, customers under the influence of alcohol would be expected to be directed to an emergency exit by staff and stewards and therefore they had a duty to ensure all persons employed at the premises know

where to find fire escape routes, fire extinguishers and alarms are located. To this end, Members had absolutely no confidence in either of them, should such an event occur and were filled with relief, that it had not. This is despite Mr Ralph producing a Fire Awareness Certificate dated 28 March 2021, as exhibited to his witness statement.

In respect of Mr Ralph's appointment as the Premises Licence Holder and Designated Premises Supervisor, again the day before what was a second Review hearing in less than a six months period, was of the upmost concern to Members. In forming this concern, Members noted that Mr Ralph was the third person to take up the position of Premises Licence Holder and Designated Premises Supervisor in respect of these premises, within less than a ten month period. Furthermore, Mr Ralph was a third successive employee of Mr Hennessey to hold these positions. Albeit Members noted that Mr Ralph did not have a formal contract in place which also caused them concern, understanding on the evidence before them, that Mr Ralph had been engaged by Mr Hennessey to oversee three licensed premises leased by him but without, what appeared, to be firm arrangements in place.

In Members opinion, it appeared to them that these resignations and appointments were no more than an attempt by those involved in this premises operation, to frustrate the actions of the Responsible Authorities, in ensuring this premises operated in a responsible and safe manner. Noting also on the submissions of Mr Ralph, that those previously appointed as Premises Licence Holders and Designated Premises Supervisors under Mr Hennessey's employment, remained employed by him at these premises.

Furthermore, Members could not be satisfied that Mr Ralph was a suitable person to train up managers, as proposed by him, enabling him to have oversight of all three premises. Whilst this may have been an aspiration of his and Mr Hennessey, it did nothing to reassure Members in the immediate or the long term, that this premises would operate in a safe and responsible manner. In forming this opinion and in addition to the concerns already noted, Members were mindful that Mr Ralph had never held a late licence such as these premises and the only relevant qualification Mr Ralph appeared to possess, was a certificate exhibited to his witness statement which evidenced that he had completed the BIIAB Level 2 National Certificate for Licensees (On-Licence) on 2 May 2003, some nineteen years ago and before the Licence Act 2003 came in to force. In addition, when asked about his experience, noting his submissions in his witness statement, Mr Ralph was vague on his dates and the experience he alluded to, did not add up which also caused concern for Members.

Members further noted that Mr Ralph had inserted a noise limiter into the premises, as required but it was the opinion of the Public Protection Officer, that this particular limiter was an old model and not fit for purpose. Whilst Mr Ralph said he would change it, this again demonstrated to Members, the lack of relevant experience held by Mr Ralph in dealing with this type of premises, notwithstanding his witness statement stating he had a history as a sound engineer.

Despite agreed conditions to prohibit Mr Hennessey's involvement in the premises operations and the assurances given by Mr Ralph that he would be in control and his word was final, it is of great concerns to Members to learn that Mr Hennessey remains involved in this premises operations, nine months after a Licensing Authority determination was made to refuse to transfer the Premises and Designated Premises Supervisor licences to himself. This evidenced to Members that there was an absence of robust control measures or capabilities in place to prohibit the persistent and apparent devious nature of Mr Hennessey, who in Member's opinion, was using employees as a front, to enable him to operate these premises in circumvention of that decision and Mr Ralph's appointment, was no different.

In forming this opinion, Members were greatly concerned following Mr Ralph's admission that Mr Hennessey had sent an email to a Responsible Authority, holding himself out to be Mr Ralph, using Mr Ralph's email address, without his knowledge. The email stated that it was Mr Ralph's intention to re-open the premises on 4 February 2022, only a few days after the Responsible Authority had been given assurances that the premises would not open, following fire safety concerns being identified. Whilst Mr Ralph sought to assure Members that it was not his intention to open until the

premises were safe, they were alarmed to learn that Mr Ralph had no knowledge of this act, or control over it and in their opinion, showed that Mr Hennessey would go to any lengths to remain involved in the premises operation, with no real regard for public safety but instead, putting income and profit over this. In respect of this incident, Members were concerned to read in Mr Ralph's witness statement that he stated Mr Hennessey had not made any decisions about the licence since he came on board. This witness statement is dated 22 March 2022, Mr Ralph was engaged on the 14 January 2022, yet this incident occurred on the 9 February 2022. Therefore, Members found this submission to be misleading.

It was of further concern to Members to learn that Mr Hennessey had recently completed and submitted an Application for a premises licence in respect of Hennessey Cocktail Lounge, 2 King Street Brixham in Mr Ralph's name. This is a premises leased by Mr Hennessey and he was the Premises Licence Holder and Designated Premises Supervisor of that premises, until the licence was revoked by a Licensing Committee on the 24 June 2021. This decision was subsequently upheld by the Magistrates' Court, following an unsuccessful appeal of that decision, by Mr Hennessey.

Whilst it is accepted that Mr Ralph had knowledge of this application, Mr Ralph did not submit it as implied, and it was only at a Licensing Sub-Committee hearing on the 10 March 2022 that this became known. Members were further alarmed to learn that Mr Hennessey consulted Mr Ralph over the telephone as to the contents of the application and despite Mr Ralph not being happy with certain conditions, he was told by Mr Hennessey to put them in to get the application granted. Members noted that this application was subsequently refused and that a further application has been submitted by Mr Ralph, without sight as to the reasons for that refusal. This further evidenced to Members, continued control by Mr Hennessey, despite engaging Mr Ralph to oversee his leased licensed premises, demonstrating Mr Ralph's lack of autonomy.

Whilst Members were encouraged by Mr Ralph's honesty, noting at time this became to his detriment as a Respondent, they were seriously concerned to note within his witness statement, that Mr Ralph felt Mr Hennessey had been unfairly treated. Members determined this was a serious misjudgement by Mr Ralph, as it failed to recognise or appreciate the seriousness of the issues to date and the scale of intervention necessary by the Responsible Authorities.

Added to this, was Mr Ralph's oral submission at the hearing, whereby he confirmed that he had read all the paperwork relating to these premises, that of Hennessey's Cocktails and had discussed this with Mr Hennessey. Had he objectively done so, Members believed Mr Ralph would have arrived at a different feeling, given Hennessey Cocktails dealings had been independently test by an appeal Court, or at least would have reasonably expected him to have done so, even if in part, noting his loyalty to Mr Hennessey who Members were advised, was also providing Ralph and his wife accommodation at no charge.

Mr Ralph's further misjudgement was noted by Members, in reading Mr Ralph's witness statement, where he stated that in his view, this premises had improved since Mr Hennessey took over. However, in the Police's Review application and echoed in their oral submissions at the hearing, Members noted that under previous ownership, this premises did not regularly come to the Police's attention within a sixteen year period, due to what they say, was robust management in place. However, under Mr Hennessey's lease and employees, this premises licence had been subject to two Reviews and a Closure Notice, within a ten month period.

In Members opinion, a further and significant misjudgement by Mr Ralph, not connected to these premises or Mr Hennessey which was of great concern to them, as it evidenced the influence others could have over Mr Ralph, to carryout licensable activities, other than in accordance with its licence. This related to Mr Ralph's previous employment, where he states in his witness statement that his previous employer neglected to nominate him as a Designated Premises Supervisor when the previous one left after around six months. This would have resulted in Mr Ralph operating these premises as a general manager for about twelve months, without a Designated Premises Supervisor in place and on the evidence before them, there did not appear to be any continued challenge to his employer to rectify this or that Mr Ralph had reported this to the Licensing

Authority, even if he had done so anonymously, in fear of losing his employment and associated accommodation. When asked about this, Mr Ralph stated that the person was closely connected to him and was there but had another job too. Members found this to be inconsistent, electing to give greater weight to that in his witness statement, as this would have been considered, as opposed to a reactive reply to Members questions.

Members also noted in Mr Ralph's witness statement that he had discussed with the Police the possibility of being named as a Designated Premises Supervisor for two of Mr Hennessey's licensed premises, including this one, and that the Officer was 'very enthusiastic and suggested there would be no issue'. However, at the hearing, Members heard from the Police that this submission was not true and if that had been the case, why would they have objected to the applications to enable this. Members found the Police account to be true.

Members further noted the content of Mr Hennessey's witness statement, much of which in their opinion, was an attempt to revisit matters which had been concluded and on one of the premises, upheld independently by an appeal Court. There were also a number of inaccuracies contained within the statement, such the Council suggested that, in order to avoid an appeal hearing, we try to negotiate conditions. Members were advised that it was in fact Mr Hennessey who indicated his wish to withdraw the appeal through his Counsel, at the conclusion of the Hennessey appeal. Notwithstanding again, that Mr Hennessey was not the Premises Licence Holder. Furthermore, the statement states that Mr Hennessey had removed himself from the premises operations but on the evidence before them and some of which is documented within this decision, Members know this not to be true and therefore found these submissions to be misleading.

As such, Members could not be satisfied on the evidence before them, that Mr Hennessey either accepted these determinations, would not continue to be involved in or influence these premises operations, as he had done so to date and would not exploit the misjudged feelings of Mr Ralph, that he had been unfairly treated which would enable him to influence and control Mr Ralph in the future. In coming to that position, Members determined that a revocation was both necessary and proportionate in all the circumstances before them.

In addition, Members could not be satisfied on the evidence before them that Mr Ralph had the necessary autonomy, foresight, experience or strength of character to implement the change required, noting in addition that already set out, that he was also engaged at these premises during Ms Trust's appointments as licensee and Designated Premises Supervisor. Therefore, when carefully considering a further suspension period for one month, as requested by Mr Ralph, they unanimously determined against this, believing the scale of change required would not be implemented at all and certainly not within this time frame and to believe otherwise, further evidenced to them, Mr Ralph's inexperience in operating this type of premises.

In Members opinion, all that was likely to occur within this intervening period, was the further completion of some building works which may enable the premises to reopen to the satisfaction of Environmental Health and Fire Safety Officers. However, to permit this request, Members determined unanimously would undermine the Licensing Objectives, further continue breaches of the premises licence conditions and place patrons at a real and substantial risk of harm or even death, given its operations to date under the lease of Mr Hennessey.

In concluding, Members had careful regard to what other options were available to them, as an alternative to revocation and determined that further conditions, given the recorded breaches to date, nor the exclusion or limiting of licensable activities, given the individuals continually involved in these premises operation, would alleviate their concerns. Members also considered the removal of Mr Ralph, as the Designated Premises Supervisor but given the appointments and resignations to date of these positions under the employment and lease held by Mr Hennessey, noting also the Police's submissions in respect of how these roles have been filled in the past, without proper scrutiny or consideration of qualifications or experience required to successfully hold this position, Members could not be satisfied that a suitable replacement would be found. Furthermore, for the reasons set out above, Members disregarded a further period of suspension and therefore

unanimously determined on the evidence before them, that the only necessary and proportionate outcome in respect of these premises to uphold the Licensing Objectives, was a revocation of the premises licence with immediate effect.

I enclose a sheet advising you of your appeal rights, if you are unhappy with the determination made by the Licensing Sub Committee. A Right of Appeal to the Magistrates' Court is available to you under Section 181 and Paragraph 8 of Schedule 5 to the Act. The Magistrates, in considering such Appeal, may:-

1. Dismiss the appeal
2. Substitute the decision for any other decision which was available to the Council, or
3. Remit the matter back to the Council to dispose of in accordance with the direction of the Court.

If you have any queries then please do not hesitate to contact me.

Yours sincerely


Licensing Officer
Community Safety

Encl – appeals schedule (7DL)

c.c. Licensing Department, Devon & Cornwall Constabulary, Launceston Police Station,
Moorland Road, Launceston, PL15 7HY
Public Protection Officer, Torbay Council, Town Hall, Castle Circus, Torquay, TQ1 3DR
Devon & Somerset Fire & Rescue Service, Protection Delivery, Torquay Headquarters,
Newton Road, Torquay, TQ2 7AD

5. Whilst it is not impossible for the applicant to understand the decision from what was said at a hearing, they would lack the necessary detail which would be of the upmost importance to enable the drafting of another application.
6. This application regrettable demonstrates it was drafted without regard to the determination and reasons for refusal of a new application on the 10th March 2022.
7. This is a new application similar to the first which was near identical to an application for a premises licence that was revoked by Torbay Councils Licensing Sub-committee on the 24th June 2021.
8. The Licence Holder at the time, Mr Ross Hennessey 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.
9. The Responsible Authority has considered the background to the premises when considering the merits of this new application but also Jackz Bar, also owned by Mr Hennessey and managed by Mr Ralph.
10. On the 31st March 2021 Torbay Council Licensing Sub-committee at a Review hearing concluded the only viable option available to them was to revoke the Premise Licence for Jackz Bar.
11. Please see Appendix 2 for the full reasons.
12. The background to the previous application for Hennessey Cocktails and Jackz Bar is most relevant when considering the merits of this new application as the Responsible Authority asserts that it the low confidence in the business owner and those nominated to manage the premises that represents a considerable and unacceptable risk of the Licensing Objectives being undermined if the application is granted in its current configuration.
13. On the 10th March 2022 Members learnt that Mr Hennessey submitted the application in Mr Ralphs name. Members also learnt Mr Hennessey completed the application and consulted with Mr Ralph over the phone before Mr Hennessey submitted the application.

On the 31st March 2022 members further learnt Mr Hennessey had sent emails he had written and sent from Mr Ralphs email account to Responsible Authorities. The contents of the email and impact on the licensing objectives was of grave concern to Members.

A condition on the licence for Jackz prevent Mr Hennessey from making licensing decisions. Yet this trust and faith was breached and Mr Ralph confirmed he did not send an email to the Responsible Authority, but he did correct Mr Hennessey course action when detected.

The Responsible Authority asks, with what confidence can the Licensing Authority and Members have that this application has been made lawfully and in good faith by Mr Ralph?

14. Sec 158 of the Licensing Act states:-

(1)A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with—

(a)an application for the grant, variation, transfer or review of a premises licence or club premises certificate,

(2) For the purposes of subsection (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

15. The first application heard on the 10th March 2020 stated in the operating schedule: -

'31) The written Noise Management Plan must contain procedures to ensure the lobby is used effectively, to reduce noise outbreak emanating from the premises.'

This is false as there is no lobby at Hennessey Cocktails.

This application now states: -

'40) An internal lobby shall be installed within 2 months of the licence being granted. Specifications shall be confirmed with the local authority, but shall be built to be as noise proof as possible'

Had the applicant been aware and therefore mindfully of decision notice from the first hearing they would note the following

'Again, of concern, it appeared to Members that there was no real thought or understanding by the Applicant in this off the cuff proposal, other than to provide a reactive response, having had the oversight brought to his attention. In Members opinion, to be an effective lobby which prevented noise outbreak, the input of an acoustic engineer may be necessary and without knowing the qualifications of the builder, what was being proposed as a build, whether the owner's permission would be required or granted in changing the layout of the premises, Members could not be satisfied that this proposal would be permitted or effective.'

Furthermore the applicant would have read:-

'On the evidence before them, Members were of the opinion that the suite of conditions submitted, was no more than an attempt to get the application through. Furthermore, Members could not be satisfied that the conditions had been considered individually against the intended operation, in a way which ensured that the Licensing Objectives would be promoted. Instead, it appeared to Members that conditions had merely been lifted from another Premises Licence and a Consent Order, drafted by Torbay Council, with an expectation that these would be accepted, and the application granted.'

The Responsible Authority believes it is reasonable given the history and comments above that the applicant should have sought to establish the criteria for specification and design of the lobby before submission of another application.

Whilst the installation of a lobby is welcomed the applicant has not provided any supporting information, particularly with regards to permission from the freeholder if this is required.

To allow 2 months to complete the works following the granting of licence is not appropriate in this case given the low confidence in the operators to succeed in complying with a time limited condition.

It is on balance reasonable probable, if granted, this condition will not be complied with leading the Licensing Authority to consider prosecution under Sec 136 and/or the Responsible Authority to seek a Review of the Premise Licence.

16. It should be noted point 15 is merely one example of a licensing condition that requires some element of supporting information, when taking into account the history.

As general observation the conditions still feel like they have been cut and paste with no evaluation given to the consequence. For example reference to announcements at the end of the evening appears twice, though expressed slightly differently but implies the same.

17. In the operating schedule under the heading 'Prevention of Public Nuisance' there is no less than 10 conditions requiring some degree of management or staff direct interaction to enable the conditions to be complied with. More examples of this type of condition can be found under the other Licensing objectives.

At the Review Hearing for Jacks, the same controlling minds as in this application, Members learnt many licence conditions had simply not been complied with, a significant number required direct intervention from management or staff. Failure to comply with these conditions it was argued could have put the public at risk. The Responsible Authority confidence in the operators to professional and diligently manage the premises remains low and mirrors a number of statements in the Jackz review hearing:-

'Noting the dates, Members were satisfied that Mr Ralph would have had oversight of this opening, and this was significant to them, when considering Mr Ralph's suitability in operating these premises and determining if a further suspension was the right decision, to that of a revocation of the premises licence. In doing so, Members noted during a scheduled visit to the premises on the 21 January 2022, at the request of ██████ in respect of the Closure Notice, to which Mr Ralph was also present, Police Officers found breaches of the premises licence which in Members opinion, would have also taken place when the premises were noted to be open and operating on the 15 and 16 January 2022, at a time when Mr Ralph was engaged'

and

'This was further compounded by the horrifying response given by ██████ and subsequent action taken by Mr Ralph, when asked about staff training and any guidance given to the door stewards before their shift, using fire safety and escape routes. To say she had not provided any staff training, did not know if there was a fire extinguisher, but if there was, she did not know where it was located and then for Mr Ralph to have to go and look for it, was woefully unacceptable to Members and filled them with absolute dread and fear that these two individuals were operating and overseeing the operation of this late licence. In the case of an emergency, customers under the influence of alcohol would be expected to be directed to an emergency exit by staff and stewards and therefore they had a duty to ensure all persons employed at the premises know where to find fire escape routes, fire extinguishers and alarms are located. To this end, Members had absolutely no confidence in either of them, should such an event occur and were filled with relief, that it had not. This is despite Mr Ralph producing a Fire Awareness Certificate dated 28 March 2021, as exhibited to his witness statement.'

18. The Responsible Authority representation for the first application is still valid and submitted with this representation as Appendix 3.

It is noted and welcomed the exterior setting area has been removed from this application.

19. There can be no doubt following the Jackz Review hearing that Mr Hennessey is still actively involved in licensing arrangements.

It may be accepted that Mr Ralph genuinely believes he is in charge and Mr Hennessey involvement only extends to owning the business. But this is simply not the case. Mr Hennessey sending an email in Mr Ralph's name is alarming and does nothing to reassure that Mr Ralph's appointment is genuine and can bring the necessary change for this application to succeed.

20. Mr Ralph is an employee not an equal business partner or is he leasing the business from Mr Hennessey. Again, the Jackz Review Hearing only served to highlight the successive attempts by Mr Hennessey to coerce and manipulate employees in an attempt to show compliance.

21. It is interesting to note at the first application Hearing Mr Ralph attempted to portray the future of Hennessey Cocktails as a more family friendly establishment and yet this does not reflect in either application. When challenged the default position remains i.e. the premises needs to be a vertically drinking establishment with a midnight finish.

In this application the operating schedule casually states 'bar' and nothing else in the box to describe the premises.

22. This application has only addressed with any merit the seating area outside.

23. It has not addressed the concerns about the thought and placement of licencing conditions that have been 'cut and paste' leading the Responsible Authority to believe the applicant considers the Licensing Act nothing more than a paper exercise. Comments made by Mr Ralph on the 10th March support this view.

24. It has not addressed the concerns that Mr Ralphs appointment is nothing more than cover for Mr Hennessey to continuing running the premises as he sees fit. If this was the case it would be expected to see some of Mr Ralphs personality in the application ie. a family orientated enterprise. But we do not. Perhaps we would see the removal of conditions Mr Ralph could not see the point off, but we do not.

25. It does not address how licensing conditions will be complied with, following the points raised in the decision notice for Jackz. Though it is accepted the application was made before the Jackz hearing, but after the Review application was made. Both Responsible Authorities published these concerns before this application was made.

26. After careful evaluation of this application the Responsible Authority has concluded this application is a like for like to the first and has fundamentally failed to addressed many critical observations made by Members of the Licensing Sub-Committee on the 10th March 2022.



Karl Martin
Public Protection Officer
Licensing and Public Protection
Community Safety
Torbay Council

Appendix 1 – Decision notice for Hennessey Cocktails new application on the 10th March 2022, published 25th March.

Decision:

That the application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham, be refused.

Reasons for Decision:

Having carefully considered all of the written and oral representations, it was clear to Members that the Applicant had not completed or submitted the application form for a Premises Licence himself. In coming to that decision, Members noted the Applicant's oral submissions, and resolved that he was not familiar with the content of the application, nor did he fully comprehend the extensive list of conditions contained therein when asked questions about them, nor did he appear to have in person, the due diligence required to ensure all conditions would be complied with.

Members were alarmed and concerned to hear from the Applicant when pushed, that it was the previous Premises Licence Holder, Mr Ross Hennessey, who had drafted and submitted the application in the Applicants name, and when consulted on its contents over the telephone, the Applicant stated to Mr Hennessey that he did not agree with certain conditions but was told by Mr Hennessey, as his intended employer, to agree them. Members therefore had no confidence that the Applicant would comply with all conditions set out in the application form, having not agreed with them in the first place.

On the evidence before them, Members were of the opinion that the suite of conditions submitted, was no more than an attempt to get the application through. Furthermore, Members could not be satisfied that the conditions had been considered individually against the intended operation, in a way which ensured that the Licensing Objectives would be promoted. Instead, it appeared to Members that conditions had merely been lifted from another Premises Licence and a Consent Order, drafted by Torbay Council, with an expectation that these would be accepted, and the application granted.

On the evidence before them of the operational history of this premises and its geographical location, Members resolved that careful consideration of each condition was required to mitigate noise nuisance emanating from the premises, along with strong management to uphold compliance of those conditions. In Member's opinion, this application nor the Applicant in person, demonstrated the attributes required.

Members noted that the application contained the following two conditions:

'Mr Ross Hennessey, the previous Premises Licence Holder and Designated Premises Supervisor, be prohibited from entering the premises during operational hours.

Mr Ross Hennessey, the previous Premises Licence Holder and Designated Premises Supervisor, shall not be involved in or influence the operation of these premises.'

In doing so and on the evidence before them, Members were extremely concerned to learn that Mr Hennessey's previous licence for these premises had been revoked by a Licensing Committee in June 2021 and on appeal of that decision in December 2021, his application was dismissed by the Court. Therefore, forming the opinion that Mr Hennessey in making this application, was seeking to circumvent the decision of the Licensing Committee and the outcome of his appeal and was using the Applicant, who is his employee, as a front to enable him to continue operating these premises.

Given the sequence of events leading to this application coming before them, Members were of the strong opinion that the Applicant would not, or would not be able to, comply with these conditions, despite what may be his best efforts and therefore unanimously concluded, that granting this application would inevitably lead to the Licensing Objectives being undermined.

In addition to the above, Members resolved that the following specific examples also cemented their unanimous decision to refuse this application. The application itself was poorly drafted, in that it was littered with contradictory and duplicated condition, some of which could not be complied with, as the necessary measures were not in place. Such as a lobby, and when asked about this, the Applicant said he had a builder working on their other nearby premises who he could bring down to build this. Again, of concern, it appeared to Members that there was no real thought or understanding by the Applicant in this off the cuff proposal, other than to provide a reactive response, having had the oversight brought to his attention. In Members opinion, to be an effective lobby which prevented noise outbreak, the input of an acoustic engineer may be necessary and without knowing the qualifications of the builder, what was being proposed as a build, whether the owner's permission would be required or granted in changing the layout of the premises, Members could not be satisfied that this proposal would be permitted or effective. Furthermore, it was of concern to Members to note that the application sought to include an outside seating area but on the evidence before them, no steps had been taken to engage the appropriate authorities to enable this provision and no conditions were proposed in the application, as to its operation which ensured that the Licensing Objectives would be promoted. Instead, the Applicant said they thought they would throw it in as they saw that a nearby premises had it. Hearing from the Responsible Authority Public Protection Officer, it was clear that Officers with that Premises Licence Holder had undertaken extensive work, to enable this provision. This in Members opinion, further showed a lack of experience and foresight in what was required to operate a premises in a responsible manner and understanding the impact an outside area could have on nearby residents and the necessity to mitigate this.

A further concern for Members which highlighted one of many contradictions, was Applicant's submission that the premises would operate with a focus upon families and food. Yet this appeared to be contrary to what was contained within the application. Also being impeded by the premises not having a kitchen. Combined with this, Members noted the Police's oral and written representation, that they tried to negotiate with the Applicant a terminal hour and that all persons would be seated within the premises and served by waiter/waitress service but the Applicant indicated he would not agree to this as it would not work for them, instead wanting to run the premises as a pub/bar.

Members also noted the submissions of the Applicant and that of the Police, that the Applicant will be responsible for these premises and that he will also oversee the management of two other premises owned by Mr Hennessey, one of which is subject to a second licensing review, within a short period. Noting that all three premises are classed by the Police as a high risk, due to ongoing issues and previous concerns and the late licences of the two other premises, Members unanimously resolve that to grant this licence would in their opinion, certainly undermine the Licensing Objectives, as the Applicant would not have the capacity nor capabilities to operate these premises in the manner required.

In concluding and as an alternative to refusal, Members carefully considered what if any modifications could be made to the application, such as adding or removing conditions, along with granting the application but refusing to appoint the Applicant as the Designated Premises Supervisor. However, after careful consideration of all options available to them, they unanimously resolved that such modifications could ultimately result in them changing the business model in a way which was not agreeable to the Applicant and for the reasons outlined above, an outright refusal was in their opinion, the only way to ensure that the Licensing Objectives would not be undermined.

Appendix 2 – Decision notice for Jackz Bar Review Application hearing on the 30th March 2022, published 13th April.

Decision:

That in respect of the application for a Review of a Premises Licence of Jackz Bar, Parkham Road, Brixham, Members resolved unanimously to revoke the premises licence with immediate effect.

Reasons for Decision

Having carefully considered all the oral and written Representations, Members resolved unanimously to revoke the Premises Licence, as they could not be satisfied on the evidence before them, that the Premises Licence Holder, Mr Ralph, an employee of Mr Ross Hennessey, had autonomy, capacity nor capabilities to operate these premises in a manner which ensured that the Licensing Objectives would be promoted, and patrons would be kept safe.

In coming to that decision, Members noted the history of events leading to this Review and the continued involvement of Mr Hennessey in these premises, despite conditions in place to prohibit this.

In doing so, Members noted that Ms Harley, an employee of Mr Hennessey, was appointed as the Premises Licence Holder and Designated Premises Supervisor, on the afternoon of the 24 June 2021, following a Licensing Committee decision earlier that same day, to refuse the transfer of these licences to Mr Hennessey. Furthermore, on the 7 October 2021, Members noted under the licences of ██████████ these premises were subject to a Review hearing called by the Police, for the reasons outlined in the report before them. Furthermore, on the morning of the Review hearing, Members noted that ██████████ had resigned from these positions and a ██████████, also an employee of Mr Hennessey, took up these positions and attended the hearing, stating that she was [aware of the concerns raised within the Review application](#) and agreed to modify the premises licence, to include the conditions proposed by the Police and Public Protection Officers, along with the following two conditions:

- 1) That Mr Ross Hennessey be prohibited from entering the premises during operational hours.
- 2) That Mr Ross Hennessey shall not be involved in or influence the operation of these premises; and

In addition to that modification, Members noted that the premises licence was suspended for a period of three months, until 7 January 2022, allowing ██████████ time in the intervening period, to implement the measures outlined in the new conditions. Members also noted that this decision was appealed two days after ██████████ initial submissions to the Police, during their visit to the premises on the 16 November 2021, whereby she stated that she did not want to appeal the decision, that she was satisfied with the conditions and that she did not want to go to Court. It was therefore of great concern to Members to learn that during this discussion, ██████████ also stated that she had not discussed the matter with Mr Hennessey, so she was not aware if he wanted to appeal. Notwithstanding that ██████████ was the Premises Licence Holder. This evidenced to Members, operational control by Mr Hennessey, despite him having no legal standing in respect of the premises licence and his influence in this, was in their opinion, a direct breach of the second of the two conditions set out above.

Whilst the appeal was subsequently withdrawn by ██████████ on the 22 December 2021, in lodging the appeal, Members noted that the premises were permitted to continue trading, as the decision to suspend the premises licence did not take effect until its withdrawal. During that period of operation, Members further noted with grave concern that the Police continued to raise issues of concern with ██████████ in respect of the premises operation and non-compliance with conditions. This further alarmed Members and demonstrated to them that ██████████ was out of her depth in managing these premises, especially as this was a period where Members could reasonably have expected full compliance with its conditions and strong management in place, given the high stakes associated with an appeal and the risk that ██████████ could lose her licences.

Despite ██████ being afforded the opportunity of a suspension to implement change, it was also of great concern to Members to note that late on the 8 January 2022, a day after the suspension was lifted, leading into the early hours on the 9 January 2022, Responsible Authority Officers visited the Premises and noted concerns in respect of covid passport compliance checks, likely noise outbreak emanating from the premises, non-compliance with conditions of the premises licence and the premises layout, not being in accordance with its plan. During this visit, Members were alarmed to note that the personal licence holder on duty, was Ms ██████ the previous Premises Licence Holder and Designated Premises Supervisor who had resigned from these positions. In Members opinion, placing ██████ in this position of responsibility was a fundamental misjudgement by ██████ especially noting her submissions at the Review hearing on the 7 October 2021, that she was aware of the concerns raised within the Review application and as such, would have been aware of ██████ failings in compliance with licensing conditions, alleged drug supply, increase in recorded crime, drunkenness, and use of unlicensed SIA door stewards at the premises. This again cemented the opinion of Members, that ██████ was out of her depth and did not have the capabilities required to operate this premises licence or to hold positions of responsibility. In doing so, Members formed the clear opinion on the evidence before them, that ██████ had been put into these positions, following the resignation of Ms ██████ as a front for Mr Hennessey which enabled him to continue operating these premises, as he had done so.

Members also noted that on the 9 January 2022, the Police served a Closure Notice under Section 19 Criminal and Justice and Police Act 2001 on the outcome of the visit referred, and that this Notice remains in force. Additionally, Members noted following further visits and communication with ██████, the Police submitted a Review of the Licence on 1 February 2022.

Members further noted that Mr Ralph had been engaged by Mr Hennessey, to oversee the management of his three leased licensed premises which have all been identified by the Police as being high risk premises, including this one, from the 14 January 2022. This engagement coincided with ██████ emails to the Police to reopen these premises, where she was advised that if she was satisfied that she could comply with the conditions, she could carry out licensable activities whenever she wished. Members noted that a Police Officer observed the premises being open and operating on the Saturday 15 January 2022, into the early hours of Sunday 16 January 2022.

Noting the dates, Members were satisfied that Mr Ralph would have had oversight of this opening, and this was significant to them, when considering Mr Ralph's suitability in operating these premises and determining if a further suspension was the right decision, to that of a revocation of the premises licence. In doing so, Members noted during a scheduled visit to the premises on the 21 January 2022, at the request of ██████ in respect of the Closure Notice, to which Mr Ralph was also present, Police Officers found breaches of the premises licence which in Members opinion, would have also taken place when the premises were noted to be open and operating on the 15 and 16 January 2022, at a time when Mr Ralph was engaged. Furthermore, and of great concern and significant worry to Members, Officers found that the premises itself was of such a poor state of repair which in Members opinion, was likely to have been the state of the premises on the 15 January 2022, some six days earlier, when it was open to the public. Such was the disrepair, the premises was found to have no electric in the ladies toilet, a free standing lamp placed inside the toilet, between the electric hand drier and sink which could have resulted in it coming in to contact with water in the sink or wet hands, the use of an extension lead for this which was plugged in to the main bar area which in Members opinion, was wholly unacceptable for this type of premises and would have been a trip hazard, cubicle in complete darkness when in use, a crack to one of the sinks which was plugged with paper towels and had sharp edges and was held together with silver tape and cello tape and no facilities to dry hands.

In respect of the male toilets, Officers noted that the cistern was not connected to the mains and therefore no water flushes through the urinals which on the admissions of ██████, had been like this for some time but concerningly to Members, no action had been taken to address this, a strong smell of urine, likely to be attributable to this defect, an electric hand drier was not fitted properly to the wall and was lying on a shelf but still connected to the mains electricity above the sink and in respect to a paper towel dispenser being pulled off the wall, ██████ response was to stay staff had not informed her. In a position of responsibility, it was reasonable to expect the Premises Licence Holder, along with Mr Ralph, having been appointed for management oversight, to be aware of all aspect of the premises and this response showed in Member's opinion, the irresponsible attitude of ██████ and a failing of them both to allow the premises to open in this state.

In the main bar area, it was noted by Officers that a number of wires were hanging from the from walls in at least three different locations and the number of extension leads being used with sockets potentially being overloaded.

When advised of the serious safety concerns and asked when the premises last had an electrical safety check, ██████ indicated that she did not know which was of serious concern to Members and again echoed the irresponsible attitude and lack of professional oversight required. Whilst Mr Ralph and ██████ agreed that the premise was not safe and that ██████ would not be opening again until an electrician had checked all wiring to ensure it is safe and provides her with a certificate to this effect, Members were of the opinion that this was a reactionary response to the serious safety concerns brought to their attention and had the visit not taken place, Members were absolutely certain that the premises would have continued to operate, as it had done so on the 15th and early hours of the 16th January 2022, placing patrons at a serious risk of harm and even death.

This was further compounded by the horrifying response given by ██████ and subsequent action taken by Mr Ralph, when asked about staff training and any guidance given to the door stewards before their shift, using fire safety and escape routes. To say she had not provided any staff training, did not know if there was a fire extinguisher, but if there was, she did not know where it was located and then for Mr Ralph to have to go and look for it, was woefully unacceptable to Members and filled them with absolute dread and fear that these two individuals were operating and overseeing the operation of this late licence. In the case of an emergency, customers under the influence of alcohol would be expected to be directed to an emergency exit by staff and stewards and therefore they had a duty to ensure all persons employed at the premises know where to find fire escape routes, fire extinguishers and alarms are located. To this end, Members had absolutely no confidence in either of them, should such an event occur and were filled with relief, that it had not. This is despite Mr Ralph producing a Fire Awareness Certificate dated 28 March 2021, as exhibited to his witness statement.

In respect of Mr Ralph's appointment as the Premises Licence Holder and Designated Premises Supervisor, again the day before what was a second Review hearing in less than a six months period, was of the upmost concern to Members. In forming this concern, Members noted that Mr Ralph was the third person to take up the position of Premises Licence Holder and Designated Premises Supervisor in respect of these premises, within less than a ten month period. Furthermore, Mr Ralph was a third successive employee of Mr Hennessey to hold these positions. Albeit Members noted that Mr Ralph did not have a formal contract in place which also caused them concern, understanding on the evidence before them, that Mr Ralph had been engaged by Mr Hennessey to oversee three licensed premises leased by him but without, what appeared, to be firm arrangements in place.

In Members opinion, it appeared to them that these resignations and appointments were no more than an attempt by those involved in this premises operation, to frustrate the actions of the Responsible Authorities, in ensuring this premises operated in a responsible and safe manner. Noting also on the submissions of Mr Ralph, that those previously appointed as Premises Licence Holders and Designated Premises Supervisors under Mr Hennessey's employment, remained employed by him at these premises.

Furthermore, Members could not be satisfied that Mr Ralph was a suitable person to train up managers, as proposed by him, enabling him to have oversight of all three premises. Whilst this may have been an aspiration of his and Mr Hennessey, it did nothing to reassure Members in the immediate or the long term, that this premises would operate in a safe and responsible manner. In forming this opinion and in addition to the concerns already noted, Members were mindful that Mr Ralph had never held a late licence such as these premises and the only relevant qualification Mr Ralph appeared to possess, was a certificate exhibited to his witness statement which evidenced that he had completed the BIIAB Level 2 National Certificate for Licensees (On-Licence) on 2 May 2003, some nineteen years ago and before the Licence Act 2003 came in to force. In addition, when asked about his experience, noting his submissions in his witness statement, Mr Ralph was vague on his dates and the experience he alluded to, did not add up which also caused concern for Members.

Members further noted that Mr Ralph had inserted a noise limiter into the premises, as required but it was the opinion of the Public Protection Officer, that this particular limiter was an old model and not fit for purpose. Whilst Mr Ralph said he would change it, this again demonstrated to Members, the lack of relevant experience held by Mr Ralph in dealing with this type of premises, notwithstanding his witness statement stating he had a history as a sound engineer.

Despite agreed conditions to prohibit Mr Hennessey's involvement in the premises operations and the assurances given by Mr Ralph that he would be in control and his word was final, it is of great concerns to Members to learn that Mr Hennessey remains involved in this premises operations, nine months after a Licensing Authority determination was made to refuse to transfer the Premises and Designated Premises Supervisor licences to himself. This evidenced to Members that there was an absence of robust control measures or capabilities in place to prohibit the persistent and apparent devious nature of Mr Hennessey, who in Member's opinion, was using employees as a front, to enable him to operate these premises in circumvention of that decision and Mr Ralph's appointment, was no different.

In forming this opinion, Members were greatly concerned following Mr Ralph's admission that Mr Hennessey had sent an email to a Responsible Authority, holding himself out to be Mr Ralph, using Mr Ralph's email address, without his knowledge. The email stated that it was Mr Ralph's intention to re-open the premises on 4 February 2022, only a few days after the Responsible Authority had been given assurances that the premises would not open, following fire safety concerns being identified. Whilst Mr Ralph sought to assure Members that it was not his intention to open until the premises were safe, they were alarmed to learn that Mr Ralph had no knowledge of this act, or control over it and in their opinion, showed that Mr Hennessey would go to any lengths to remain involved in the premises operation, with no real regard for public safety but instead, putting income and profit over this. In respect of this incident, Members were concerned to read in Mr Ralph's witness statement that he stated Mr Hennessey had not made any decisions about the licence since he came on board. This witness statement is dated 22 March 2022, Mr Ralph was engaged on the 14 January 2022, yet this incident occurred on the 9 February 2022. Therefore, Members found this submission to be misleading.

It was of further concern to Members to learn that Mr Hennessey had recently completed and submitted an Application for a premises licence in respect of Hennessey Cocktail Lounge, 2 King Street Brixham in Mr Ralph's name. This is a premises leased by Mr Hennessey and he was the Premises Licence Holder and Designated Premises Supervisor of that premises, until the licence was revoked by a Licensing Committee on the 24 June 2021. This decision was subsequently upheld by the Magistrates' Court, following an unsuccessful appeal of that decision, by Mr Hennessey.

Whilst it is accepted that Mr Ralph had knowledge of this application, Mr Ralph did not submit it as implied, and it was only at a Licensing Sub-Committee hearing on the 10 March 2022 that this became known. Members were further alarmed to learn that Mr Hennessey consulted Mr Ralph over the telephone as to the contents of the application and despite Mr Ralph not being happy with certain conditions, he was told by Mr Hennessey to put them in to get the application granted. Members noted that this application was subsequently refused and that a further application has been submitted by Mr Ralph, without sight as to the reasons for that refusal. This further evidenced to Members, continued control by Mr Hennessey, despite engaging Mr Ralph to oversee his leased licensed premises, demonstrating Mr Ralph's lack of autonomy.

Whilst Members were encouraged by Mr Ralph's honesty, noting at time this became to his detriment as a Respondent, they were seriously concerned to note within his witness statement, that Mr Ralph felt Mr Hennessey had been unfairly treated. Members determined this was a serious misjudgement by Mr Ralph, as it failed to recognise or appreciate the seriousness of the issues to date and the scale of intervention necessary by the Responsible Authorities.

Added to this, was Mr Ralph's oral submission at the hearing, whereby he confirmed that he had read all the paperwork relating to these premises, that of Hennessey's Cocktails and had discussed this with Mr Hennessey. Had he objectively done so, Members believed Mr Ralph would have arrived at a different feeling, given Hennessey Cocktails dealings had been independently test by an appeal Court, or at least would have reasonably expected him to have done so, even if in part, noting his loyalty to Mr Hennessey who Members were advised, was also providing Ralph and his wife accommodation at no charge.

Mr Ralph's further misjudgement was noted by Members, in reading Mr Ralph's witness statement, where he stated that in his view, this premises had improved since Mr Hennessey took over. However, in the Police's Review application and echoed in their oral submissions at the hearing, Members noted that under previous ownership, this premises did not regularly come to the Police's attention within a sixteen year period, due to what they say, was robust management in place. However, under Mr Hennessey's lease and employees, this premises licence had been subject to two Reviews and a Closure Notice, within a ten month period.

In Members opinion, a further and significant misjudgement by Mr Ralph, not connected to these premises or Mr Hennessey which was of great concern to them, as it evidenced the influence others could have over Mr

Ralph, to carry out licensable activities, other than in accordance with its licence. This related to Mr Ralph's previous employment, where he states in his witness statement that his previous employer neglected to nominate him as a Designated Premises Supervisor when the previous one left after around six months. This would have resulted in Mr Ralph operating these premises as a general manager for about twelve months, without a Designated Premises Supervisor in place and on the evidence before them, there did not appear to be any continued challenge to his employer to rectify this or that Mr Ralph had reported this to the Licensing Authority, even if he had done so anonymously, in fear of losing his employment and associated accommodation. When asked about this, Mr Ralph stated that the person was closely connected to him and was there but had another job too. Members found this to be inconsistent, electing to give greater weight to that in his witness statement, as this would have been considered, as opposed to a reactive reply to Members questions.

Members also noted in Mr Ralph's witness statement that he had discussed with the Police the possibility of being named as a Designated Premises Supervisor for two of Mr Hennessey's licensed premises, including this one, and that the Officer was 'very enthusiastic and suggested there would be no issue'. However, at the hearing, Members heard from the Police that this submission was not true and if that had been the case, why would they have objected to the applications to enable this. Members found the Police account to be true.

Members further noted the content of Mr Hennessey's witness statement, much of which in their opinion, was an attempt to revisit matters which had been concluded and on one of the premises, upheld independently by an appeal Court. There were also a number of inaccuracies contained within the statement, such the Council suggested that, in order to avoid an appeal hearing, we try to negotiate conditions. Members were advised that it was in fact Mr Hennessey who indicated his wish to withdraw the appeal through his Counsel, at the conclusion of the Hennessey appeal. Notwithstanding again, that Mr Hennessey was not the Premises Licence Holder. Furthermore, the statement states that Mr Hennessey had removed himself from the premises operations but on the evidence before them and some of which is documented within this decision, Members know this not to be true and therefore found these submissions to be misleading.

As such, Members could not be satisfied on the evidence before them, that Mr Hennessey either accepted these determinations, would not continue to be involved in or influence these premises operations, as he had done so to date and would not exploit the misjudged feelings of Mr Ralph, that he had been unfairly treated which would enable him to influence and control Mr Ralph in the future. In coming to that position, Members determined that a revocation was both necessary and proportionate in all the circumstances before them.

In addition, Members could not be satisfied on the evidence before them that Mr Ralph had the necessary autonomy, foresight, experience or strength of character to implement the change required, noting in addition that already set out, that he was also engaged at these premises during [REDACTED] appointments as licensee and Designated Premises Supervisor. Therefore, when carefully considering a further suspension period for one month, as requested by Mr Ralph, they unanimously determined against this, believing the scale of change required would not be implemented at all and certainly not within this time frame and to believe otherwise, further evidenced to them, Mr Ralph's inexperience in operating this type of premises.

In Members opinion, all that was likely to occur within this intervening period, was the further completion of some building works which may enable the premises to reopen to the satisfaction of Environmental Health and Fire Safety Officers. However, to permit this request, Members determined unanimously would undermine the Licensing Objectives, further continue breaches of the premises licence conditions and place patrons at a real and substantial risk of harm or even death, given its operations to date under the lease of Mr Hennessey.

In concluding, Members had careful regard to what other options were available to them, as an alternative to revocation and determined that further conditions, given the recorded breaches to date, nor the exclusion or limiting of licensable activities, given the individuals continually involved in these premises operation, would alleviate their concerns. Members also considered the removal of Mr Ralph, as the Designated Premises Supervisor but given the appointments and resignations to date of these positions under the employment and lease held by Mr Hennessey, noting also the Police's submissions in respect of how these roles have been filled in the past, without proper scrutiny or consideration of qualifications or experience required to successfully hold this position, Members could not be satisfied that a suitable replacement would be found. Furthermore, for the reasons set out above, Members disregarded a further period of suspension and therefore unanimously determined on the evidence before them, that the only necessary and proportionate outcome in

respect of these premises to uphold the Licensing Objectives, was a revocation of the premises licence with immediate effect.

Appendix 3 – Responsible Authority representation for Hennessey Cocktails new application dated 4th February 2022

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/ReviewHen
For the attention of:		Your Ref	:	
		Date	:	4 th February 2022

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

- a) I have no comments to make on the above application
- c) 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

27. 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.

28. 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.

29. The Licence Holder at the time, Mr Ross Hennessey 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.

30. 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 Hennessey and managed by Mr Ralph.

Relevant background

31. 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.

32. The Licensing Sub-Committee unanimously resolved at the review hearing on the 24th June 2021 that:-

Mr Hennessey's 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.

33. The Licensing Sub-committee considered conditions and removal of Mr Hennessey 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

34. Mr Hennessey purchased the lease and sought to transfer the Licence and DPS to his ownership. Both applications were refused on the 24th June 2021.

35. Shortly afterwards an application to transfer the Premises Licence and DPS was received by Torbay Council to transfer these functions to [REDACTED]

36. 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.

37. Shortly prior to the review hearing in October 2021 [REDACTED] resigned as the DPS and Licence Holder and [REDACTED] was appointed. [REDACTED] 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 facilitate an opportunity to get their 'house in order'.

38. [REDACTED] appealed the decision but withdrew her appeal in January 2022 following an agreed consent order.

39. At the appeal for Hennessey 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.

40. In Relation to Jackz the Councils and the Police put forward Mr Hennessey was presenting [REDACTED], [REDACTED] 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.

41. The Responsible Authority will not document the evolution of Mr Ralphs involvement in the two Business owned by Mr Hennessey 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.

42. 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.

43. 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 [REDACTED] 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.
44. [REDACTED] 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.

45. 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.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. At the Appeal hearing it was presented to owner, Mr Hennessey, 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

52. The premises under Mr Hennessey 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.
53. 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.
54. 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.
55. 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 Hennessey 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.

56. 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.
57. 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

58. 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.
59. 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 Hennessey 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

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



Karl Martin
Public Protection Officer
Licensing and Public Protection
Community Safety
Torbay Council