

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of Oldenburg Inn, 46-48 Winner Street, Paignton, TQ3 3BQ

Wards Affected: **Roundham with Hyde**

To: **Licensing Sub-Committee** On: **22 September 2022**

Contact Officer: **Carrie Cottell**  
Telephone: **01803 207079**  
Email: [Licensing@torbay.gov.uk](mailto:Licensing@torbay.gov.uk)

---

## 1. Key points and Summary

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

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

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

## 2. Introduction

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

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

To increase the hours for the Supply of Alcohol, on and off the premises, from 10:00 until 24:00 on Sunday. Currently the Supply of Alcohol is from 12:00 until 23:30 on Sunday.

To increase the hours that the premises is open to the public from 10:00 until 00:30 on Sunday. Currently the premises is open to the public from 12:00 until 00:00 on Sunday.

To remove the non-standard timing for the Supply of Alcohol which states "On Sundays preceding Bank Holidays 12:00 to 00:00".

To remove the non-standard timing for the hours the premises is open to the public which states "On Sundays preceding Bank Holidays 12:00 to 00:00".

The Applicant has proposed to remove the following conditions:-

Annexe 2, Prevention of Crime & Disorder, Condition 1

"An incident book and recorded details of all incidents or public disorder shall be kept."

Annexe 2, Prevention of Crime & Disorder, Condition 7

"No bottles to be served that persons may intend to drink from."

Annexe 2, Prevention of Crime & Disorder, Condition 8

"After 22:00hrs no drinks to be taken in the garden area and suitable signage displayed."

Annexe 2, Prevention of Crime & Disorder, Condition 10

"SIA Door staff will be employed when live music is provided on the premises other than standard karaoke night. Door staff to be on duty from 20:00hrs to close and will wear reflective high visual jackets whilst working on the front door."

Annexe 2, Prevention of Crime & Disorder, Condition 12

"Smoking will be at the rear garden area of the premises and after 22:30hrs staff to manage no more than 6 persons outside at any time."

Annexe 2, Prevention of Public Nuisance, Condition 15

"There must be no entertainment in the outside area."

Annexe 2, Protection of Children from Harm, Condition 1

"A proof of age policy agreed by the police and local authority shall be enforced."

Annexe 2, Protection of Children from Harm, Condition 7

“There will be a personal licence holder present on the premises whilst alcohol is sold.”

The applicant has proposed to amend the following condition:-

Annexe 2, Protection of Children from Harm, Condition 5

From “No children under the age of 18 to be on the premises after 19:30hrs.”

To ‘No persons under the age of 18 years shall be permitted within the premises after 21:00 hours.’

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

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

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

We have received 2 representations from Interested Parties in relation to the Licensing Objectives “The Prevention of Crime and Disorder” and “The Prevention of Public Nuisance”. These are shown at Appendix 3 of this report.

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

- 2.4 The Licensing Authority is required to conduct a hearing by the provisions of Section 35(3) unless all parties agree that this is not necessary.
- 2.5 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representations and the procedure to be followed at the hearing.
- 2.6 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates’ Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.
- 2.7 If the application is granted, a Right of Appeal to the Magistrates’ Court is granted by Section 181 of the Act and, by Paragraph 4(2) of Schedule 5 to :-
- (a) The applicant for the variation of the licence against any decision to modify the conditions
  - (b) Any person who made a relevant representation in relation to the application who desires to contend
    - (i) that any variation made ought not to have been made, or
    - (ii) that, when varying the licence, the Licensing Authority ought to have modified the conditions of the licence or ought to have modified them in a

different way.

- 2.8 Following such Appeal, the Magistrates' Court may:-
- (a) dismiss the appeal,
  - (b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
  - (c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,
- and may make such order as to costs as it thinks fit.

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

### **Appendices**

Appendix 1	Relevant sections of the application form.
Appendix 2	Copy of the Premises Licence
Appendix 3	Representations from 2 Interested Parties

### **Documents available in members' rooms**

None

### **Background Papers:**

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

The current Premises Licence for the above Premise.

Torbay Council Licensing Policy 2021-2026.