

Minutes of the Licensing Sub-Committee

5 January 2023

-: Present :-

Councillors Ellery, Sykes and Brooks

5. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

6. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Brooks instead of Councillor Barbara Lewis.

7. Minutes

The Minutes of the meeting of the Sub-Committee held on 17 November 2022 were confirmed as a correct record and signed by the Chairman.

8. Licensing Act Review of Devon Dumpling

Members considered a report on an application for a Review of a Premises Licence in respect of the Devon Dumpling, 108 Shiphay Lane, Torquay.

Written Representations received from:

Name	Details	Date of Representation
Application	Application and supporting correspondence for a Review of the Premises Licence in respect of the Devon Dumpling, 108 Shiphay Lane, Torquay.	Dated 31 October 2022
Member of the Public	Representation objecting to the Application for a Review of the Premises Licence.	Undated
Member of the Public	Representation objecting to the Application for a Review of the Premises Licence.	Dated 5 December 2022
Member of the Public	Representation objecting to the Application for a Review of the Premises Licence.	Dated 30 November 2022
Public Protection	Report by Torbay Council as the Responsible Authority for Public	Dated 9 December 2022

Officer	and Statutory Nuisance.	
Member of the Public	Representation objecting to the Application for a Review of the Premises Licence.	Undated

Additional Information:

At the Hearing, the Public Protection Officer played two sound recordings which had been shared with the Respondent prior to the Hearing. With the agreement of all Interested Parties, the Public Protection Officer also circulated a site plan and colour photographs of the outside areas.

Oral Representations received from:

Name	Details
Applicant and supporting witnesses	The Applicant and those who had submitted statements to accompany the Application for a Review of a Premises Licence outlined the Application and responded to Members questions.
Public Protection	The Public Protection Officer outlined his representation and responded to Members questions.
The Respondent	The Respondent supported by the Premises Manager responded to the Application for a Review of a Premises Licence and responded to Members questions.

Decision:

That the premises licence in respect of The Devon Dumpling, 108 Shiphay Lane, Torquay be modified with the following conditions:

1. The premises outside areas shall be closed by 10 pm every day except for the smoking area, known as the cage.
2. Regulated entertainment shall be prohibited in the premises outside areas.
3. All windows and doors shall be kept closed during regulated entertainment after 10 pm.
4. All use of amplification equipment during regulated entertainment shall be under the control of the duty manager and set at a level not to unreasonably disturb nearby residents.
5. The duty manager, or designated staff member each day to regularly check the premises outside areas at least once every half hour when in use, and affectively address any excessive noise by any person or group using that area.
6. A log shall be kept at the premises to record checks of the premises outside area, and is shall be recorded therein, where any action is taken. This log shall be available for immediate inspection by the Police or any Council Officer or agent visiting the premises, for a look-back period of at least one month.

7. Patrons causing a nuisance in the outside area shall be asked to cease causing a nuisance or come inside the premises or where necessary, be asked to leave the premises.
8. The duty manager, or designated staff member on every Friday and Saturday to effectively monitor and control noise from patrons on the car park and front outside areas after 11pm.
9. That the pre-existing conditions around prevention of public nuisance at Annex 3, point 1 of the current Premises Licence shall be reinstated.
10. Signage shall be prominently displayed in the premises outside area, notifying patrons to keep noise to a minimum so as not to unreasonably disturb nearby residents.
11. Patrons using the outside area shall be seated and signage shall be prominently displayed in these areas notifying patrons of this.
12. Lights in the outside area shall be turned off at 10 pm but for the smoking area, which is to be situated in the area known as the cage, and the area leading directly to the cage.
13. After 10 pm patrons wishing to smoke, must use the designated smoking area, known as the cage.
14. There shall be no more than 10 patrons at any one time permitted to use the designated smoking area after 10 pm.
15. Drinks shall be prohibited outdoors after 10pm.

Reasons for Decision:

Having carefully considered all the written and oral representations and audio recordings, Members unanimously agreed that the Applicant and their supporters had proven there to be excessive noise outbreak from the Premises, namely The Devon Dumpling. Members particularly noted the representation, both oral and written, from the Public Protection Officer and found this to be helpful and drew Members to the conclusion that noise outbreak from these Premises was causing a nuisance, and at times, this nuisance was significant.

In determining a nuisance, Members resolved that the imposition of additional conditions was both necessary and proportionate, given that the evidence before them which clearly demonstrated that excessive noise emanating from the premise outside area, was having a significant impact on the nearby residents.

Members considered the Applicant and supporters to have been reasonable in their expectation of wanting a quality of life and having heard the evidence before them, were in no doubt that the Applicant's quality of life was being detrimentally impacted, and that the noise outbreak was unreasonable. Members acknowledged that there

had clearly been a relationship breakdown between the Applicant and the Premises Licence Holder and his Manager, in what they resolved to be a direct consequence of the ongoing nuisance being experienced by the Applicant. However, Members recognised that despite a breakdown in the relationship, the Premises Licence Holder and Manager had taken steps to address these concerns, albeit some were not implemented fully, as agreed. In imposing conditions, Members were of the opinion that this would provide clear expectations, both to the Premises Licence Holder and the Applicant, and would aid in the premises being operated in a responsible manner which upheld the Licensing Objectives; namely, the Prevention of Public Nuisance.

Members gave serious consideration to reducing the Premises operating hours and licensable activities, and the appropriateness of removing the Designated Premises Supervisor but on this occasion, concluded that the additional conditions could achieve the required outcomes, alleviate the concerns and that being experienced by the Applicant and their supporters, and promote the Licensing Objectives.

In concluding, Members in their determination also took in to account the oral submissions of the Premises Licence Holder and his Manager, in their desire and efforts to operate these premises so as not to cause a nuisance and were reassured by this. Resolving that with compliance of these conditions, the Premises would operate in a manner which would uphold the Licensing Objectives.

Chairman/woman