

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of Birdcage, New Road, Brixham, TQ5 8LT

Wards Affected: **Furzeham with Summercombe**

To: **Licensing Sub-Committee**

On: **29 February 2024**

Contact Officer: **Carrie Cottell**

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✉ Email: 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 08:00 until 01:00 on Friday and Saturday. Currently the Supply of Alcohol is from 08:00 until 24:00 on Friday and Saturday.

To increase the hours for Live Music indoors from 08:00 until 01:00 on Friday and Saturday. Currently the Live Music indoors is from 08:00 until 24:00 on Friday and Saturday.

To increase the hours for Recorded Music indoors from 08:00 until 01:00 on Friday and Saturday. Currently Recorded Music indoors is from 08:00 until 24:00 on Friday and Saturday.

Please note that we have been advised by the Solicitor acting on behalf of the applicant, that they now wish to remove the request for extended hours for live and recorded music from the application.

The addition of Late Night Refreshment indoors from 23:00 until 24:00 on Sunday to Thursday and from 23:00 until 01:00 on Friday and Saturday.

To increase the hours that the premises is open to the public from 08:00 until 01:30 on Friday and Saturday. Currently the premises is open to the public from 08:00 until 00:30 on Friday and Saturday.

The Applicant has proposed to remove the following condition:-

Annexe 2, Prevention of Public Nuisance, Condition 13
"Amplified live music until 00:30 hrs shall be limited to Friday and Saturday."

- 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 a relevant Representation has been received from an Interested Party. The Licensing Authority is also satisfied that the Representation was received within the appropriate time-scale, has not been subsequently withdrawn and is not vexatious or frivolous.

We have received 1 representation from an Interested Party in relation to the Licensing Objectives “The Prevention of Crime and Disorder” and “The Prevention of Public Nuisance”. This is shown at Appendix 3 of this report.

There was 1 other Representation received from an Interested Party, however that has since been withdrawn after the solicitor for the applicant advised that the regulated entertainment was no longer part of this application. There have been no Representations received from 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.

Rachael Hind
Regulatory Services Manager

Appendices

Appendix 1	Relevant sections of the application form.
Appendix 2	Copy of the Premises Licence
Appendix 3	Representation from 1 Interested Party
Appendix 4	Supporting information from the Applicant

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