

# **TORBAY COUNCIL**

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Variation of the Premises Licence in respect of The Mermaid, 2 King Street, Brixham, TQ5 9TF

Wards Affected: **St Peter's with St Mary's**

To: **Licensing Sub Committee**

**17 October 2024**

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## **1. Key points and Summary**

- 1.1 To consider and determine an application, in respect of the Premises detailed above, for a Variation to a Premises Licence.
- 1.2 The Sub Committee must consider the effects of the application against the Corporate Priorities of Community Prosperity and Economic Prosperity.
- 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 merits having received details of the issues arising either at a hearing or by written Representation if all parties have agreed that a hearing is not necessary. Having regard to the Representations, a decision must be made to take such steps as are necessary for the promotion of the Licensing Objectives. These are either:-
  - (a) to modify the conditions of the licence, or
  - (b) reject the application in whole or in part.

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 (the Act) for a Variation to a Premises Licence to permit regulated activities at the premises detailed above.

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.

The provision of recorded music from 2300 hrs to 0100 hrs on Friday and Saturdays only, and on New Years Eve from 2300 hrs to 0200 hrs the following day. Currently the Premises Licence does not authorise the provision of recorded music. However, the exemptions under the Live Music Act 2012 apply to this premises.

To extend the sale of alcohol from 0000 hrs to 0100 hrs on Fridays and Saturdays only. Currently the Premises Licence authorises the sale of alcohol from 0900 hrs to 0000 hrs Monday to Sunday.

To extend the opening hours of the premises from 0900 hrs to 0130 hrs on Fridays and Saturdays only, and an additional hour to closing times on the morning British Summer Time begins to allow for clocks going forward at 0100 hrs. Currently the premises is open from 0900 hrs to 0030 hrs Monday to Sunday, and on New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

- 2.2 A copy of the current Premises Licence showing the licensable activities, timings and conditions is shown at Appendix 2 of this report.
- 2.3 The Council as Licensing Authority, is satisfied that the Applicant has met the administrative requirements of Section 35(1) but is unable to issue the amended Licence as relevant Representations have been received, either from an Interested Party or a Responsible Authority. The Authority is also satisfied that such Representations have been received within the appropriate time-scale, have not been subsequently withdrawn and are not vexatious or frivolous.

7 Representations have been received from Interested Parties in respect of the Licensing Objectives "The Prevention of Crime and Disorder" and "The Prevention of Public Nuisance". There are shown at Appendix 3.

No Representations have been received from any Responsible Authority.

The Applicant has provided a written response to the Representations received. This is shown at Appendix 4.

The Applicant has also provided the premises Dispersal Policy, dated May 2023, which is shown at Appendix 5.

- 2.4 The 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 - Commercial**

### **Appendices**

Appendix 1	Relevant parts of the application form
Appendix 2	Copy of the Premises Licence
Appendix 3	Representations from Interested Parties
Appendix 4	Applicant's response to Representations
Appendix 5	Dispersal Policy – May 2023

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

None

### **Background Papers:**

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

Torbay Council Licensing Statement of Principles 2021 - 2026