Form J

TORBAY COUNCIL

Licensing Act 2003: Application for the review of a premises licence of club certificate

Notification

Information held by Torbay Council complies with and is held in accordance with the UK Data Protection Act 1998. The information that you provide on this form will only be used for this application form and will only be disclosed where necessary under any applicable legislation.

Information may also be shared for the prevention and detection of crime, for example with the police and other agencies as required by law, such as the Audit Commission under the National Fraud Initiative data matching exercise.

You have a right of access to your personal information. If you wish to access your personal information or exercise any of your rights under the legislation then please contact Torbay Council's Information Governance team on 01803 20 7467. Further information can be found on the Information Governance pages on Torbay Council's Internet site at, ***www.torbay.gov.uk***

Completed forms should be returned to:

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

Contact Details:

Tel: 01803 208025
Web: www.torbay.gov.uk
Email: licensing@torbay.gov.uk

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I, **Julie Smart (Insert name of applicant)** apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**.**

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description:

Below Decks

3-4 Beacon Quay

Post town: Torquay

Post code (if known): TQ1 1BG

Name of premises licence holder or club holding club premises certificate (if known): Bold Ayres Ltd

Number of premises licence or club premises certificate (if known): PL0019

Part 2 - Applicant details

I am:

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete [A] or [B] below) ☐

2) a responsible authority (please complete [C] below) ☒

3) a member of the club to which this application relates (please complete (A) below) ☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Mr: ☐

Mrs: ☐

Miss: ☐

Ms: ☐

Other title (for example, Rev):

Surname:

First names:

I am 18 years old or over: ☐

Current postal address if different from premises address:

Post town:

Post Code:

Daytime contact telephone number:

E-mail address (optional):

(B) DETAILS OF OTHER APPLICANT

Name and address:

Telephone number (if any):

E-mail address (optional):

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address:

Julie Smart

Licensing Officer

Torbay Council

Town Hall

Torquay

Telephone number (if any):

E-mail address (optional): Julie.smart@torbay.gov.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes.

1. the prevention of crime and disorder: ☒
2. public safety: ☒
3. the prevention of public nuisance: ☒
4. the protection of children from harm: ☐

Please state the ground(s) for review (please read guidance note 2)

The Premises Licence Holders have regularly and repeatedly failed to comply with a condition on the premises licence which states “Staff will regularly monitor all outside areas and ensure that customers do not loiter in the road or prevent vehiclular access to the harbour areas”.

Numerous complaints have been received over a period of 3 years in respect of the licensing objectives The Prevention of Public Nuisance and Public Safety. These complaints relate to music events which take place at the premises on a weekly or twice weekly basis throughout the summer months. Complainants state the music is loud, and these events encourage a large crowd to congregate within the road, where they dance and drink alcohol provided in glass vessels, preventing or restricting vehicular access to the pier and slipway, with little to no supervision of customers by staff. The area is frequently littered with glass vessels, plastic vessels and bottles that are not cleared on a regular basis by staff throughout the events.

Please provide as much information as possible to support the application (please read guidance note 3)

Premises Licence PL0019 was granted on 24 November 2005.

The licence was transferred to Bold Ayres Ltd on 27 July 2021.

On 15 July 2022 a minor variation application was granted to extend the premises into an adjacent vacant unit. This application in effect doubled the size of the premises.

Between July 2021 and June 2023 no complaints were received in respect of this premises.

SRU 276104 – 19 June 2023

A complaint was received concerning 14 June 2023 and 18 June 2023 in respect of a large crowd outside the premises, glass everywhere, drunk people dancing & singing on the harbour and sitting on public benches and boats stored on the harbourside. The complainant also raised concerns in respect of cars being unable to get through due to abusive drunk customers within the road. The complainant provided a photograph of the area outside Below Decks. A copy of this complaint and photograph is attached (Pages 1 and 2).

Between 7.10 and 7.30 pm on Wednesday 21 June 2023 I attended the area of Below Decks. I noted that a band was playing quite loudly at end of the seated jetty area, which contained a glass structure. I noted that this area did not form part of the licensed premises for Below Decks.

On 22 June 2023 I spoke to Mr Kevin Shadbolt, a director of Bold Ayres Ltd. I advised him that a complaint had been received in respect of Wednesday 14 June and Sunday 18 June 2023. I also informed him of my visit to premises the previous night, when a band were playing in an outside area. Mr Shadbolt referred to this area as “The Deck”, and said he put the band there to stop people standing drinking in the road.

On 27 June 2023 a meeting took place at Below Decks in respect of their music events. Present were Mr Kevin Shadbolt, Mrs Julia Shadbolt, and their son, Mr Gregory Shadbolt (directors of Bold Ayres Ltd), a representative from the Harbour Authority, Mrs Hind (Regulatory Services Manager), and me. Discussions took place concerning the complaint received which refers to noise but does not provide any detail as to the volume. However, the complainant also raised issues of persons in the road, alleged drunkenness and abusive behaviour. Mr Shadbolt explained that he had put the band in the Deck so that people did not stand in the road. He said for the next event he will put the band in the Deck facing out to sea, to alleviate noise concerns. Mr Shadbolt said he monitors noise from different locations around the harbour. Mr Shadbolt was advised to keep records to show that this has taken place. Mrs Hind recommended the use plastic glasses for events where larger groups may congregate and the Harbour representative supported this to alleviate any safety concerns in respect of broken glass.

The glass structure within the outside area referred to as the Deck was viewed. Mrs Hind indicated that a minor variation was required to add this structure to the approved plan. I gave Mr Shadbolt our “Pool of Licensing Conditions” and recommended they select some to include within their minor variation to detail how they will manage their music nights to promote the public nuisance objective.

SRU 276821 – 30 July 2023

A complaint was received via our call centre –

“Loud music was being played outside at the Below Decks bar on Beacon Key on the evening of 29th July 2023. This has happened previously. The music continued until about 11.00 pm and could be heard very clearly by us living at the top of Park Hill Road. I phoned the bar to complain only to be told that the bar had permission from Torbay Council and that the manager would phone me back, which they did not do.

The noise was intrusive and could be heard even inside the house through double glazed windows. It spoilt the enjoyment of our evening. I am not against some music at a bar but not so loud that it affects those living nearby."

Unfortunately, a former temporary Torbay Council employee did not take any action in respect of this complaint. A copy of this complaint is attached. (See Page 3)

SRU 279727 – 4 April 2024

An email was received from the police in respect of a mobile bar van being placed on the harbourside selling alcohol outside of Below Decks.

I also received a complaint about the mobile bar selling alcohol, people stood in the road drinking and alcohol being supplied in glass vessels, together with a photograph showing the position of this mobile bar. A copy of this email and photograph is attached.

On 5 April 2024 I discussed the mobile bar with a Harbour Authority representative and informed him that the premises need to submit a Temporary Event Notice (TEN) if they wish to use the van at the location shown in the photograph again. The Harbour Authority representative informed me that whilst the mobile bar was in situ, the premises did not provide customers with plastic glasses and people were again stood up drinking in the road.

At 1300 hrs on 11 April 2024, Mr Tom West and I met with Mr and Mrs Shadbolt at the premises.

We advised them of the complaint received in respect of a van selling alcohol, people stood up drinking in road area, no stewards being present, plastic vessels not being used and loud music. Mr Shadbolt stated that he had a DJ event planned and they were going to set up at end of the Deck area but it was too windy so they had to move to just outside front of premises. This meant that instead of all customers being in the Deck they congregated in the road. Mr Shadbolt further explained that larger numbers than anticipated attended as it was Bank Holiday weekend, which they did not realise when booking the DJ. Mr Shadbolt stated this caused problems at the bar, so he arranged for the mobile bar to attend. He admitted he did not think about the licensing aspect of placing a mobile bar in the vicinity.

I advised Mr and Mrs Shadbolt that I believed an offence of the unauthorised sale of alcohol, contrary to Section 136 of the Licensing Act 2003, had taken place. Mr and Mrs Shadbolt were very apologetic and said they would not have done this if they had realised. We discussed that a TEN is required in respect of the sale of alcohol from any area not within the licensed area on the premises plan.

We discussed customers stood up drinking in road, and similar discussions that we had in June 2023 regarding this matter. Mr Shadbolt said he was aware that a Harbour Authority representative has a problem with this as the premises are situated in a working harbour, but Mr Shadbolt said that only two cars went through during the whole time of their event.

We discussed the Public Space Protection Order which prohibits the consumption of alcohol around Torquay harbourside and the town centre area. I advised Mr and Mrs Shadbolt that they need to encourage all customers to be within their licensed areas.

We discussed the lack of plastic glasses and stewards. Mr and Mrs Shadbolt explained that the number of customers that attended was higher than anticipated.

In respect of the complaint regarding loud music, Mr Shadbolt showed us his decibel readings taken from various locations, i.e. on Beacon Terrace, entrance to the harbour, breakwater wall. Mr West felt that these readings were reasonable.

We discussed possible events for a Power Boat event and the air show, when Mr Shadbolt would like to put his mobile van at the end of the breakwater. I told him he will need permission from the Harbour Authority to do so and submit TENs, and I recommended the use of plastic drinking vessels for these events.

On 11 April 2024, I received an email from a Harbour Authority representative who said that Below Decks had sought permission to place the mobile van around the harbour but permission was refused, and they ignored that. He further stated that Below Decks is at its operational capacity and events such as he has witnessed cause significant concern for harbour users.

On 17 April 2024 I sent a letter to Mr and Mrs Shadbolt regarding the unauthorised sale of alcohol on 30 March 2024, copy attached. (See pages 4 to 11).

SRU 281148 – 6 July 2024

A complaint was received from a member of the public who indicated that they had contacted the owner of Below Decks to establish what time the music was due to finish. They were informed that the music would cease at 10.30 pm, but the complainant indicated that the music continued beyond that time. They further stated, "they are on the town dock in Torquay every week and the music from Below Decks is so loud you can't hear yourself speak" and they wanted a member of staff to attend to monitor the noise levels. A copy of this complaint is attached. (See page 12).

Mr West subsequently sent the complainant a noise diary to complete, with advice about completing the diary and providing evidence such as videos.

At 4.13 pm on 11 July 2024, Mr West sent an email to Mrs Shadbolt, as follows:

"Good afternoon Julia, I hope you are well. I write with reference to a noise complaint that we have received (SR281148) about Below Decks. The complainant has advised that live music coming from the premises on Saturday nights is excessive and is interfering with the enjoyment of their home. Please ensure that you are regularly monitoring the levels in and outside the premises aswell as complying with any conditions you have imposed on the licensing in respect of noise. Should you have any questions or wish to discuss this matter further then I would be happy to speak over the phone or arrange a meeting in person. I will be on leave until 22nd July but if you wish to speak with one of my colleagues, please feel free to E-mail the licensing inbox at Licensing@Torbay.gov.uk Kind regards, Tom"

At 5.09 pm on 12 July 2024, Mr West received a further email from the complainant, as follows:

"Dear Tom Thank you for the email you sent to me today. I did go and complain to the owner of Below Decks last Saturday about the very loud music that was playing. I asked what time it would stop I was told 10.30 he rolled his eyes at me then walked off ,it stopped about 10.40 pm but it had been playing from around 7 pm. We have a boat on the town dock and stay on it nearly every weekend so we aren't in a house. We aren't against music and people having a nice time but when you can't speak to each other without raising your voice it's not good. I will video and make a diary if we have issues again . I can't believe you don't have more complaints about the weekly music playing so loud. Thank you you again"

At 1.51 pm on 25 July 2024, Mr West received an email from Mr Shadbolt:

"Hi Tom Just thought I would drop you a line and let you know as usual I take your comments seriously As always i monitor any outside music to check for any legitimate complaints . I spoke to the lady concerned as she is moored next to my boat and told her the music was due to stop within half an hour . I even walk done my boat and the level was less than 60 so well within your guidelines".

Mr West responded to this email at 1.51 pm on 25 July 2024:

"Hi Kevin, Thank you for your response. I'm glad to hear that you managed to speak with the complainant yourself. We ask that premises supervisors do this in the first instance so as to avoid potential escalation. I have asked the complainant to provide evidence of any further instances of nuisance. Since then, I have not heard back from them. I know that as a responsible premises supervisor you would wish to be the first to know If there are any further issues. I will therefore update you on the matter should anything else come up. Until then, I would thankyou again for your response and due diligence in monitoring for noise."

Email Complaint – 5 August 2024

An email complaint was received concerning a music event on 3 August 2024. The complaint related to people walking and sitting in the area with drinks, drinks being provided in glass vessels, and the road filling up with people drinking whilst vehicles are trying to get through. Photographs were also provided. This email, the photographs and Mrs Hind's response are attached. (See pages 13 to 17).

SRU 281690 – 11 August 2024

A noise complaint was received from a resident who provided an address within Barnfield Road, Livermead, Torquay. A copy of this complaint is attached at page 18.

"I live in Livermead and the music is so loud I can hear it at my property and even here it is loud enough to be disturbing."

On 16 August 2024, Mr West provided the complainant with a noise diary, together with advice on completion of the diary and provision of video footage demonstrating the volume of music being experienced.

However, as the complainant did not respond to Mr West's email or return the noise diary the case was closed on 23 August 2024.

SRU 281882 – 25 August 2024

A noise complaint was received from a resident who provided an address within Parkhill Road Torquay.

"I live in Livermead and the music is so loud I can hear it at my property and even here it is loud enough to be disturbing Whilst it's correct that we should all have the opportunity to enjoy the bay it seems that this establishment does not concern itself with other peoples requirements. Can you explain how a cafe can extend to an all day drinking establishment !". A copy of this complaint is attached at page 19.

On 29 August 2024, Mr West provided the complainant with a noise diary, together with advice on completing the diary and providing video footage.

On 17 September 2024, as the complainant failed to respond to Mr West's email and return a completed noise diary, the case was closed.

SRU 2844548 – 17 April 2025

I received an email from a Swisco Enforcement Officer concerning music he witnessed at Below Decks, whilst he was walking around the seafront. He stated he heard loud music near the Princess Theatre and thought it was from a boat near the footbridge. The music was very loud and he later determined the music to be coming from Below Decks. A copy of this email is attached at page 20.

A further email from this officer, received at 9.06 am on 17 April 2025, states:

"Subject: Re: Just some intel Thanks Julie, it was quite impressive really, you could make out each individual song from outside the princess theatre. I'm not sure how anyone eating there were able to hold a conversation." A copy of this email is attached.

On 22 April 2025, Mr West updated the record that he noted the intelligence, but that he had not received any complaints from members of the public for some time, there was little he could do in terms of action.

SRU 284790 – 3 May 2025
A complaint was received from the resident who resides in Parkhill Road, Torquay:

"Loud music non-stop today from 3 pm (it is now 9pm and no let-up). We of course accept music generally around the harbour as it is part and parcel in such an area but this is just incessant repetitive loud drumming enough to give me a migraine and no relief when the migraine passes as it is non-stop. This is just the first May Bank Holiday. It is obviously only going to get worse as the summer comes unless the owner is told to stop." A copy of this complaint is attached at page 21.

On 9 May 2025, Mr West emailed the complainant:

"Good afternoon ######, I write with reference to your complaint about Below Decks, Torquay. Issues with noise from the premises have been raised in recent weeks following submission of temporary event notices. I spoke with the DPS prior to the commencement of this particular event. They assured me that sound measurements would be taken, and that extra consideration would be made to ensure that noise is not a problem. Evidently the measures taken were not sufficient to prevent noise nuisance. I will speak again with the premises supervisor and emphasise the importance of noise control and warn them that temporary event notices may be objected to on this basis in future. On a more positive note, I suspect that this is a one-off event or one that happens very irregularly. If, however, this becomes more of a persistent issue then please let me know and we will have to look at more targeted action. Many thanks, Tom"

This complaint was discussed with the licence holder, Bold Ayres Ltd, at the Below Decks on 27 May 2025 – see details below.

SRU 284870 – 10 May 2025
On 12 May 2025 a noise complaint was received from a male whose home address is not known:

"I am writing again in regards to Below Decks, as we embark on another summer season and things have not improved, in fact have got a lot worse!

I live about 1.5 miles away from Below Decks, but many evenings I can hear the music from Below Decks when I'm trying to have a quiet evening on my balcony. The venue is becoming an outdoor live music venue, with a marquee set up and full four piece bands playing there regularly. I notice that this Sunday they have a full band starting at 8pm outside, which I find unacceptable that late on a Sunday evening. I'm sure there must be a license required for this sort of outdoor music, as I have recently received a letter from XXXXXXXXX pre-warning of noise for they're bi-annual music festival. I very much appreciate this warning and find it a responsible thing to do. It does not finish too late and is not too regular, whereas Below Decks have this kind of thing going on most evenings, it goes on until late and is especially bad on Wednesdays.

I have tried to speak to the owner, but am not able to get a helpful response. I feel like he thinks he is above any rules and frankly does not care. That area of the harbour is becoming rowdy and noisy, people with glasses and drinks all over the public area and public benches with absolutely no care given.
I look forward to your response."

A copy of this complaint is attached at page 22.

This complaint was discussed with the licence holder, Bold Ayres Ltd, at the premises on 27 May 2025 – see details below.

On 12 May 2025 an email was also received from a Harbour Authority representative concerning an incident on 11 May 2025, whereby a female on a skateboard was pushed at force along the road outside Below Decks, where she collided with a male, knocking him over, as a result of which he sustained a fractured skull. A copy of this email is attached at page 23.

On 13 May 2025, Mrs Hind discussed this incident with the Harbour Authority representative, who said he estimated about 100 customers were present outside Below Decks, but someone else estimated there to be about 200 customers. The Harbour Authority representative said customers of Below Decks were blocking the road, and a female customer was being pushed down the road on a skateboard whist being filmed by a male with a drone. The skateboarder went into the male who was knocked over. The Harbour Authority representative indicated that he had CCTV footage of the incident.

This matter was discussed with the licence holder, Bold Ayres Ltd, at the premises on 27 May 2025 – see details below.

SRU 285007 – 17 May 2025
A complaint was received from a resident who provided an address in Park Road, St Marychurch, Torquay:

"The DJ is outside on the quayside playing extremely loud dance music. This has been a frequent occurrence. It's impossible to escape the noise. Even with the windows and doors closed it is loud. There are approximately 40 revellers on Beacon Quay, drinking and dancing, with another 20 on the small outside deck dancing." A copy of this complaint is attached at page 24.

On 22 May 2025 Mr West emailed the complainant:
"Good morning #####, I write with reference to your complaint about Below Decks, 4 Beacon Quay, Torquay. Noise has been an issue at this premises in recent weeks, and yours is not the only complaint we've received. My colleague and I will be meeting with the premises supervisor early next week to discuss these complaints and to set firm expectations for noise control in future. However, I note from the complaint form that you've listed your address as ## Park Road Torquay. Can you confirm where you were at the time you experienced the nuisance? I only ask as Park Road is approximately 3 miles away from below decks which would make it very unlikely that you would be able to hear noise from this venue so far away. You also mention that this is a frequent occurrence. Could I ask how frequent this is on average and how it affects your daily life? For example, do you struggle to sleep, to watch the TV etc? If you could let me know I'd be most grateful. Kind regards, Tom

The complainant failed to respond to Mr West's email.

On 27 May 2025, Mr West and I met with a Harbour Authority representative, who raised numerous concerns in respect of the premises:

- A boat owner had complained about loud music
- The premises are not using plastic glasses for customers outside
- No door stewards are used to monitor customers outside and ensure the road is kept clear

We viewed CCTV footage of the incident involving the skateboarder, which showed a lack of supervision by the premises who were not monitoring the road and keeping it clear, with several groups stood around drinking and dancing in the road. I considered this to be a breach of a condition on the licence, which states "Staff will regularly monitor all outside areas and ensure customers do not loiter in the road or prevent vehicular access to the harbour area".

After viewing the CCTV, Mr West and I met with Mr and Mrs Shadbolt at Below Decks. I advised them that we were aware of the incident where a male sustained a fractured skull and had viewed the CCTV footage. I informed Mr and Mrs Shadbolt that the CCTV showed a lack of monitoring of customers outside, leading to them standing in the road drinking and dancing. I reminded Mr and Mrs Shadbolt of a condition on the licence that states "Staff will regularly monitor all outside areas and ensure that customers do not loiter in the road or prevent vehicular access to the harbour area".

We discussed information received that recently a Coastguard vehicle could not get through the crowd outside Below Decks. Mr Shadbolt stated that the vehicle did get through.

Mr West advised Mr and Mrs Shadbolt that he had received 3 noise complaints, one from an individual who has a boat moored nearby, and two from residents - one living 1 1/2 miles away, and the other lives 3 miles away, therefore the validity of these complaints is not at the same level as it would be for a resident living closeby. Discussions took place concerning the monitoring of noise levels during events. Mr Shadbolt showed Mr West his notes from a couple of dates and Mr West was satisfied that wind direction was impacting volume at different locations. Mr West advised Mr and Mrs Shadbolt to check wind direction and speaker positions so that wind does not impact noise, and that wherever possible speakers should be positioned to take noise out to sea.

I asked whether Mr and Mrs Shadbolt were present at the time the skateboard incident occurred. They said they were not, and they confirmed that no noise monitoring took place during that evening. I referred them to a condition on the licence "The Premises Licence Holder or Designated Premises Supervisor shall be available at all times during regulated entertainment and be responsible for co-operating and liaising with any responsible authority". A discussion took place concerning the interpretation of this condition as to whether the “Premises Licence Holder or Designated Premises Supervisor being available at all times” means that they have to be physically present at the premises or at the end of the phone. I therefore recommended that this condition be amended by way of a minor variation, and subsequently proposed an alternative condition: “On occasions when entertainment is provided at the premises, the Premises Licence Holder or DPS shall nominate a designated member of staff to monitor customers outside to ensure the road is kept clear and to monitor and record noise levels, in accordance with the requirements of the licence”.

In respect of the above condition, the Licensing Authority accepts that this condition is not enforceable as the Live Music Act exemption applies to this premises. However, as numerous noise complaints and complaints concerning obstruction of the road had been received, advice was provided to Mr and Mrs Shadbolt that the Licensing Authority expects the licence holders to take appropriate steps to alleviate further concerns being raised and demonstrate their due diligence by monitoring noise levels. Compliance with this condition was recommended.

On 29 May 2025 I emailed the licence holders outlining the Licensing Teams expectations in respect of future events, copy attached at pages 25 and 26.

At 9.43 am on 28 May 2025, Mr West emailed the male complainant in respect of SRU 284870, to update him in respect of the action taken:

“Good morning ######, Further to our discussion, I have an update following a meeting between myself and the licence holders for Below Decks. This meeting was also attended by my colleague Ms Smart (Licensing officer). There have been a number of complaints about noise and heavy congregation in the road directly outside the premises in recent weeks. I am aware that these same issues have occurred in the past also, and as such, strong words of advice have been given. The licence holders have admitted fault on several occasions where there should have been stronger supervision – particularly in regard to the congregation of patrons on the highway. They did, however, make the point that this area is also used by other members of the public, who oftentimes, will purchase alcohol from nearby convenience stores to then congregate and drink in this area. I can attest to this, as I’ve seen evidence of drinking cans/bottles along the harbour wall which aren’t sold by the premises themselves. Nonetheless, the licence holders have agreed to take stronger action to disperse customers who may be blocking the highway. As far as noise is concerned, I have seen evidence that noise measurements were taken throughout the course of the events from various points around the bay. The measurements did not appear to be in what I would consider to be the high-end range; however, I suspect that wind direction has played a significant part in the nuisance caused to you and other complainants. I have therefore suggested that greater consideration is made for wind direction, overall volume, and speaker direction. Again, the licence holder has agreed to do this. I hope this will have the desired effect, however, should noise continue to be an issue then please do not hesitate to make contact. Many thanks, Tom”

Mr West subsequently received a further email from the complainant:

“Thank you for your reply. I appreciate you taking some action in this case. I would just make one comment and that is around ‘other members of the public’ using the highway and drinking bottles and cans from the supermarket. These people would not be there if Below Decks were not operating as an outdoor music venue. The only reason they are there using the public space, drinking alcohol and leaving litter is because of below decks. They would not be there without the loud live music going on. Thank you”.

On 26 June 2025, as I had not received any communication from Mr and Mrs Shadbolt as a result of my email of 29 May 2025, I sent them a further email advising them that if they did not apply for a minor variation as suggested, they must ensure they comply with the existing condition on the licence. A copy of this email is attached at pages 27 to 29.

On 26 June 2025, I received a phone call from Mr Shadbolt in respect of my emails of 26 June 2025 and 29 May 2025. Mr Shadbolt confirmed that he had seen my email and they were happy with the wording of the proposed condition, but said they did not have a laptop and were experiencing difficulties in making their minor variation application. To assist them, I advised that I would draft an application and send to them for approval.

Mr Shadbolt asked if I am aware of any recent issues, I confirmed that I did not. Mr Shadbolt said he had been in contact with Tom about a female who rang the premises complaining about music and Tom had provided advice. We discussed the supervision of premises when live music is provided and that although he and Mrs Shadbolt do not need to be present, they need to nominate a responsible member of staff to keep the road clear and monitor the noise levels to demonstrate they are working with the Licensing Authority to address the concerns raised. Mr Shadbolt confirmed they will do this.

On 27 June 2025, I sent a draft minor variation application to Mr Shadbolt in respect of the removal of a condition on the licence stating “The Premises Licence Holder or Designated Premises Supervisor shall be available at all times during regulated entertainment and be responsible for cooperating and liaising with any responsible authority” and replacing this with “On occasions when entertainment is provided at the premises, the Premises Licence Holder or DPS shall nominate a designated member of staff to monitor customers outside to ensure the road is kept clear and to monitor and record noise levels, in accordance with the requirements of the licence.”

The minor variation application was subsequently granted on 23 July 2025.

SRU 285777 – 28 July 2025

An email was received from a Harbour Authority representative, forwarding a complaint he had received from a harbour user, which contained a still photograph of customers stood in the road outside the premises. A copy of this email and photograph is attached at pages 30 to 32.

Unfortunately, this record was not updated in respect of any action taken due to the record being incorrectly archived when a new IT system was introduced.

Case Noise 15995877 – 4 August 2025

A noise complaint was received from a male who complained of loud music outside Below Decks when retrieving his boat. He stated the music was played at a ridiculous volume within an area called The Deck, and it was obvious that the premises had no regard whatsoever for anyone else in the vicinity of the harbour and surrounding homes/businesses. He said that he had planned to have dinner at a nearby restaurant but decided not to as the music was loud enough to give you a headache. This individual stated that prior to retirement he was a member of the Institute of Acoustics so has knowledge of these matters. A copy of this email is attached at page 33.

On 8 August 2026, Mr West updated the complainant that he had spoken to the licence holder who is taking steps to address the problem of excessive noise. Mr West also provided advice concerning capturing any evidence of further nuisance and sending to him for review.

Case 16311321 – 22 August 2025

On 22 August 2025, I received an email from Mr Shadbolt regarding measures he had put in place in an attempt to keep the road clear of customers when the premises provided music:

“In order to counter act this myself and XXXX positioned ourselfs at the entrance end outside birchells and a response vehicle arrived and we dispersed the crowd immediately so they were not delayed at all . Not perfect but at least it appeared to work
So with that in mind on Wednesday I had what I thought was a good idea . I set up a boundary using 5 foot off the road which is on line with the kerb outside Birchells .
The road widens by that much outside our premises so it would not interfere with any vehicle gaining access .
It worked really well I was able to tell people this was where to dance effectively without causing a nuisance.”

A copy of this email is attached at page 34.
I responded to Mr Shadbolt’s email that day, reminding him of a condition on the premises licence which states:

"On occasions when entertainment is provided at the premises, the Premises Licence Holder or DPS shall nominate a designated member of staff to monitor customers outside to ensure the road is kept clear and to monitor and record noise levels, in accordance with the requirements of the licence".
I indicated that he should note that the condition says that staff must monitor customers outside to "ensure the road is kept clear" and informed him that they cannot allow people to stand in the road and move them if a vehicle needs access, nor can they allow any customers to stand on any part of the road, even if an area is cordoned off. I pointed out that failure to comply with this condition constitutes an offence under Section 136 of the Licensing Act 2003, and the penalty for such an offence.

I also expressed my opinion that from his email and previous complaints we have received, it appears that the music nights at Below Deck are attracting a larger audience than can be accommodated inside the premises and their outside areas, and that they may wish to consider ways that they can restrict the number of people attending events, perhaps by introducing ticket only events or on a first-come-first serve basis, whereby once the licensed areas are at capacity, no further customers are served drinks and are asked to leave the immediate area.

I reminded Mr and Mrs Shadbolt that as Premises Licence Holders it is their responsibility to ensure they have sufficient measures in place to ensure the road is kept clear in accordance with the condition on the licence, and that should further evidence of breaches of conditions or complaints about customers standing in the road be received, we shall consider applying for a review of the licence. A copy of this email is attached at page 35.

I did not receive a response from Mr and Mrs Shadbolt in respect of my email.

Case 19833541 – 27 April 2026
The Harbour Authority received a complaint from a business situated on Beacon Quay, which was forwarded to Mr West and me. Copy email attached at pages 36 and 37.

The complaint related to:
- “music playing so loudly that people, potential customers, are turning around and walking back off the quayside
- drinking all over the quayside, sitting on benches well outside the licensed areas and generally making Beacon Quay look like an Ibiza Beach Club!
- The music commenced at 14:00 and is alternating between recorded music and bands

- the band is virtually blocking the pedestrian walkway and totally preventing walkway access to the end unit.
- There is no security on site and little or no management of the customers drinking all over the harbourside
- We have not seen a customer since the music started and the only people coming onto the quay are people who look like they are dressed for a night out ready for dancing and drinking on Beacon Quay."

On 19 May 2026 the Licensing Team attended the CCTV Control Room to learn about the system and location of cameras, to assist us in dealing with complaints. Whilst there I noted that there is a camera in the car park above Below Decks. I asked the CCTV staff if they had any footage showing an event at Below Decks on 25 April 2026 and was subsequently shown some footage. I arranged for 30 minutes of footage from 1900 to 1930 hrs to be forwarded to me.

I subsequently received this footage and Mr West and I viewed it. The footage shows that between 1900 and 1930 hrs there were several small groups of customers stood in the road outside, but no large crowd. During the 30 minutes of footage three members of staff were seen delivering food and drinks to customers in the Deck area, and clearing empty glasses, but at no time did they appear to speak to customers who were stood in the road. The CCTV shows several people sat on or standing near the public seating (not part of Below Decks licensed area) who appeared to be drinking alcohol from glasses and glass bottles. Although some customers appeared to obtain their drinks from Below Decks, it was not possible to establish where all the drinks came from. At one point a vehicle is seen to pass through the area, with the driver manoeuvring around a small group of customers stood in the road.

As a result of this complaint Mr West met with Mr Kevin Shadbolt on 29 May 2026, and made the following notes on the case:

"Site visit on Friday 29th May. Met with Kevin and explained that a noise complaint has been received from a resident on St Lukes Road on the site side of the harbour. Harbour Master has also reported the noise from entertaintment at Below Decks being audible from across the other side of the harbour. Kevin acknowleded that entertainment can be loud occasionally, and sometimes struggles to know where to direct speaker given that residential accommodation is present on all sides. I advised Kevin that the overall volume should be reduced to the extent that it does not cause unreasonable disturbance to residents. Kevin accepts this and assured me that he will do more to reduce the potential impact of noise on residents. He said he would ask his entertainers to reduce the volume at which they play. However, Kevin pointed out that XXXXXXXX, which is not far from Below Decks, frequently have live music events outside on their deck area. This is reportedly often very loud, and Kevin believes that entretainment from XXXXXXX and othere venues can sometimes be conflated with his own. I have checked this and can see that XXXXXXXX have held several live music events outside recently. Kevin therefore asked whether, upon receipt of a noise complaint, he is notified as soon as possible so that he can check against the dates/times of his entertainment and make adjustments as necessary. I believe this to be a reasonable request and first step in trying to resolve the issue. I did, however, remind Kevin that where noise complaints are received and substantiated with evidence, we may have no alternative but to seek a review of the licence. Kevin acknowleded this and does not want to risk a review of the licence.

As for the issue with congregation in the road, Kevin acknowledges that sometimes this can be difficult to manage, however, argues that, in the instance of a vehicle (particularly an emergency vehicle) wants to get through, patrons immediately get out of the way. Kevin feels that he is sometimes unfairly targeted, given that some members of the public (not customers of his) have in the past freely ridden bikes dangerously down this area and caused issues such as the incident with the skateboard last year. Nonetheless, Kevin accepts that this is a condition of his licence and said that he would do more to try and manage this better. Again, I have reminded Kevin that this may trigger a review of the licence if it is deemed that he cannot uphold the public safety licensing objective and fails to manage the area effectively."

Case 20351098 – 20 June 2026
A complaint was received from a resident who provided an address of St Lukes Road South, Torquay:

"How is it that XXXXXX in Paignton cannot play live music because of complaints but nothing is ever done about Below Decks ?? I am sure you have had complaints about this premises that seems to hold a festival every sunny weekend. Shouldn't all customers drinking be sat down do they know their license ? You can hear the music up in St Lukes Road surely not right ?" A copy of this complaint is attached at page 38.

As a result of this complaint, Mr West spoke to Mr Shadbolt, and sent a letter to the complainant stating "I have spoken with the licence holder who has apologised for any disruption caused and assured me that entertainment will be better managed in future. However, the licence holder also pointed out that there are several venues in the vicinity who regularly play live music outside and is therefore concerned that noise from other venues may be misattributed to Below Decks. I will attempt to gather additional information and evidence of any alleged nuisance associated with live music from below decks in the coming weeks. In addition, I would ask that you document any instances of nuisance, including the date and time as well as any other relevant information. If possible, please also attempt to capture the noise via video recording, preferably showing the extent of the noise heard within your own home and how the noise is impacting the enjoyment of your property."

Mr West discussed this complaint with Mr Shadbolt on 26 June 2026 – see details below.

Case 20719568 – 20 June 2026
A further complaint was received from the male who lives 1 ½ miles from Below Decks in respect of loud music, people all over the public benches with drinks purchased from Below Decks in glass and bottles, not plastic. He said he witnessed people bringing drinks out of the premises and a nearby premises as the queue was too long in Below Decks. He said he feels uncomfortable using this public area as he would have to make his way through drunk men and women and very loud music, and he described the area as a "no go for families and children". This complainant also provided a photograph. The complaint and photograph are attached at pages 39 and 40.

Mr West discussed this complaint with Mr Shadbolt on 26 June 2026 – see details below.

Case 20720398 – 22 June 2026
A complaint was received from a Harbour Authority representative in which he referred to members of the Harbour Team receiving 30 complaints in respect of Saturday 20 June 2026, with harbour users being turned away and one member of staff visiting Below Decks at 6.15 pm to ask them to manage their customers as they believed the area was critically unsafe. CCTV footage was provided. A copy of this email is attached at pages 41 and 42.

The Harbour Authority representative also forwarded an email complaint he had received from a neighbouring premises of Below Decks. A copy is attached at page 43.

Mr West discussed this complaint with Mr Shadbolt on 26 June 2026 – see details below.

Case 20733861 – 23 June 2026
A noise complaint was received from a resident who provided an address within Grafton Road, Torquay:

"I live approximately 1 mile away from Below Decks and I am regularly disrupted by the excessively loud music that comes from the premises. This is on a weekly basis, particularly over entire weekends. The noise is as such that when windows and doors are open at my property, the music is overbearing and I also cannot enjoy sitting outdoors. I struggle to hear my television for example or work at home due to the noise interference. Music can go on late into the night and I can even hear it when I am trying to sleep. In addition, I am a harbour customer and the noise is even more disruptive when I am on the marina, often finding it difficult to have low level conversations. Finally, when launching and recovering vessels on the harbour slip way, the huge crowds of people stood in the roadway approach drinking causes many hazards

despite the obvious signs I have seen informing customers of the premises not to stand in the roadway." A copy of this complaint is attached at pages 44 and 45.

On **26 June 2026**, Mr West spoke to Mr Shadbolt and recorded the following notes on the case:

"I spoke with Kevin again on Friday 26th June following further complaints of noise and congregation on the highway. Kevin explained that it was unusually busy and his event attracted people who wouldn't ordinarily come to his events. Kevin conceded that his music would have attracted a larger than normal crowd. I advised Kevin that it would be preferable to have music on the 'deck' section to avoid congregation of the highway and to keep noise levels down as much as possible. Kevin agreed to this and I told him that I would get back to him if we receive further complaints."

On 30 June 2026 a Harbour Authority representative shared a folder with Mr West and me.

The folder contains:

1. A still photograph of the area outside Below Decks taken on 20 June 2026 at 2220 hrs. This photograph shows a few groups of people stood in the road and a few people sat on the public benches but no large congregation, as has been seen at previous events. The photograph also shows empty drinking vessels can be seen on the public bench that appear abandoned but have not been cleared away.
2. CCTV of 20 June 2026 at 1946 hrs. This 2 minute piece of footage shows several small groups stood in the road outside Below Decks, two persons sat on chairs in the road outside Below Decks who appear to be looking at something within the premises, and a mixture of glasses, glass bottles and plastic vessels visible on the public benches.
3. CCTV of 20 June 2026 at 2108 hrs. This 2 minute piece of footage shows a larger crowd present outside Below Decks, the majority of persons are stood in the road, with persons sat on chairs also visible within the road.
4. CCTV of 20 June 2026 at 2132 hrs. This 2 minute piece of footage shows a large crowd stood in the road outside Below Decks, with people dancing and drinking within the road. Several people are sat on chairs within the road area. The camera pans over the public benches and empty drinking vessels can be seen strewn across these, including 70cc alcohol bottles. From this footage it appears that people are attending the area to listen to music provided by Below Decks and taking their own alcohol to consume.

Case 20888183 – 1 July 2026

A further complaint was received from a resident who provided an address within Grafton Road, Torquay:

"I recently submitted a nuisance complaint to the council regarding the noise omitted from Below Decks. I am now raising this complaint because the nuisance has escalated to a completely unacceptable level. I live 1 mile away from the premises and I am also a harbour user. I am frequently disrupted by loud music from the premises to the extent that I cannot enjoy my outdoor space and I have to shut doors and windows in order to hear my TV. The noise is completely over bearing, happening every weekend and now every Wednesday due to live music ongoing. When I am on Torquay marina I cannot have a low level conversation with others due to the volume level of the music. The premises recently held a music festival and when trying to access the underground car park on the harbour at 10pm when the event was finishing, there were hundreds of people walking in the middle of the road next to the XXXXXX, obstructing my vehicle. I am told 500 people attended and this is evident from social media posts from the event. In addition, I am constantly obstructed by people standing in the road between the premises and their glass

extension when I am launching and recovering vessels, despite the visible signs that there is to be no standing in the roadway. I do not think that the premises license extends to the roadway, public benches and in front of the other neighbouring premises so I do not understand why Below Decks continue to get away with this. What was once a family friendly harbour area has now become an area for anti social behaviour, drug taking and fighting, all of which I have seen. I have video evidence of the noise from my property which I am willing to share." A copy of this complaint is attached at pages 46 to 48.

On 3 July 2026, Mr West emailed the complainant advising them that we have received other complaints about this premises, that he had met with the licence holder on several occasions to remind them of their obligations, but this does not appear to have been successful, he had also met with the Harbour Authority to understand the extent of the problem with congregation in the road, that we are exploring available options as to potential action to take in response the complaints and he would be conducting some out of hours visits to make noise assessments in the vicinity. Mr West provided the complainant with a noise diary, requested that the complainant capture some video evidence if possible and provided advice on completion of the diary. Mr West has not received a response to his email and the noise diary has not been completed and returned.

Case 21565641– 1 August 2026

On 7 August 2026 I received a complaint in respect of tables and chairs from Below Decks obstructing the ferry footpath on 1 August 2026. The complainant indicated that at that time the ferry had 250 passengers with double buggies, walkers and mobility scooters which needed to be unloaded. The complaint indicated that this happens regularly, after the ferry has usually stopped operating, however sometimes the ferry operates later in the evening. A copy of this complaint and photograph is attached at pages 49 to 51.

On 11 August 2026, I emailed Mr and Mrs Shadbolt advising them of this complaint, sending them the photograph, and asking them to ensure staff monitor the area and keep the area clear of tables and chairs. (See unnumbered page between 51 and 52). I did not receive a response to this email.

Case 21824546 – 18 August 2026

On 18 August I received an email from a Harbour Authority Representative concerning recurring issues on the harbourside caused by Below Decks, together with a Management Plan prepared by Mr Gregory Shadbolt in response to the issues identified. The Management Plan prepared by Mr Shadbolt is not dated. However, the properties of this document show it was created on 14 August 2026 and lasted modified on 17 August 2026. A copy of this correspondence is attached at pages 58 to 61.

Case 21790445 – 24 August 2026

A complaint was received from a resident who lives in Parkhill Road, Torquay.

This complaint relates to persistent loud music from the premises which seemed to improve when bands were placed facing out to sea but has deteriorated due to them being placed in another location. Copies of email correspondence between the complainant and Mr West are attached at pages 52 to 57.

On 28 August 2026 Mr West emailed Mr and Mrs Shadbolt concerning this complaint. This email is attached at pages 62 and 63.

Please tick □ yes

Have you made an application for review relating to the premises before 0

If yes please state the date of that application: Day/Month/Year

If you have made representations before relating to the premises please state what they were and when you made them:

Please tick □ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☐
- I understand that if I do not comply with the above requirements my application will be rejected ☐

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature: Julie Smart

Date: 30/09/26

Capacity: Licensing Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

Torbay Council

Town Hall

Post town: Torquay **Post Code:**

Telephone number (if any):

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional): julie.smart@torbay.gov.uk

Notes for Guidance

5. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
6. The ground(s) for review must be based on one of the licensing objectives.
7. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
8. The application form must be signed.
9. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
10. This is the address which we shall use to correspond with you about this application.