Licensing Act 2003
Environmental Health Representation

Application Details

Premises: Below Decks

Name of Applicant: Julie Smart

Address: Below Decks, 3-4 Beacon Quay, Torquay, TQ1 2BG

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

Representation

This department would like to make the following representation:

This department supports the review application of the premises licence for Below Decks and has submitted this representation on the grounds the prevention of public nuisance for the following reasons:

Below Decks is situated on the southern side of Beacon Quay within harbour land, commonly referred to by the Harbour Authority as a "working harbour". The premises benefit from a premises licence authorising the sale of alcohol for consumption on and off the premises, regulated entertainment and late-night refreshment.

For several years, and particularly throughout the summer season, the premises have hosted regular live music events. The nature of this entertainment varies considerably, both in genre and scale, but commonly consists of solo vocal performers or bands utilising amplified instruments, including guitars and percussion.

Over recent years, Torbay Council has received numerous complaints from residents concerning noise associated with live entertainment at the premises. Complainants have consistently reported that amplified music has been clearly audible within their homes and has adversely affected their ability to reasonably enjoy their properties. Complaints have predominantly related to evening and weekend events and occur most frequently during the summer months when outdoor entertainment is regularly provided. I have observed several occasions when the venue has hosted live music performances, and on one out of four of those occasions, I considered that the entertainment could likely to amount to nuisance given that the noise was audible at various points around the harbour.

The review application submitted by Ms Julie Smart, Licensing Officer, provides a detailed chronology of complaints received and the actions taken in response. Following a minor variation application submitted by the premises licence holder, additional conditions were attached to the premises licence in July 2025 in an effort to address the reported issues. However, despite those measures, complaints continue to be received, suggesting that the current controls have not been sufficiently effective in preventing nuisance.

Several attempts have also been made to work constructively with the premises licence holder to identify practical solutions. Whilst the licence holder has generally been cooperative and willing to engage, reports of noise nuisance continue to be received.

It is my opinion, that several factors contribute to the impact experienced by nearby residents. These include the overall volume of entertainment, sound direction, tonal characteristics, bass, weather conditions, frequency of events, time of day and the particular genre of music being performed. Certain forms of amplified entertainment appear more likely than others to give rise to complaints.

Notwithstanding these challenges, it is my view that entertainment at the premises can be operated in a manner which appropriately balances the interests of the business, patrons and nearby residents. Noise associated with entertainment can be controlled to reasonable levels where suitable mitigation measures are implemented.

It is acknowledged that the building itself appears capable of providing a significant degree of acoustic containment when entertainment is conducted internally. Complaints received by the Council have predominantly related to outdoor performances rather than entertainment taking place within the enclosed building, however, outdoor entertainment consisting of one acoustic performer with a small amplifier would not, in my opinion, be likely to amount to nuisance. Consequently, it is considered that the nuisance experienced by residents can be substantially reduced through the introduction of appropriate licence conditions and operational controls.

Of particular significance is the apparent relationship between certain types of live entertainment and the likelihood of complaints. By way of example, during monitoring undertaken on 14 July 2026, a solo singer was observed performing at volume levels which were considered reasonable and unlikely to give rise to either public or statutory nuisance. Conversely, subsequent events involving larger amplified performances generated considerably greater concern from residents, such as those identified on the 20th June 2026.

The current layout and operation of the premises also contribute to the issue. Live performers are frequently positioned within the main entrance of the premises, facing outward towards the quay. In some instances, this has resulted in large numbers of people congregating outside the premises to watch performances. The Harbour Authority has indicated that such gatherings have at times, impeded pedestrian and vehicular access along the quay. Condition 6 under the prevention of public nuisance objective under annexe 2 of the premises licence was added in July 2025 to regularise this particular issue. Despite this, the Licensing authority have continued to receive complaints about crowd congregation outside the immediate vicinity of the premises, the details of which can be found within Mrs Smarts representation. CCTV evidence has also been received which appears to corroborate this on at least one occasion.

It is considered that improved management of sound projection would help mitigate these impacts, as the presence of live entertainment appears to be a contributing factor when it comes to crowd congregation. Furthermore, the installation and proper use of a noise limiting device would provide an effective means of controlling overall sound levels and reducing the likelihood of entertainment noise giving rise to nuisance.

Whilst the Licensing Authority recognises the important contribution that live entertainment venues make to the local economy and the character of the harbour area, it is considered that the further controls are required to ensure that the balance between the business needs of this licenced venue and the promotion of the prevention of public nuisance objective are equally upheld.

Accordingly, in order to promote the licensing objective of the prevention of public nuisance, I recommend that the following conditions be added to the premises licence:

1. The provision of off sales to be removed
2. To **remove** the following condition from the licence:

"When live or recorded music is being provided outdoors, the Premises Licence Holder or Designated Premises Supervisor will carry out a risk assessment to determine whether plastic or polycarbonate vessels should be used. This assessment will consider the number of customers expected to attend, whether these will be seated or standing and whether it is anticipated that they will take alcohol outside of the permitted areas'".

To **add** the following conditions to the licence:

1. A noise limiting device (the specification and design to be agreed with Torbay Council's Environmental Health Service) shall be fitted so that all live and recorded music is channelled through the device(s). The maximum noise levels will be set by agreement with Torbay Council's Environmental Health Service and will be reviewed from time to time as appropriate.

2. The noise limiting device must be fully functional and in proper working order at all times during performances of live and recorded music.

3. If the noise limiting device breaks Torbay Council's Environmental Health Service will be informed as soon as reasonably practicable. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay.

4. No performances of live and recorded music will proceed without the noise limiting device in proper working order.

5. All amplified sound sources (including live performances) from the premises will be channelled through the noise limiting device.

6. The Premises Licence Holder or nominated person shall control the sound levels of the music/entertainment.

7. When any live or recorded music is taking place in any of the licensed areas, the following will apply:

• The sale and supply of alcohol for consumption in any outdoor area of the premises shall be restricted to alcohol consumed at the outside tables and chairs and shall be by waiter or waitress service only.

- The Premises Licence Holder shall employ SIA licensed door supervisors in accordance with the following ratio: A minimum of 2 door supervisors will be employed for the first (100) customers and one door supervisor for every (100) thereafter.

- All drinks shall be served in plastic/paper/toughened glass or polycarbonate containers during live and recorded entertainment.

8. The Live Music exemption under s.177A of The Licensing Act 2003 shall be removed.

I consider these measures to be reasonable given the circumstances. The proposed conditions would allow the premises to continue providing regulated entertainment whilst ensuring that local residents are afforded appropriate protection from unreasonable noise disturbance and that the licensing objective of the prevention of public nuisance is effectively promoted.

I welcome any opportunity to discuss these proposals with the premises licence holder and their representatives.

Yours sincerely,

Tom West | Licensing Officer | Public Protection | Torbay Council