

# Memorandum

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<b>To:</b>	<b>From</b>	<b>: Community Safety</b>
<b>c.c</b>	<b>Contact</b>	<b>: Mr Karl Martin</b>
<b>c.c.</b>	<b>Ext</b>	<b>: 01803 208025</b>
<b>c.c</b>	<b>My Ref</b>	<b>: 1ZV SRU No: 180209/KJM</b>
<b>For the attention of: Licensing Steve Cox</b>	<b>Your Ref</b>	<b>:</b>
	<b>Date</b>	<b>: 6<sup>th</sup> March 2014</b>

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## **Subject: Premises– Licensing Act 2003** **Premises Name & Address: Paignton Rugby Club**

### Overview

This is a representation in support of the application as received for the above premises. The licence holder has been encouraged and supported by myself and other agencies in submitting this application to ensure the application complies with Torbay Councils Licensing Policy and thus upholding the licensing objectives.

I would like to note the application seeks to align the premises licence to the same authorisations granted under the club premises certificate. The applicant is not seeking to extend hours for alcohol, amplified music or recorded music beyond the existing club certificate licence.

The premise currently has three separate licences operating under the same premises. There are two club premises certificates, one for the Rugby Club (CP0033) and the second for the Cricket club that operates at the same premises between May and September (CP0040). Both club certificates authorise alcohol and regulated entertainment until 1:00am. The premises licence (PL0879) was applied for and granted to the rugby club for the sole purpose of holding events outside, though this applies to the club house until 10:00pm. It is this arrangement that has led to confusion amongst enforcement agencies and indeed the operators regarding the times members of the public are allowed in the club house without being signed in by another member.

It became apparent the club identified the need to operate a premises licence rather than club certificate to enable a greater freedom of who can attend the premises for the benefit of the facilities on offer. Subsequently due to noise problems associated with events held at this premises the applicant agreed to a range of new stringent licensing conditions to ensure future events would not give rise to noise problems and ensure events could be allowed under the premises licence instead of a Temporary Event Notice (TEN) meaning conditions on the licence would not be suspended as they currently are under a TEN.

Existing conditions of the premises licence (PL0879)

- 1. Noise or vibration shall not emanate from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed. In general terms, noise from the premises should be at a reasonable volume so as not to cause a nuisance.*
- 2. The application shall be limited to allow for such events to take place up to six times per year.*
- 3. Doors and windows shall be kept shut during entertainment to reduce noise breakout. A management scheme shall be in place to ensure this situation remains.*

an event safety plan to Torbay's Safety and Advisory Group (SAG). SAG is a non-statutory body comprised of professionals from a range of agencies and disciplines with the objective of promoting the highest levels of public safety at major events in Torbay. As part of their work the group has published their event safety guidance for event organisers. The licence holder was given a copy of this guidance and subsequently developed an event plan for the beer festival to the satisfaction of all responsible authorities.

The beer festival of 2013 as a result of this process promoted the licensing objective. The Council did not receive any complaints during the event; however the Council did receive a complaint the weekend before in relation to noise.

To date the applicant (or representatives) have been in consultation with SAG in relation to the proposed 2014 Beer festival and it is likely the event will follow the same format, but on a smaller scale, as the previous year's event.

### **Current position**

The application as applied complies with Torbay Councils licensing Policy, particular with regards to the Licensing Statement of Principles sec 3.3. p.19-20. However talks with a local resident prior to the submission has led me to draw the committee to the following concerns:-

1. The existing premises licence allows events to take place on no more than 6 occasions a year (1<sup>st</sup> October to 30<sup>th</sup> April). It has been suggested this condition is removed. The logic for this is because for each event the licence holder is required to submit an Event Safety Plan 3 months prior to the event. This will allow ample time for consultations to take place to ensure events will not give rise to nuisance. For reassurance and clarification the committee may wish to re-instate the maximum permitted events.
2. The beer festival of 2013 live music stopped at 11:00pm and it is envisaged this will be the terminal hour for all live music or pre-recorded music outside because the premises is in a noise sensitive area. However in error or oversight the application as applied is seeking Live music outside until 1:00am. I would not support this and this should be amended to 11:00pm for all outdoor events.

Please see Appendix 2 for a maps of the premises and surrounding area.

Kind regards  
Karl Martin  
Public Protection Officer



APPENDIX 1

ENVIRONMENTAL PROTECTION ACT 1990, SECTION 80  
Abatement Notice in respect of Statutory Noise Nuisance  
Notice No: 001502/GDF/2NB

To: Queens Park Sports Clubs Limited

Of: The Pavillion Paignton Rugby and Cricket Clubs Queens Road Paignton TQ4 6AH

**TAKE NOTICE** that under the provisions of the Environmental Protection Act 1990 Torbay Council being satisfied of the likely occurrence of noise amounting to a statutory nuisance under section 79(1) (g) of that Act at:

**Paignton Rugby Club, Queens Park, Queens Road, Paignton, Devon, TQ4 6AT** (the premises)

within the district of the said Council arising from : the playing of amplified music at an excessively high volume (the statutory nuisance)

**HEREBY REQUIRE YOU** as the occupier of the premise from the service of this notice to prohibit the occurrence and recurrence of the said statutory nuisance.

If without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be committing an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will liable to a fine not exceeding level 5 on the Standard Scale, together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction.

A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000.

The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance.

If you fail to comply with this Notice the Council may also abate the nuisance and do whatever may be necessary in execution of the Notice.

Signed *Garth Fudge*  
Mr Garth Fudge  
Senior Environmental Health Officer

Dated *20-4-12*

Name, address and telephone number for all communications: Executive Head, Community Safety, Torbay Council, Roebuck House, Abbey Road, Torquay TQ2 5EJ Telephone: 01803 208091

**N.B. The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with the date of service of the notice. See notes on the reverse of this form.**

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:-

## Appeals under section 80(3) of the 1990 Act

(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.

(2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case:-

- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates:-
  - (i) is a nuisance falling within section 79(1)(a),(d),(e),(f) or (g) of the 1990 Act and arises on industrial, trade or business premises, or
  - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney, or
  - (iii) is a nuisance falling within section 79(1)(ga) (a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes,

that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of:-

- (i) any notice served under section 60 or 66 of the 1974 Act (control of noise on construction sites and from certain premises), or
- (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
- (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);

(g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the 1993 Act (loudspeakers in streets or roads);

(h) that the abatement notice should have been served on some person instead of the appellant, being:-

- (i) the person responsible for the nuisance, or
- (ii) the person responsible for the vehicle, machinery or equipment, or
- (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
- (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;

(i) that the abatement notice might lawfully have been served on some person instead of the appellant being:-

- (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
- (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,

and that it would have been equitable for it to have been so served;

(j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being:-

- (i) a person also responsible for the nuisance, or
- (ii) a person who is also owner of the premises, or
- (iii) a person who is also an occupier of the premises, or
- (iv) a person who is also the person responsible for the vehicle, machinery or equipment,

and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

(5) On the hearing of the appeal the court may:-

- (a) quash the abatement notice to which the appeal relates, or
- (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit, or
- (c) dismiss the appeal;

and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit:-

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.

(7) In exercising its powers under paragraph (6) above the court:-

(a) shall have regard, as between an owner and an occupier, to the terms and conditions, where contractual or statutory, of any relevant tenancy and of the nature of the works required, and

(b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

## Suspension of notice

(1) Where:-

- (a) an appeal is brought against an abatement notice served under section 80 or section 80A or the 1990 Act, and:-
- (b) either:-

(i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal, or

(ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise

c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) This paragraph applies where:-

- (a) the nuisance to which the abatement notice relates:-

(i) is injurious to health, or

(ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or

(b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(3) Where paragraph (2) applies the abatement notice:-

(a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and

(b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

4. A senior member of staff (manager) shall assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment to ensure levels of noise have not increased.

5. Prior to outside entertainment Environmental Health shall be consulted with regard to the positioning of equipment such as speakers. It may be necessary for Environmental Health and carry out sound testing prior to the event.

Amendments suggested to the applicant and accepted are as follows:-

Remove existing conditions 1, 2 and 4 Add the following:-

1. In respect of the Beer Festival or similar outdoor event where the major inducement is the sale of alcohol (from a bar and for consumption on the premises) or the major inducement is the performance of live amplified music the following conditions shall apply;
  - (a) An event safety management plan must be submitted to the Torbay Safety Advisory Group (SAG) no later than 3 months prior to the event start date for the SAG consideration.
  - (b) Noise from the premises shall not be audible within any dwelling with windows open for normal ventilation, especially after 11pm. This shall be assessed from the boundary to the nearest residential properties on all sides of the licensed premises. The criteria that shall be applied is as follows:-
    - i. Before 11pm - noise emanating from the premises shall not be clearly distinguishable above other noise.
    - ii. After 11pm - noise emanating from the premises shall not be distinguishable above background levels of noise.
    - iii. The local authority shall reserve the right in cases of tonal noise and where premises are attached to others, to make further assessments from within the residential property.
  - (c) The DPS or a senior designated member of staff shall assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment, to ensure the level of noise has not increased.
  - (d) A senior designated member of staff must monitor noise levels periodically throughout the duration of the event at Stafford Road, Queens Road, Adelphi Road and Queens Park Road.
  - (e) Clear and unobstructed signs must be displayed at all points of exit, to encourage patrons to leave quietly and respect local residents and
  - (f) Announcements shall be broadcast by way of loudspeaker system, at least 30 minutes prior to closing, requesting patrons co-operation in leaving the premises and vicinity as quickly and quietly as possible.

The application seeks to allow the premises to grow and develop but offers reassurance to responsible authorities and interested parties that the licensing objectives will be upheld by way of additional conditions that places a duty on the applicant to consult with responsible authorities before an event takes place.

### Background

The premises first came to the attention of the Public Protection team in April 2011 following numerous complaints from nearby residents regarding the volume of live and amplified music during a beer festival event. This led to Mr Gareth Fudge, Environmental Health Officer, serving an abatement notice under section s80 of the Environmental Protection Act 1990, Appendix 1. This notice still stands and a breach of this licence could result in prosecution if the notice is breached.

In March 2013 the licence holder notified the Council of its intention to submit a TEN for another Beer festival in April 2013.

In October 2012 the licensing Act was amended giving the power to Environmental Protection practitioners to object to a TEN that was likely to result in public nuisance.

As the previous beer festival had resulted in nuisance the organisers were told Public Protection would object to the TEN unless certain criteria was met. Their licence holder was asked to submit

## APPENDIX 2 - Plans of site

Red – Boundary of site

Yellow – Mixed residential and commercial areas

Purple star – The premises club House

