

Memorandum

To:	From	: Community Safety
c.c	Contact	: Mr Karl Martin
c.c.	Ext	: 01803 208025
c.c	My Ref	: 1ZV SRU No: 201582/KJM
For the attention of: Licensing Steve Cox	Your Ref Date	: : 31 st March 2014

Subject: Premises– Licensing Act 2003

Premises Name & Address: Seamus O'Donnells, 28 Victoria Parade, Torquay.

Seamus O'Donnell's is a licensed premise situated at the Beacon Quay end of Victoria Street and is situated in the Cumulative impact area. The premises effectively operates as two separate premises, the ground floor area is an Irish themed bar open to the public until midnight whilst the 1st floor area is an 80's themed nightclub operating until 3:00am.

The premises licence holders are Steve and Lesley Butcher. Lesley Butcher is the Designated Premises Supervisor (DPS).

The premise adjoins commercial property on one side and residential accommodation on the other side above an amusement arcade. Please see Appendix 1. The residential accommodation on the right side of the premises above the amusement arcade consists of seven self contained flats and is known as Harbour view. Flat 3 located on the 1st floor has been the source of complainants since April 2010. This flat shares the party wall with Seamus O'Donnell's. The existing tenant of flat 3 has called the review of the premises licence.

Chronology of noise complainants and interventions

April 2010- Jan 2012

The authority first received a complaint about noise regarding this premises in April 2010 regarding noise breakout from live and pre-recorded music emanating from the ground floor of Seamus O'Donnell's. The complaint at the time lived in flat 3. However the resident did not return a diary sheet and the complaint was closed. The same complainant contacted the authority a second time in October 2011. In November 2011 statutory nuisance was witnessed. The licence holders immediately undertook remedial work and officers confirmed the noise breakout problem from the ground floor had been resolved.

In November 2011 the authority received a full variation application to develop the 1st floor area into a 80s themed nightclub, the rear of the club would be the dance floor, bar and the DJ would be situated there; I shall refer to this area as room 2. The front area would remain a 'chill out' area with no amplified music; I shall refer to this area as room 1. In a committee hearing held in December 2011 it was agreed the noise levels would be set before the nightclub opened. In January 2012 Officers of this authority set the levels and

confirmed no noise was breaking out of the club. The levels were set from Flat 3 with the tenant's assistance. The club known as Back to the 80's opened shortly afterwards with no further problems.

July 2012

The authority received a complaint from the tenant of Flat 3 regarding music breakout from the Back to the 80's club. The licence holders consulted with a noise consultant and resolved the problem quickly by ensuring all music tracks are normalised and adjustments to the PA system were made.

November 2012

Complaint received from a resident living in a nearby block of apartments about the 1st floor smoking terrace. The licence holder was informed and they consulted with a noise consultant. Remedial work was undertaken which included removal of furniture, adding noise barriers and absorbent materials. The work resolved the problem at the time.

December 2012

Complaint received but complainant refused to give their details. A departmental policy is not to investigate anonymous complainants. The complainant was encouraged to give details and the policy was explained to them. The licence holder was not informed and no further action was taken.

April 2013

Ms Tanya Carlton moved into flat 3, Harbour view and the Licence holders submitted a minor variation to change the layout of room 1.

The Police had previously raised concerns about overcrowding in the Back to the 80's bar. The licence holders proposed putting PA equipment, a DJ booth and a dance floor into room 1 to alleviate overcrowding. A meeting was arranged on the 8th April with the licence holders and Julie Smart, Police licensing Officer, Devon and Cornwall Police Constabulary. During this meeting I advised the licence holders of my concerns due to the proximity of residential accommodation and advised them to consult with a noise consultant before a decision could be reached. The licence holders consulted with Neil Carpenter and a range of noise measures were recommended and implemented by the licence holders.

May 2013

On the 2nd May I met with Neil Carpenter and the licence holders at the premises. The dance floor, DJ booth and PA system had been installed. Mr Carpenter had in addition installed limiters in the premises. The purpose of the meeting was to ensure music from room 1 was not breaking into the adjacent flat 3. Lesley Butcher had arranged and sought permission from Tanya Carlton who was aware of previous noise problems and agreed to allow access to her flat to set the limiters. This was undertaken and it was confirmed no music was breaking into flat 3 at this time and it was agreed the licence holders could open the newly designed room 1 following a minor variation application.

December 2013

Miss Tanya Carlton complained to the public protection team regarding noise breakout. It was alleged she could hear music breakout from the Back to the 80's bar and this was keeping her awake every Saturday until the club closed at 3:00pm.

January 2014

Licence Holders informed of new noise complaint and Miss Tanya Carlton issued with noise recording equipment. Visit arranged to Seamus O'Donnell's on the 16th January with Craig Noble, Licensing Officer, Karl Martin and Licence Holder Steve Butcher to check sound levels. Music breakout out could very faintly be heard in Flat 3. Steve Butcher reduced levels further. Tanya Carlton stated this was not the levels she can hear at the weekends and added if the noise was like this at the weekend she would not have a problem. Further noise attenuation works identified and recommended to the licence holders. Steve Butcher showed Craig Noble and Karl Martin changes they were in the process of making to the club which included moving toilets to the former kitchen area, a proposed small chill out area and the opening of corridor along the party wall shared with Flat 3, Harbour view. This work was indented to allow abetter flow of customers around the premises thereby assisting the security and safety of customers.

February 2014

Miss Tanya Carlton continued to complain music from the back to the 80's bar could be heard in her flat preventing her from sleeping despite the levels being checked. She specifically claimed noise was breaking into her flat at a greater volume than when the levels where checked on the 16th January. Saturdays again seemed to be the main problem.

David Walker SEHO and Karl Martin arranged to visit Miss Tanya Carlton on Saturday the 15th February. Both Officer witnessed noise levels in Miss Tanya Carlton flat emanating from the Back to 80's club that was deemed unreasonable and at a level giving rise to a statutory nuisance.

Licence holders informed and given 7 days notice of the Authorities intention to serve a Noise Abatement Notice in accordance with s80 of the Environmental Protection Act 1990. Licence Holders provided within the 7 day period an outline of the action they intend to take to abate the nuisance, including remedial work to be undertaken in the next few weeks.

March 2014

March 17th review application served on the Council by Miss Tanya Carlton. March 19th review paperwork served on licence holders.

March 21st Craig Noble and Karl Martin met with licence holders Steve Butcher, Lesley Butcher and the licence holders appointed noise consultant Neil Carpenter. Access to Ms Tanya Carlton's flat was arranged. Noise levels and limiters again checked from flat 3. Levels where reduced so no noise could be heard breaking into flat 3. This resulted in the sound levels in room 1 being at a lower volume than was set originally in April 2013. The licence holders had completed the work agreed in February but this had not had the desired effect. Originally a DJ played from room 1 and a second played in room 2. In September 2013 when the licence holders were informed by Ms Tanya Carlton of noise breakout they removed the DJ from room 1 believing this would help the noise problem. This resulted in the music entering room 1 from 2 up to 20db higher and in combination with the improvement works to the gent's toilets to assist security and safety of customers had resulted in the noise breakout.

The noise consultant recommend a number of remediation work to the PA systems and recommended the door leading from room 1 to the gents toilets to be put back on in addition to lowering the ceiling to reduce the 'corridor' effect that can amplify sound pressure levels.

Throughout March Ms Tanya Carlton maintained at the weekends music was still breaking through from the night club despite the works being undertaken.

On March 27th the licence holder requested a sound check as further works identified in the previous meeting had been completed. The door leading from room 1 to the gent's toilets had been replaced and alterations to the PA system had been completed. The levels in room 1 had been restored to the level agreed in April 2013 and it was confirmed no noise was breaking out into flat 3.

It was agreed with the Licence holders I would continue to give them feedback after the weekend to see if this had the desired effect.

March 31st I contacted Ms Tanya Carlton who stated she could hear live music all day on Saturday 29th March until midnight when she managed to sleep. Steve Butcher was contacted who confirmed there was no live music in the back to the 80's bar and the live music act in the ground floor was a covers act they host once a month. The authority has no received a complaint about live music from downstairs since December 2011.

At this time it is not possible to confirm if the work undertaken in the back to 80's bar has abated the nuisance. I advised Steve Butcher I will arrange a weekend visit to Ms Tanya Carlton flat.

At the time of writing this representation this is the stage Public Protection is at. In the coming weeks Officer of the department will continue to liaise with Ms Tanya Carlton, the licence holders Steve Butcher and Lesley Butcher to ascertain if the works undertaken have abated the nuisance or if further works are required.

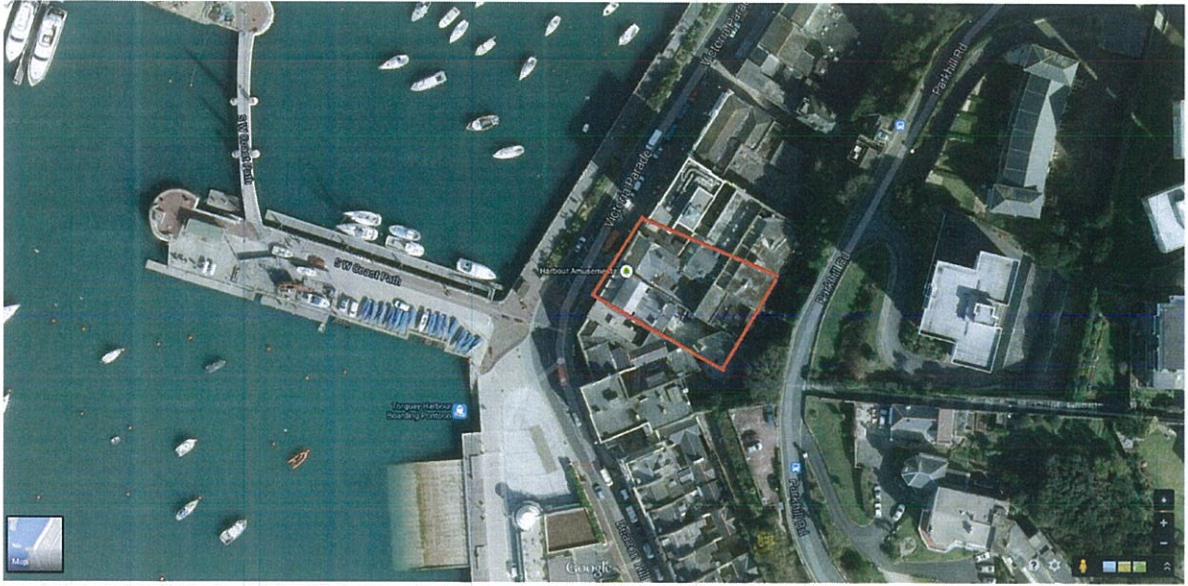
The Licence holders continue to engage with authority and show genuine willingness to resolve the nuisance.

The authority has on numerous occasions intervened and acted on behalf of two separate residents living at Flat 3, Harbour view. On all occasions interventions have resulted in the licence holders undertaking noise attenuations works, including seeking advice from professionals that have resulted in nuisance being abated.

At this stage I do not wish to make any recommendations to the Licensing Committee as I continue to investigate and work closely with the licence holders to resolve the nuisance. It is my intention to circulate to the committee shortly before the committee hearing additional updates for the time period from the date of this report to the hearing date.

Kind regards
Karl Martin
Public Protection Officer

Appendix 1



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