

# Memorandum

To: Steve Cox

From : Mr Karl Martin

C.C

Contact :

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Ext : 01803 208025

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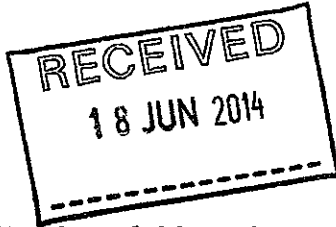
My Ref : 1ZV SRU No:

For the attention of: Licensing  
Sub- committee members

Your :

Ref

Date : 18<sup>th</sup> June 2014



## Subject: Park Lane, 1 Torwood Street, Torquay

I refer to a variation application submitted by Jam Leisure on the 7<sup>th</sup> May 2014 in respect of the above named premises. The variation application seeks to extend the licensable area and activities to encompass a roof terrace.

Having considered the application as submitted I wish to make it known to the members of the Licensing Sub-Committee I am objecting to the proposed amendments to the existing licence.

The reasoning for objecting to this application are detailed in the following representation:

### Overview

Park Lane night club is a licensed premises situated at 1 Torwood Street, Torquay, within the Cumulative Impact Area. In the March 2013 the club was re-opened after a major re-fit as a self styled bar, grill and night club medley and licensed for the supply and sale of alcohol between the hours of 10:00am and 3:00am seven days week. Currently the floor is split over three floors. The ground floor is given over to a general bar and eatery whilst the second floor forms the main nightclub aspect and lastly the 3<sup>rd</sup> floor contains a small cocktail bar area and is marketed as a VIP chill out area.

The application submitted by Adrian Hobbs on behalf of Jam Leisure is to create a 4<sup>th</sup> floor roof garden to facilitate as an eating area during the day and evening and to act as a smoking area with seating at night. The consumption of alcohol will take place in this area throughout the permitted times. There is no current smoking area on the premises, instead patrons use the outside area on Torwood Street and in Park lane adjacent to the club, please see Appendix 1.

### The Variation application

There are 8 separate points I wish to draw the committee's attention to in respect of the application submitted by Jam Leisure:-

1. The variation application submitted by Jam Leisure has indicated in part 3 of the application the applicant is seeking an extension of all licensing activities to apply to the roof garden:-

*'To extend the area of the premises for the consumption of alcohol and licensable activities to encompass a roof garden, located on the lower roof at the front of the of the [sic] building'*

Currently the premises licence authorises licensable activities for indoors only.

Should this application be granted as applied for, these activities will automatically extend to outdoors. Please see Appendix 2.

Of most concern is that if this application is granted as applied recorded and live music will be authorised outside until 3:00a.m. The existing conditions do not reflect this significant change to the operation of the premises and offers no controls or restrictions on these two licensable activities. The same is true with all other licensable activities.

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2. The applicant in Part 3 has remarked the following:-

*'All the existing licensing conditions will apply in this area. The Garden will only have a background music system, playing low volume music limited by the existing control system which only the management can alter'*

Although this implies there will be a system of managing noise levels, no detail is given and the above statement is not a condition or has it been offered as a condition as part of this application.

Annex 3 'Prevention of Public Nuisance' condition 7 and 8 states:-

*7. 'The variation to the existing premises licensee shall not be permitted until such times that the levels of the noise limiters are set and agreed between the premises license holder or a nominated person by them and the Environmental Health department'*

*8. 'These levels shall be set and agreed by within 1 month of the application being granted'*

These conditions refer to a previous variation application for the internal renovation undertaken in 2013. Recorded music outside is a new activity at these premises and requires specific conditions to ensure playing of recorded music on the roof garden does not give rise to nuisance.

I recommend to the committee that no music of any kind takes place at this location, including background music. The reasons for this recommendation will become clear throughout this representation.

3. In Part 3 the applicant suggests:-

*'Additional sound proofing walls be installed and none[sic] reflective surfaces used where possible'*

The applicant has failed to enlighten committee members, the responsible authority or reassure members of the public of the exact physical specification noise attenuation measures will be installed.

An environmental report noise report prepared by Acoustic Consultants Ltd dated April 2014 on behalf of Jam leisure suggest:-

*'The roof terrace is to include a solid timber barrier around the perimeter. The section of barrier between the roof terrace and residential properties on Victoria Parade is to be*

*extended to the height of the existing chimney stack. The timber barrier is to have a density of at least 10 Kilograms per metre squared with no gaps.'*

The applicant has not made it clear if the recommendations of the acoustic consultants will be implemented. The applicant refers to additional sound proofing walls, is this solid timber barrier referred to in the acoustics report? No mention is made in the report of reflective surfaces, what are these? Where are they going and who is recommending the specification?

4. Planning permission, though not a consideration at a licensing hearing, has been applied for but not granted at the time of writing. The committee should be aware the roof garden will require planning permission. If planning permission is granted but the additional noise attenuation measures as outlined in point 3 are not approved this may have severe implications on the licensing objective 'Prevention of Public Nuisance'.

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5. The applicant has not stated how many customers are allowed on the roof garden at any one time. The existing licence does not offer any capacities either. The applicant does not state whether how many could be seated and how many standing? Will number be reduced during more noise sensitive times?
6. The expected norm is that SIA door steward's primary role is to manage security within a premises to ensure the licensing objective prevention of crime and disorder is upheld. A secondary role and arguably as important is that SIA door stewards are able to monitor and control customers whose behaviour in a manner likely to give rise to excessive noise. In the case of beer gardens surrounded by residential accommodation the presence and strict management by door staff is essential.

The applicant has not indicated arrangements for supervision of the roof garden. The applicant during previous conversation has indicated the intention to station door staff in the roof garden but does not describe these arrangements in the application.

Other than mandatory conditions an existing condition states:

*'on every occasion that the premises sells alcohol after midnight and then closes at 12:30, SIA door staff shall be employed from 10:00pm until closing'*

The condition requires door stewards but does not direct where they should be positioned and when. It should not be left to premises to undertake a risk assessment to determine when and where with regards to the roof garden as the roof garden will be operating in a noise sensitive area.

7. Annex 3 'Prevention of Public Nuisance' condition 4 states :-

*'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 through the activity/entertainment to ensure levels of noise have not increased'*

How will this condition be complied with as there is a large number of residential accommodation surrounding the proposed roof garden. The condition implies staff should enter nearby residential accommodation. Impractical and unenforceable and therefore the applicant is not offering any solution to monitoring noise from the beer garden arising from customers. Instead the applicant is relying on the acoustic consultant's report that the roof garden will not cause a noise nuisance.

8. The applicant has accepted customers using the surrounding streets as a smoking area are contributing to increased noise levels and indeed the acoustic report tells us noise levels at the weekends in this area are considerable higher than quieter week nights. The acoustic report assumes a comparison between noise on the street and predicted noise from the roof garden. The report argues a reduction of overall noise levels if customers are taken away from the street.

However the applicant has not offered any conditions or restrictions on how the outside area will be managed if this application is accepted as applied for. Will there be as many people outside if the roof garden is open as there is currently?

### **Smoking/ beer gardens in the harbour area**

9. The department has received numerous complaints over the years from a series of smoking areas/beer gardens along Victoria parade, notably from residents living along the Park Hill area. Residents whom have complained about noise from these beer gardens are often further away than the bulk of residential accommodation surrounding park Lane nightclub.
10. A running complaint currently under investigation relates to one such beer garden along Victoria Parade. The resident is elevated above the smoking area but is more than 100m from the source of the noise. This is enough to disturb their sleep at night.
11. A premises currently closed has a beer garden that caused numerous complaints and was only resolved when a premises operator agreed to reduce the size of the beer garden and its operating time to 11:00pm.

### **Analysis of the noise report provided by the applicant**

The applicant has submitted as part of the application an acoustic reports commission by the applicant and written by Acoustic Consultants Ltd.

I have commissioned Acoustic Associates South West Ltd to undertake a peer review of the report submitted by the applicant in order to provide a critical assessment of the findings made by Acoustic Consultants Ltd. A copy of this report will be circulated to members before the committee hearing.

The initial views of Environmental protection, Torbay Council and Acoustic Associates are outlined below:-

12. The report does suggest the roof terrace will have a positive impact on the noise environment around Park Lane, but the report does have some flaws in relation to the actual noise environmental residents are likely to experience.
13. There is no measurement of the Lmax figure given in the report and it is this that is often the source of complaints. An Lmax figure is the maximum noise created during a measurement sample, for example a scream or shouting. The report uses a LAeq(15 minute) figure, which equates to an average and the noise from a scream is lost within the average LAeq figure.
14. The report has not establish the true background levels. Instead using LAeq results in measures the ambient noise which would include passing busses, loud music from passing cars etc. The reports quietest reading of ambient noise is around 52dB, an educated estimate would put the true background noise level at around 5 dB lower. Therefore without the roof terrace or people on the street the background

noise levels would be somewhere in the region 47dB would be a typical reading of a quiet suburban street in Torquay.

15. Monitoring was undertaken in March when residents are unlikely to be opening windows for normal ventilation. The report has not provided any additional modelling to take this into account.
16. Park Lane is effectively a canyon and this is reflected in the report with lower noise levels recorded at the Devon Arms. However the department has received complaints from a resident living above the Devon Arms suggesting existing noise levels are giving rise to a potential statutory nuisance. Removing people from the lane would be expected to remove an element of noise as the report suggests. Yet the sampling criteria has not taken into account the short lived but louder noise that often gives rise to statutory nuisance as described in point 13.
17. ~~Monitoring was undertaken for 10 nights between 21<sup>st</sup> March and the 31<sup>st</sup> March 2014. These dates included 2 weekends. Saturday night tends to be the busiest nights in the harbour area and it could be argued the data is based assumptions calculated on data obtained over 2 consecutive Saturdays.~~
18. The report is unclear if the modelling was undertaken with suggested barrier in place.
19. The analyst has used ISO 9613 to model noise attenuation. ISO 9613 describes a method for calculating the attenuation of sound during propagation outdoors in order to predict the levels of environmental noise at a distance from a variety of sources. Since the report was written the floor height in proposed roof terrace has been raised and this will affect the expected outcome. Measurements are taken at 1.5m above the surface being measured.
20. We don't know how many people were in the lane on each of the Saturday nights during the monitoring period. It's unlikely the numbers are representative of the busier and generally more noise sensitive times of the summer months.
21. The report hasn't modeled for any 'background' music, other than making reference this limit will be set so it can not be heard at the nearest residential property. The applicant has not made reference to setting limits for background music, who will set it. Is the applicant relying on conditions outlined in point 2. Music in this area will be difficult for the applicant to control and could result in complainants.
22. The report makes an assumption that there will be no people in the street if the roof terrace is in use. This is a very simplistic approach. It is not realistic to expect that no one will be in the street. The applicant has not made any reference in the application to where customers are to be allowed if the roof terrace is opened. I can only assume that customers will still be allowed to come and go as they please.

Currently the no re-entry after 2:00pm has been suspended by the Police for a trial period. It is likely and I suggest certain that large numbers will still gather in street and on the roof terrace. This will cancel out any reduction of noise levels as suggested by the report.

A large number of residents are shielded by noise from the lane because of the buildings in the area, including Park Lane. This natural shield from noise will not be there if customers are allowed on the roof terrace, especially at more noise sensitive times of the day. Much like the department has experienced along Park Hill Road it is certain residents further away that currently experience no noise from the night time economy area could be disturbed by noise from the roof terrace.

## **Previous management failings/history of noise complainants**

### Prior to April 2013

23. Prior to the renovation of the nightclub in 2013 the department had on numerous occasions over at least a 5 year period received and investigated noise complaints from residents in regards to noise breakout from Park lane.
24. On the 11<sup>th</sup> August 2011 a noise abatement notice under sec 80 was served on Jam Leisure requiring the operator to cease forthwith nuisance arising from amplified music (Appendix 3). On numerous occasions with the assistance of the department noise limiters were reset to reduce the noise breakout and significant weaknesses in the building was identified to the operator at the time. Although the operator made some progress to address the noise breakout the department continued to receive sporadic noise complaints. The view of the department at the time is this was due to unsatisfactory management and inadequate attenuation properties of the building.

### April 2013 onwards

25. More recently the renovation at Park Lane has resulted in an end to the noise breakout but the operator took more than 3 months to install a double door lobbied and thus not complying with a licensing condition designed to prevent noise breakout, and one that had been required and agreed by Licensing Sub Committee on the 28<sup>th</sup> March 2013. It took considerable effort by officers of Community Safety and a final warning, to get the work completed. It is accepted that there were some mitigating factors but it should never have taken this long.
26. As part of the renovation of Park Lane a terrace was created at the front of the premises leading to the main entrance. This area is used for seating a number of tables for the benefit of customers. Shortly after the club reopened in April 2013 the department started receiving complaints about customers smoking in this area.  
  
The operator was aware the terrace did not comply with the Smoke free legislation made under the Health Act 2006. Despite numerous warnings by the Council and the Police the operator continued to allow smoking to take place in the area for over 3 months. Though the situation improved over the summer of 2013 the department most recently received a complaint about smoking in this area in December 2013 from a nearby business.
27. In January 2014 the department received new complaints about noise from Park Lane's customers gathering in the Lane adjacent to the club and contributing to a significant noise nuisance experienced by nearby residents. During poor weather the lane acts as natural harbourage from the weather but also acts like a canyon with regards to noise.
28. A number of meetings with Police licensing, Torbay Council and the operator, Adrian Hobbs to address these concerns have resulted in the operator taking some action but the problem continues.
29. The variation application before you is an attempt by the operator to relieve noise on the street. It is accepted by the department not all of the people in the lane will be customers of Park Lane but a significant number will be. Residents report noise from people in the street was not a significant problem until shortly after the club reopened in April 2013.

30. A number of significant fights have broken out in the lane in recent months resulting in injury and damage to property in addition to the associated noise disturbance. The majority of people involved in these fight appeared to have come from Park Lane.

#### Bohemia nightclub

31. Up until recently Jam leisure was operating other premises in Torwood Street known as Bohemia. This club was responsible for noise complainants from numerous residents going back 10 years.
32. On the 14<sup>th</sup> of December 2010 a noise abatement notice under sec 80 was served on Jam Leisure requiring the operator to cease forthwith nuisance arising from amplified music (appendix 4). The noise complainants never ceased despite long gaps between complaints until the Jam Leisure closed the club in the autumn of 2013.
33. Despite numerous occasions officers reset the limiters to the point where noise breakout could not be heard in complaints homes it was only a matter of months before noise breakout gradually returned. It was accepted the roof of Bohemia was an inadequate barrier and would cost upwards of £50k to remedy but the operator was aware if the roof id not replace then the noise levels would have to be carefully managed. The operator failed to manage noise levels effectively.
34. I wish to draw the attention to Members of the Licensing sub-committee Bohemia operated a small roof top smoking area that was enclosed by four walls and was source of numerous noise complaints. One complainant lived more than 200 metres away on Mead foot Lane. There was no music in this area and the complaints related to noise from customers using the smoking area.

#### Recommendations

35. I make one recommendation to the Members of the Licensing Committee if minded to do so and that is to reject outright to the application on the grounds the applications does not comply with Torbay Council Licensing Statement of Principles 2011 and therefore will undermine the licensing objection Prevention of Public Nuisance.
36. Torbay Council Licensing Statement of General Principles 2011 (p37) states:

*'The Licensing Authority will presume against the grant of a new premises licences or Licence Variations and Club Premises Certificates where there are extensions in operational hours, or the addition or extension of activities (regulated entertainment) that may cause public nuisance, where the applicant has not properly considered the issue of nuisance and sought appropriate sought advice from those with expertise in this field, in order to alleviate any concerns arising.*

*There will be an assumption however that Licensed Premises in residential areas, or where there is proximity to residential properties, will only be allowed to undertake Licensable Activities until 11pm unless detailed consideration and mitigation measures have been proposed to address those concerns. A simple application with no supporting material can be expected to be refused, where relevant representations have been received'*

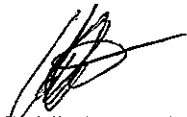
37. The applicant has not given due consideration to Torbay Councils Licensing Statement of Principles, especially the criteria laid out on p37-38. The applicant has sought advice from a professional in the field of noise but I would argue the

report is too simplistic and relies heavily on moving one source of noise to another would solve the existing noise nuisance and not create another. In the real world it is the random and unexpected noise that often leads to nuisance, more so if during noise sensitive times.

38. The department has worked with the applicant over many years and has formed the view that management failings especially during operating hours has led to many instances of noise nuisance arising from applicants premises. This view is reinforced by the operator's failure to remedy issues in a timely and permanent basis.

39. I have little confidence that if this application is granted in full as applied for the applicant will respond in a satisfactory approach to resolve the inevitable noise complainants the department will receive.

Karl Martin

A handwritten signature in black ink, appearing to be 'Karl Martin', written in a cursive style.

Public Protection Officer  
Torbay Council



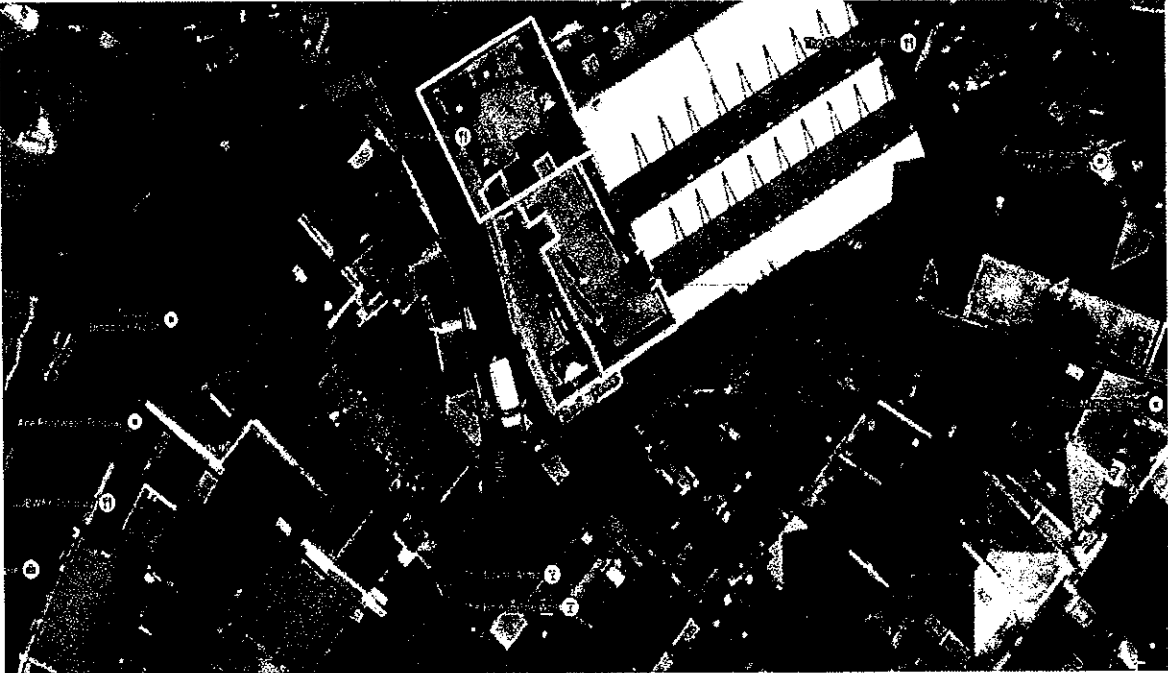
Park Lane Variation application

Appendix 1 --

Existing Smoking area in blue.



Proposed roof terrace in yellow and residential accommodation in red.



## Appendix 2 – Existing Licensing activities and timings

### **Premises Open Hours granted**

	<b>Time From</b>	<b>Time To</b>
Sunday – Friday	10:00am	3:30am
Saturday	10:00am	4:00am
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:30am

Bank Holiday Sunday - 03.30am finish.

British Summer Time - allow for additional hour when clocks move forward.

### **Activities - Times granted**

	<b>Time From</b>	<b>Time To</b>
<b>E. Performance of live music (Indoors)</b>		
Monday - Sunday	10:00am	3:00am
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:00am
<b>F. Playing of recorded music (Indoors)</b>		
Monday -Sunday	10:00am	3:00am
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:30am
Bank Holiday Sunday - 02.00 am finish		

British Summer Time - allow for additional hour when clocks move forward.

### **G. Performance of dance (Indoors)**

Sunday to Thursday	10:00am	3:00am
Friday	10:00am	3:00am
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:00am

### **H. Entertainment of a similar description to that falling within E, F, or G (Indoors)**

Sunday to Thursday	10:00am	3:00am
Friday	10:00am	3:00am
New Year's Eve	11:00am	3:30am
Christmas Eve	11:00am	3:30am

### **I. Provision of facilities for making music (Indoors)**

Monday	10:00am	3:00am
Tuesday	10:00am	3:00am
Wednesday	10:00am	3:00am
Thursday	10:00am	3:00am
Friday	10:00am	3:00am
Saturday	10:00am	3:00am
Sunday	10:00am	3:00am See below
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:30am

### **J. Provision of facilities for dancing (Indoors)**

Monday	10:00am	3:00am
Tuesday	10:00am	3:00am
Wednesday	10:00am	3:00am
Thursday	10:00am	3:00am
Friday	10:00am	3:00am
Saturday	10:00am	3:00am

	<b>Time From</b>	<b>Time To</b>
Sunday	10:00am	3:00am See below
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:30am

**K. Provision of facilities for entertainment of a similar description to that falling within I or J (Indoors)**

Sunday to Thursday	10:00am	3:00am
Friday	10:00am	3:00am
Sunday	10:00am	3:00am
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:30am

**L. Late night refreshment (Indoors)**

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Monday	11:00pm	2:00am
Tuesday	11:00pm	2:00am
Wednesday	11:00pm	2:00am
Thursday	11:00pm	2:00am
Friday	11:00pm	2:00am
Saturday	11:00pm	2:00am
Sunday	11:00pm	2:00am
Christmas Eve	11:00pm	Midnight
New Year's Eve	11:00pm	Midnight

**M. The sale by retail of alcohol for consumption ON and OFF the premises**

Monday	10:00am	3:00am
Tuesday	10:00am	3:00am
Wednesday	10:00am	3:00am
Thursday	10:00am	3:00am
Friday	10:00am	3:00am
Saturday	10:00am	3:30am
Sunday	10:00am	3:00am
Christmas Eve	11:00am	3:30am
New Year's Eve	11:00am	3:30am



COMMUNITY SAFETY

ENVIRONMENTAL PROTECTION ACT 1990, SECTION 80  
Abatement Notice in Respect of Statutory Noise Nuisance

Notice No: 001393/KJM

To: Jam Leisure Limited

Of: [REDACTED]

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 TORBAY COUNCIL ("the Council") being satisfied of the existence and likely recurrence of a statutory nuisance under section 79(1)(g) of that Act at:

Park Lane, 1 Torwood Street, Torquay, TQ1 1ED

within the district of the Council arising from **AMPLIFIED MUSIC EMITTED FROM THE PREMISES AT AN EXCESSIVE VOLUME**

HEREBY REQUIRE YOU as the person responsible for the nuisance FORTHWITH from the service of this Notice to abate the nuisance and prohibit its recurrence.

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 ..... Dated .....

Mr Karl Martin  
Noise and Licensing Officer  
(Officer Appointed for this purpose)

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. A 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 the 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 of 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.

**Please reply to:** Mr Karl Martin

Community Safety

Roebuck House

Abbey Road

Devon

TQ2 5EJ

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The Company Secretary

Jam Leisure Limited

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**My ref:** NOU No: 001393

**Your ref:**

**Telephone:** 01803 208010

**Fax:** 01803 208854

**Website:** [www.torbay.gov.uk](http://www.torbay.gov.uk)

**Date:** 11<sup>th</sup> August 2011

Dear Sir/Madam

**Section 80 Environmental Protection Act 1990**

**Abatement Notice NOU-001393**

**Park Lane, 1 Torwood Street, Torquay, TQ1 1DL**

As you are aware, this council has been investigating complaints alleging that noise breakout from your premises has been sufficient to amount to a statutory noise nuisance. On the night of the 30<sup>th</sup> of July 2011, between the hours of 11:30 pm – 00:30 am two Officers from this department witnessed, from inside local residential accommodation, noise breaking out from your premises sufficient to constitute a statutory noise nuisance. The noise breakout is mainly in the low frequency region but is clearly audible within nearby residential accommodation.

The enclosed notice requires you to abate the nuisance forthwith from the service of this notice.

If you would like to discuss methods of controlling the noise before you apply them I suggest that you contact me on the telephone number above.

**Should you need to contact us please quote the reference number above.**

Yours sincerely

Mr Karl Martin

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Noise and Licensing Officer

Licensing and Public Protection



COMMUNITY SAFETY

ENVIRONMENTAL PROTECTION ACT 1990, SECTION 80  
Abatement Notice in Respect of Statutory Noise Nuisance  
Notice No: 001245/GDF

To: Jam Leisure Limited  
Of: [REDACTED]

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 TORBAY COUNCIL ("the Council") being satisfied of the existence and likely recurrence of a statutory nuisance under section 79(1)(g) of that Act at:

Bohemia 41 Torwood Street Torquay

within the district of the Council arising from **AMPLIFIED MUSIC EMITTED FROM THE PREMISES AT AN EXCESSIVE VOLUME**

HEREBY REQUIRE YOU as the person responsible for the nuisance FORTHWITH from the service of this Notice to abate the nuisance and prohibit its recurrence.

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 ..... Dated .....

Mr Gareth Fudge  
Senior Environmental Health Officer  
(Officer Appointed for this purpose)

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. A 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 the notes on the reverse of this form.



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 of 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 necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
  - (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.

**Please reply to:** Mr Gareth Fudge  
Community Safety  
Roebuck House  
Abbey Road  
Devon  
TQ2 5EJ

The Company Secretary

Jam Leisure Limited

**My ref:** NOU No: 001245

**Your ref:**

**Telephone:** 01803 208010

**Fax:** 01803 208854

**E-mail:** gareth.fudge@torbay.gov.uk

**Website:** www.torbay.gov.uk

**Date:** 17 December 2010

Dear Sir/Madam

## **Section 80 Environmental Protection Act 1990**

### **Abatement Notice NOU-01245**

**Bohemia Nightclub, 8 Queensway Crescent, Shiphay, Torquay, TQ2 6DH**

I refer to conversations with Mrs Karen Ellicott of my department and her letter dated 22<sup>nd</sup> of September 2010 advising yourselves that complaints have been received. I note from the departments files that complaints about this premises exist on file since 2000.

As you are aware, this council has been investigating complaints alleging that noise breakout from your premises has been sufficient to amount to a statutory noise nuisance. On the morning of the 12<sup>th</sup> of December, between the hours of 00:00 and 03:30, I witnessed noise breaking out from your premises sufficient to constitute a statutory noise nuisance. The noise breakout is mainly in the low frequency region but is clearly audible within nearby residential accommodation on both sides of the premises. At the time of my visits the music breakout was sufficient to cause nuisance when

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If you require this in a different format or language, please contact me.

the main doors were open and closed. The nuisance did not decrease as the morning progressed and was still an issue when I left the area at 03:30

The enclosed notice requires you to abate the nuisance forthwith from the service of this notice.

If you would like to discuss methods of controlling the noise before you apply them I suggest that you contact me on the telephone number above.

**Should you need to contact us please quote the reference number above.**

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Yours sincerely

Mr Gareth Fudge

Senior Environmental Health Officer

Licensing and Public Protection