

Memorandum

To:		From :	Mr Karl Martin
c.c	TORBAY COUNCIL	Contact :	
c.c.	10 OCT 2014	Ext :	01803 208025
c.c	COMMUNITY SAFETY	My Ref :	12V SRU No:
For the attention of:		Your :	
Mandy Guy, Licensing Officer		Ref :	
		Date :	

Subject: Review of Rock Garden, premise licence number PL0576

1. Overview

- a) Based on the evidence collected by officers of Torbay Councils Community Safety and Public Health department and evidence submitted by residents surrounding Rock Garden I wish it to be known to the members of the Licensing Sub-Committee I support the review of Rock Garden cafe and bar for reasons set out in this memorandum.

2. Background

- a) Rock Garden is set back from Fleet Street on Swan Street and is in the cumulative impact area.
- b) The building dates from the early 1800's and in 2005 the alcohol licence was transferred to the new licensing regime under grandfather rights. At this time the land the beer garden now sits was occupied by derelict warehousing units associated with the original quay. See appendix 1 for general maps of the area.
- c) November 2010 the premises licence was transferred to Halix Ltd. Harry Brewer is the current company director for Halix Ltd.
- d) August 2012 planning application submitted to Torbay Council Planning department by Halix Ltd. Community safety is a statutory consultee and is informed by Torbay Councils Principle Planning Officer.
- e) The application seeks a change of use of the vacant land previously occupied by derelict warehousing for the creation of an outdoor area alongside the existing licensed premises.
- f) Mrs Katherine Griffiths, Senior Environmental Protection Officer objects to the planning application on the grounds of noise nuisance.
- g) A comprise is agreed with Mrs Katherine Griffiths and Halix Ltd on the proviso that a suitable management plan is developed and agreed. See appendix 2. Planning permission granted.

h) March 2012. A full variation application of the premise license submitted by Halix Ltd is accepted by Torbay Councils licensing authority. The application sought to extend the licensing area to include a beer garden on the site of the former derelict warehousing. No objections from responsible authorities or interested parties is received.

i) The beer garden an area approximately 50mx20m is licensed with the following annex 2 conditions:-

4. No customers shall be permitted to drink outside unless seated.

5. Outside decking area shall only be used for consumption of alcohol between the following hours:-

Monday- Thursday - 11.00 hours - 23.00 hours.

Friday - Saturday - 11.00 hours - Midnight

Sunday - Noon - 23.00 hours.

Sundays before a Bank Holiday and Bank Holiday Mondays - 11.00 hours - Midnight.

No arrangements for maximum numbers, however the management plan submitted for planning permission refers to 150 persons seated.

j) In early June 2013 the premises begins trading as 'Rock Garden'.

3. Noise complaints received to date

a) June 28th 2013 the Licensing and Public protection department receives its first complaint from a resident about noise from customers in the beer garden and music breakout. The resident is sent a diary sheet, but this is not returned. Later the complainant stated his friend has started working at rock garden and withdraws his complaint. The authority has had no further contact with the resident to date. The resident lives above the premises on Rock road.

b) July 3rd a second complaint is received by the department. A diary sheet was sent, but not returned. The same resident phoned the Police on a number of occasions complaining about noise from people in the beer garden and music breakout. No further contact from the resident with the Authority or the Police Authority to date. The resident lives above the premises on Rock road.

c) August 21st a third complaint is made by a resident via Torbay Councils Mayor. This time the resident returns a diary sheet and engages with the Authority. The complaint is about noise from customers using the beer garden and music breakout. Two visits are made to the residents home for the purpose of assessing the alleged nuisance. The resident lives above the premises on Coburg Street.

d) August 22nd a petition is received from residents of Coburg place, Rock Road, Swan Street and Melville Street. 35 legible or verified signatures of residents were written to informing them of the Authorities position and ask to complete and return a diary sheet. Despite reminder letters and various telephone calls only one resident made contact with the Authority, this was logged as a 4th official complaint. The resident lives on Coburg place and complained about noise from the beer garden and noise from music breakout. The resident was written to requesting contact details to arrange a visit to their home, but the resident did not respond. The Authority has had no further contact with the resident.

e) 27th August the authority received a diary sheet and letter of complaint from a 5th complainant. The residents are Mr Burridge and Mr Gibbons of Steamer Quay Rock Road. Please see appendix 3 for a sample of recent diary sheets.

- f) To date the Authority has had no new complainants. The department maintains regular contact with the 3rd resident, who has had concern to mention noise was a problem on two occasions throughout the summer of 2014. One Saturday during the World Cup and the second on August Bank Holiday Saturday. The resident holds the view that the noise from the beer garden is tolerable as it now closes at 10:00pm instead of midnight at the weekends during the summer of 2014.

4. Brief chronology of events

- a) August 2013, several meetings with the DPS, Mr David Walsh at the premises to discuss noise complaints. Discussions included the installation of a double door lobby leading out to the beer garden. Lobby completed mid October.
- b) Late August/early September 2013. Noise consultant employed by Halix Ltd to assist with noise breakout from music and noise from customers in the beer garden.
- c) 7th September first visit made to the third resident on a Saturday evening. Two visits made one at approx 8:30 and a second at 22:30. The evening was unseasonably cold. Customers and music could be heard on the resident's balcony. Noise from customers in the beer garden was constant and music breakout out was intermittent. It was assumed this was because the door leading to the beer garden was not a double door lobby. The noise was not considered a statutory nuisance on this occasion as it could not be heard in the resident's home. This may have been different if the resident were able to enjoy the facilities offered by their balcony.
- d) Further meeting in September with David Walsh and Harry Brewer to discuss nuisance. See appendix 4.
- e) 21st September first visit to Mr Burrige and Mr Gibbons. Their flat overlooks the beer garden. Noise from customers in the beer garden could be heard inside their flat at levels deemed a statutory nuisance. The nuisance was witnessed in a bedroom and the living space. Complainants continue to provide diary sheets.
- f) 25th September 2013 Mr Harry Brewer written to requiring a written scheme of works within 7 days to avoid an abatement notice being served in accordance with good practice. See appendix 5.
- g) 2nd October 2013 letter received from Mr Brewer outlining work to be undertaken to resolve noise issues. Measures proposed include exploring engineering controls in the beer garden, improved management in the beer garden, confirmation of lobby doors, reducing numbers of people in the garden by 20% and closing the beer garden at 11:00pm amongst other proposals. See appendix 6.
- h) 8th October 2013 telephone conversation with Mr Neil Carpenter giving details of works to reduce music breakout. Measures include setting a number of limits for live and recorded music, moving live bands from a stage up stairs that was located next to the pizza oven flue to a more suitable position downstairs and house monitor speakers purchased as guest bands were bringing their own monitor speakers.

Mr Carpenter at this time started investigating and liaisons with specialist acoustic companies to develop and evaluate suitable engineering controls to reduce the noise breakout from customers using the beer garden. Early recommendation included cladding walls with absorbent materials and partitioning the garden into smaller areas and utilising soft furnishings.

Mr Carpenter also installing monitoring equipment on the wall below complaints flat to build a concise picture of noise breakout from the beer garden.

- i) 14th October 2014 meeting with Mr Harry brewer, Mr Neil Carpenter and Mr David Walsh with Mr Karl Martin and Mr Steve Cox of Torbay Council Community Safety Team. Meeting was arranged to discuss on-going noise complaints and action to take. Mr Brewer agreed to close the beer garden at 9pm as an interim measures until effective remedial measures can implemented.
 - j) 18th October 2013, email from Mr brewer confirming he will voluntarily close the beer garden at 9:30pm 7 days a week, instead of the previously agreed 9:00pm.
 - k) November – March 2014 nuisance from the beer garden has been abated due to weather conditions. Mr Burrige and Mr Gibbons continue to send diary sheets regarding other matters with the occasional entry of noise from the beer garden. At this time the beer garden is unlikely to be causing a statutory nuisance.
 - l) 4th March video evidence received from Mr Gibbons showing on previous Saturday night beer garden was open until 10:30pm.
 - m) 11th March 2014 update on progression of works. Mr Carpenter has installed monitoring equipment to establish background levels. Monitoring will be continuous for three weeks. Investigations continue into the propose noise sails.
 - n) March – June 2014 evidence continues to be collected by Mr Gibbons and Mr Burrige and regular progress is sought and given by Mr Brewer or Mr Carpenter regarding the noise sails.
 - o) 23rd June 2014 Meeting with Harry Brewer and David Walsh. At this time noise sails had been ordered and a sail maker has been employed to stitch absorbent foam into the panels. Mr Brewer has also order acrylic screen to break up the beer garden but was reluctant to use them until we know if the sails work.
 - p) 28th June 2014 – Visit made to Mr Burrige and Mr Gibbons home. Nuisance amounting to Statutory nuisance witnessed. As on previous occasion nuisance was witnessed from voices of people enjoying the facility of the beer garden. Please Appendix 7.
 - q) 15th July 2014 meeting with Harry Brewer, Mr Gibbons and Mr Burrige to discuss ongoing work.
 - r) 25th July work is due to be completed on the noise sails. Visit premises reveals little progress has been made.
 - s) 8th August 2014 Officer attempt to visit but do no gain access to their home. Officers arrive at 10:15 and note the beer garden was closed and two sails where seen suspended.
 - t) 27th September 2014 visit made to Mr Burrige and Mr Gibbons flat. The noise sails work had been completed. Mr Karl Martin and David Walker of Torbay Council witnessed Statutory nuisance. It was evident the noise sails had not had the desire effect. The overall volume from the beer garden had no chance and was still intrusive in the complaints home.
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- u) 7th October 2014 a s79(1)(g) noise abatement notice is served on Halix Ltd requiring the owner of rock garden to cease forthwith the nuisance from voices emanating from the beer garden. See Appendix 8.
- v) 9th October 2014 due to a complaint being received on the 5th October stating the noise sails collapsed after heavy rain fall. A visit was made by David Walker SEHO, Building control Officers to assess the risk. It was deemed a significant risk that David Walsh agreed to close the beer garden until either a full structural report can be submitted to building control for approval or the noise sails are removed.
- w) 10th October Mr Brewer informed David Walker the noise sails had been removed until further notice.

5. Conclusion

- a) Shortly after the premises opened to the public the authority began to receive a steady stream of noise complaints citing music breakout from within the building and noise from customers in the beer garden as the cause of disturbance.
- b) The beer garden is surrounded effectively by one rock face and surrounding built lends its self to unusual acoustic effects. The hard surface of rock face wall and surrounding buildings have highly reflective acoustic surfaces and as a consequence noise emanating from the beer garden reflects off the hard surfaces increasing the reverberation time it takes for the noise to lose energy. The effects are similar to an auditorium but unlike an auditorium the sound leaving the beer garden is hitting large flat hard surfaces producing prominent reflections. Compounding this effect, parallel hard surfaces produce patterns of flutter echo as the sound reflects off one surface to another and so on until the sound escapes the area around the beer garden. The more people in the beer garden, the greater the effect. This explains why officers noted whilst stood in the beer garden noise is surprisingly quieter compared to what can be heard in the residents homes above. The net effect of the environment the beer garden is situated in means residents higher above the garden are offered no protection against noise leaving the garden and experience phenomena not felt at ground level.
- c) The beer garden is a question of location, numbers and timings. The effect of sound as it propagates from source is well understood in an environment that is present at Rock Garden and is notoriously difficult to control. Reducing the numbers of customers in the garden will reduce the overall sound reaching the resident's homes, yet this increases the clarity of voices that can be heard. This was demonstrated on the evening of 28th September 2013 when Mr Burrige commented he could hear every word Torbay Council Officers were saying during a visit to the beer garden. Generally during the day customers using the garden create less of a nuisance, although in part this may be because of elevated background levels masking customer's voices. The noise sails and reflective panels installed by Mr Brewer were proven on the evening of Saturday 27th to have had a negligible effect on the volume and served only to reduce the clarity of voices.

In considering these three questions I can only draw one conclusion. This is not a suitable location for a beer garden. Statutory nuisance has been established in one residents home closest to the beer garden and public nuisance is likely to be affecting residents in the wider vicinity of the beer garden. It is important to note one resident is content as the beer garden now closes at 10:00pm, this may be suitable for residents further away but not the residents closest to the garden. A view I could agree we after witnessing statutory nuisance at the property of Mr Gibbons and Mr Burrige.

- d) Music breakout has been addressed by the owner of premises with the assistance of a noise consultant over the summer and autumn of 2013. A range of measures were implemented to reduce music breakout from the building. This has largely been a success and no music breakout has been witnessed by Council Officers since 2013. Mr Burrige and Mr Gibbons on occasions report music can still be heard; most recently music was heard on the evening of the 3rd October 2014. It is suspected this is as a result of doors being left open or held open by customers entering and leaving from either the beer garden lobby door or the main entrance. Mr Brewer is aware there still might be a problem with music breakout.
- e) Noise from customers in the beer garden to date has not satisfactorily been addressed. In October 2013 Mr Brewer began seeking advice from experts to assist him. Although there is some mitigating circumstance the process of implementing the proposed noise sails has been frustratingly slow and ever evolving. Originally a specialise company was to undertake a feasibility report to ascertain the configuration and specification any noise canopy should be designed to. To date I have not see any reports or documentation establishing either the design or expected attenuation likely to be achieved.

It was not until July 2014 that work on the noise sails was started and not completed until 27th September; nearly 12 months after Mr Brewer began exploring remedial measures.

6. Recommendations

- a) At the time of writing this report I'm not in a position to offer members of the licensing sub-committee any guidance. Currently negotiations continue with Mr Brewer and his legal representation and Mr Burrige and Mr Gibbons.
- b) Recommendations are likely to request considering reducing the operating hours of the beer garden and a range of additional licensing conditions.
- c) Recommendations will be circulated to the committee in good time before the hearing.

7. Appendices

- a) Please see attached documents.


Karl Martin
Public Protection Officer
Licensing and Public Protection
Community Safety
Torbay Council

Appendix 1 – General Maps

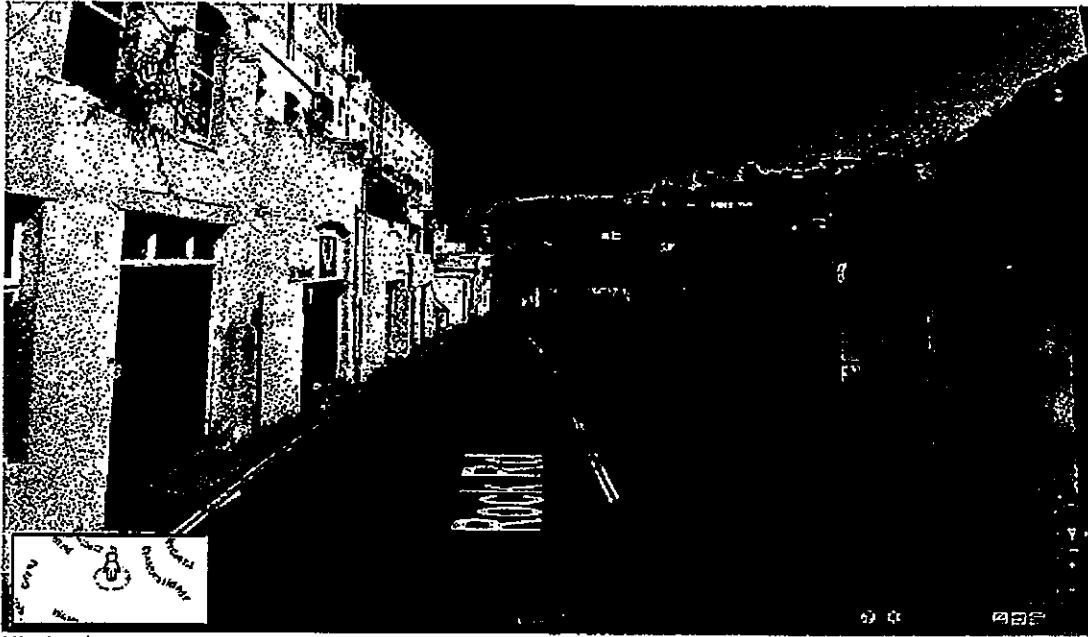


Fig1 – View of Rock Road, red boundary indicates Rock Garden below wall.

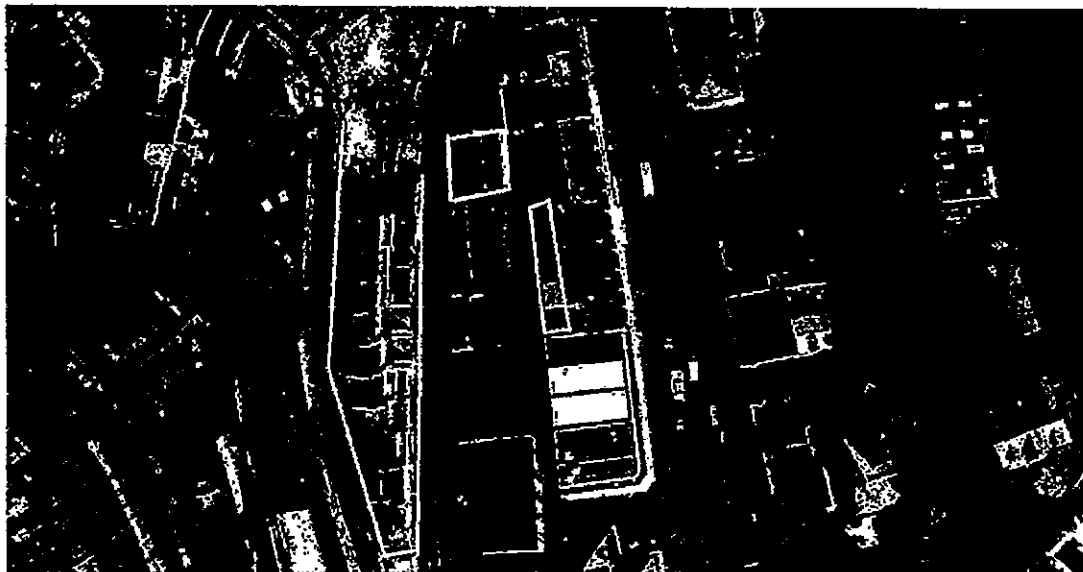


Fig 2 – Aerial view. Red box- Rock garden Boundary, Yellow boundary – Residential area

Appendix 2 - Management Plan

Management Plan.

In an attempt to limit any impact on neighbours, the following steps shall be taken.

- Numbers would be limited to 150
- No music will be played in the external area.
- Although the area is licensed until midnight on a Friday and Saturday, the area would be cleared at 11pm, to assist this furniture would start to be stacked and customers encouraged to move inside from 10.30pm.
- No clearance to waste or bottle bins will take place between 8pm and 9am.
- Windows and doors will remain closed after 8pm in line with the conditions within the license.
- During food and drink service at least one member of staff will be responsible for the outside area.
- During evenings when door staff are present, in addition to security on the front door, members of security will man the door to the external area at a ratio of 1:75 as advised.
- After the external area has closed to customers wanting to consume food or alcohol, a small area will be bartened off under the timber framed smokers canopy shown in the plan. This area would be used for a smoking area. No drinks would be permitted outside and the area would only be used when the exit is manned by security.
- Once the venue is closed all customers will leave via the front doors.
- Measures to limit noise that are stated within the license will be used including a more sedate "drinking up" period and requesting people to leave quietly.
- Any complaints of any nature will be reported to the manager and to the managing director.

Additional Information - P/2012/0463 (17.08.2012)



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2012-0463-006 (assessment Plan)



TORBAY COUNCIL
 1 / SEP 2014
 E.P. MUMFORD
 IQ1 3500 SAFETY

Case Reference:
 Community Safety, C/o Town Hall, Castle Circus, Torquay

Nuisance Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Tel.		Description of incident / noise nuisance		How did the incident / noise affect you?	
The Rock Garden 40-42 Swan Street Torquay TQ2 5ES				PEOPLE IN GARDEN CAN HEAR THEM TALKING!		Woke up.	
17-8-14 22-15				PRESTO PARTY BARS BEING EXHAUSTED		FRONT (FORWARD)	
21-8-14 5:30 AM				URBAN BARS BEING EXHAUSTED -		WOKES UP AGAIN FILMED	
21-8-14 09-45				NEW SUN SHADES BEING INSTALLED			

FILMED!

Appendix 3

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
22/8/14	9.30	-	Noise from garden (2 tables) after birds have been put in the house -	Went to sleep Closed windows - Filmed -
23/8/14	7.35 AM	-	Children in rock pool - swimming & splash filmed to show how noisy & wet track	Woke up -
23/8/14	5.50 PM	-	Loud groups under awning - has been going on for a few hours now - filmed to demonstrate noise from members tables -	Can hear it through windows -
			FIRED AT 8.00 IN THE MANAGER + SECURITY STAFF POUR CARTERS HAD CLOSED WINDOWS + TURNED UP TV.	
23/8/14	9.00 + 9.35	-	Noise from garden + got even <u>FOUL</u> FILMED.	
24/8/14	21.00	22.00	EXCESSIVE NOISE FROM GARDEN DRUNKEN PEOPLE USING FOUL LANGUAGE	HAD TO CLOSE WINDOWS AND TURN TV UP!
24/8/14	11.00 PM	-	NOISE FROM GARDEN TOO LOUD - CAN CLEARLY HEAR LYRICS - FILMED -	EAR PLUGS AGAIN!
25/8/14	6.30 AM	-	REFUSE BINS (RADONES DIXON) COLLECTED IN REAR STR. ONE BIN MAY BE EATEN HIGH PRESSURE STREET CLEANING MACHINE IN SWAN STREET	Woke up again - THANKS OTHER BINS. FILMED -
25/8/14	06.35	-		

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
26/8/14	06:30	-	REFORM BUS BEING EMITTED IN SOUND ST. FILMED.	Woke up. -
28/8/14	06:45 AM	-	REFUSE BINS PHOTO OFFICER + ONE OTHER BUSINESS * FILMED	Woke up -
28/8/14	07:00 AM	-	BENT DELIVERY LORRY FOR ROCK COW - WENT AWAY AS NO ONE ANSWERED DOOR	- MORE NOISE
28/8/14	07:30	-	MORE REFUSE COLLECTIONS. 2 BINS.	FILMED -
30/8/14	09:35	-	NOISY GROUPS IN GARDEN. NOT ONE PERSON EATING - (FILMED) * (CROSS-NOT UNDER AGREEMENT)	TURNUED UP TV + SHUT WINDOW - IN TOP BEDROOM
30/8/14	10:05	-	GROUPS OUTSIDE ROUNDABOUT - SAO LAURENCE FILMED -	TOO NOISY - PARTIALLY EAR PLUGS TO SLEEP -
1/9/14	6:30	-	STREET CLEANER LORRY - FILMED	Woke up

SPOKE TO THE MANAGER (AS THIS MORNING WHO CONFIRMED THAT THAT HER 2 BINS EMITTED EARLY C. 5:30 AM LAST WEEK AND 06:45 THIS WEEK - AND ASKED HER TO ARRANGE A LATER TIME FOR PRESTO BINS TO BE COLLECTED - INFORMED HER SENSE COMPANY AND THIS DIARY - (28/8/14)

* 30/12/14 - MANAGER WAS TAKING PICTURES FROM THE BOTTOM OF GARDEN - UP AT OUR PREVIOUS -



TORBAY COUNCIL
 1/ SEP 2014
 EN. 0541.1
 TORBAY COMMUNITY SAFETY

Case Reference:
 Community Safety, C/o Town Hall, Castle Circus, Torquay TQ1 3BB

Nuisance Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Name and address of person / address being complained about		Description of incident / noise nuisance		How did the incident / noise affect you?		
Date	Start time	Finish time						
			The Rock Garden 40-42-Swan Street Torquay TQ2 5ES					
17-8-14	22-15		PEOPLE IN GARDEN CAN HEAR THEM TALKING!					
21-8-14	5-30 AM	-	PRESTO PARTY BIKES BEING EMPTIED					WAKE UP - FILMED (BUT DANK)
21-8-14	7:00 AM	-	VICEDAR BIKES BEING EMPTIED -					WAKE UP AGAIN FILMED
21-8-14	09:45		NEW SUN SHADES BEING INSTALLED					

FILMED!

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
22/8/14	9:30	-	NOISE FROM CANSTON (2 TABLES) AFTER SALES HAVE BEEN OVER THE SCARBY	HEARD SCORE WORK (CLOSED WINDOW) - FILMED -
23/8/14	7:35 AM	-	CLEVERLY IN ROCKS ON - SWEETENING GARAGE FILMED TO SHOW HOW SCARBY LIGHT TRAP	Woke up -
23/8/14	5:50 PM	-	LOUD GROUPS UNDER AWNING - HAS BEEN GOING ON FOR A FEW HOURS NOW - FILMED TO DEMONSTRATE NOISE FROM MESS TABLES	CAN HEAR IT THROUGH WINDOW -
			FILMED AT 8:00 PM THE MANAGER + SECURITY STAFF CAME OUT + COLLECTED THEM DOWN CARPETS (HARD)	
23/8/14	9:00 - 9:35	-	NOISE FROM GARDEN + NOT EVEN FULL FILMED	CLOSED WINDOW + TURNED UP TV
24/8/14	21:00	22:00	EXCESSIVE NOISE FROM GARDEN DRUNKEN PEOPLE USING FOUL LANGUAGE	HAD TO CLOSE WINDOWS AND TURN TV UP!
24/8/14	11:00 PM	-	NOISE FROM GARDEN - CAN CLEARLY HEAR LYLES - FILMED	EAR PLUGS AGAIN!
25/8/14	6:30 AM	-	REFUSE BINS (RADONES BIGFA) COLLECTED 11:00 RUMBY STR. ONE BIN MAY BEZIELED WITH BINS AS HARKER OTHER BINS. FILMED	Woke up AGAIN -
25/8/14	06:35	-	STREET CLEANING MACHINE IN SWAN STREET	

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
26/8/14	06.30	-	REFUSE BINS BEING EMPTIED IN SWARK ST. FILMED.	Woke up -
28/8/14	06.45 AM	-	REFUSE BINS PHOTO TAKEN + ONE OTHER BUSINESS * FILMED	Woke up -
28/8/14	07.00 AM	-	BENT DELIVERY LORRY FOR ROCK CON - WENT AWAY AS NO ONE ANSWERED DOOR	- MORE NOISE FILMED
28/8/14	07.30	-	MORE REFUSE COLLECTIONS - 2 BINS.	" " FILMED
30/8/14	9.55	-	NOISY GROUPS IN GARDEN. NOT ONE PERSON EXITING - (MOST NOT USABLE AUDIO) (FILMED) *	TURNED UP TV + SHUT WINDOW - IN TOP BEDROOM
30/8/14	10.45	-	GROUNDS OUTSIDE POUSSON - BAD LARGES (FILMED)	TOO NOISY - PUT IN EARPLUGS TO SLEEP
1/9/14	6.30	-	STREET CLEANER LORRY - FILMED	Woke up

SPOKE TO THE MANAGER OF THE MARRIAGE WHO CONFIRMED THAT THAT HER 2 BINS EMPTIED EARLY C. 5.30 AM LAST WEEK AND 06.45 THIS MORN - AND ASKED HER TO ARRANGE ANOTHER TIME FOR PHOTO TAKING BINS TO BE COLLECTED - INFORMED HER OF NOISE COMPLAINTS AND THIS BINS - (28/8/14)

* 30/8/14 - MANAGER WAS TAKING PICTURES FROM THE BOTTOM OF GARDEN - UP AT OUR FRONT -

Have Pleasura - 18/8/12

101 @ Devon and Cornwall - P.N.M. Police, etc



TORBAY COUNCIL

19 AUG 2014

Case Reference:

Community Safety, C/o Town Hall, Castle Circus, Torquay, TQ1 3DR

COMMUNITY SAFETY

Nuisance Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		The Rock Garden 40-42-Swan Street Torquay TQ2 5ES		How did the incident / noise affect you?	
Date	Start time	Finish time	Description of incident / noise nuisance		
17-7-14	06-45	-	VRAPOR BIN COLLECTION SWASTIC	WAKE UP - CUTTH EMPLOYEES)	
18-7-14	8-45	-	ROCK GARDEN NOISEY WITH PARTY. FILMED - DIALECTIC TO LOG A COMPLAINT WITHIN 24 HRS WILL CALL IN MORNING FOR LOG NR 268 (19 JUL)	CLOSED UNPROVISED DOOR UP TV - ASKED BY OF STORE	
19-7-14	10-40	-	LOUWATERNOX MUSIC PEOPLE OUTSIDE BOUNDARY	LOG NR 361 FEMALE SINGER 11.15 POLICE WENT OUT SIDE 20/7/14	
24-7-14	7-25	DEVON	CONTRACT WASTE COLLECTION - BUGHT LORRY RIGHT UP ST UNDER MY BEDROOM - FILMED	WAKE UP.	

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
24/7/14	7:30	-	A <u>OTHER</u> BIN LORRY ROUND SWAN STREET COLLECTED 2 BINS (WHITE LORRY AND A RED ONE)	FILMED
29/7/14	9:05	-	LARGE GROUP IN ROCKS AT RUGBY GROUSEY	FILMED - TURNER - 11:00 PM - SHOT WITH PHONE - WOKER UP
31/7/14	6:30 7:05 AM	-	BIN COLLECTION -	
31/7/14	7:35	-	BINS BEING DELIVERED OUTSIDE ROCK GARDEN (A LORRY LOAN) COLLECTED + DELIVERED	
31/7/14	8:45	-	NOISE FROM GROUND IN GARDEN - FILMED CANT HEAR CLEARLY EVERYWHERE -	TURNER TV - SHOT WITH PHONE HAD TO TURN TV VOLUME UP!
1-8/14 20:30	21:00	-	LIVE MUSIC IN GARDEN	
2-8/14	2:50	-	SECURITY OFFICERS IN GARDEN RUNNING ROUND - FILMED - SAILS NOT WORKING	SHOT OUT WINDOW TO REAR PAPER AT ALL - JUST IN REAR AREAS - WOKER UP
4/8/14	05:15 AM	-	3 BOTTLE SKIDS FROM ROCK GARDEN BEING EMPTIED (AFTER A MEETING WITH GARDEN NEW COMPANY TO TO THIS AT AN EARLY TIME)	FILMED
5/8/14	06:10	-	MORE BINS BEING COLLECTED - SWAN STREET	WOKER UP (WITH CAMERA) - FILMED

* IMPORTANT TO NOTE MAJORITY OF GROUP SATT WHERE SOUND SAILS
WILL NOT BE PLACED

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
5-8-14	8.25-	-	WIRAPUN (AREA) COLLECTING BIRDS -	WOKED UP, WENT TO BED
7-8-14	05.55 AM	-	WIRAPUN AREA COLLECTING BIRDS - (PREFS PASSING THROUGH)	" " " "
7-8-14	01.10 8.15 PM	-	LARGE GROUPS IN GARDEN (2 UNDER ONE WINDOW) NOISE - (FILMED) CLEARLY HEAR BOOKED FOR 8.50	TURNED UP TV - CLOSED WINDOWS
8-8-14	6.30 AM	-	WIRAPUN COLLECTING BIRDS - FILMED	WOKED UP - WENT TO BED
8-8-14	21.00	22.00	LARGE NOISEY GROUPS IN GARDEN	FILMED
8-8-14	22.30	23.30	LARGE NOISEY GROUPS OUTSIDE FRONT OF PREMISES	COULDN'T SLEEP.
9-8-14	7.56 PM	-	Loud groups in garden - allowing noise to prevent work - FILMED AT VARIOUS TIMES DURING NIGHT	CLOSED WINDOWS - TURNED UP TV. NIGHT - SWITCHED TO RAIN @ 9.30
9-8-14	10.40	-	Loud audible noise from interior - loud groups outside - customers smoking leading to noise	CLOSED WINDOWS - FILMED
10-8-14	20.30	21.30	Loud noise from people in garden FILMED	CLOSED WINDOWS!

THANK GOODNESS - * GARDEN CLEARED.

IT HAS TO BE NOTED THAT ANYTIME CAUG (J)ONEY'S SHARPE SWANS" ARE UP AND HAVING NO EFFECT AT ALL - THIS WILL BE TOO LITTLE TOO LATE - THE REASON WILL SOON BE OVER, TO BE REPEATED NEXT YEAR?

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
11/8/14	6.30 AM	-	ROAD SWEEPERS WORKING UP+DOWN SEAKE ST	wake up -
12/8/14	6.30.	-	ROAD SWEEPERS WORKING UP+DOWN SEAKE ST	WAKE UP.
14/8/14	7.15	-	RUBBISH COLLECTION IN SEAKE ST - FILMING	wake up (cont + some sleep)
15/8/14	9.40	-	LOUD GROUP OF PEOPLE CLEARLY HEAR EVERY WORD - PROVING THE CASE POINTING	WAKE UP WITH NOISE SLIM PA

TURNOVER UPON



TORBAY COUNCIL
 15 JAN 2014
 LICENSING SECTION

Case Reference:
 Community Safety, C/o Town Hall, Castle Circus, Torquay, TQ1 3DR

Nuisance Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Name and address of person / address being complained about		Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
[REDACTED]		The Rock Garden 40-42 Swan Street Torquay TQ2 5ES						
				30/1/13	10PM	-	EXCESSIVE NOISE FROM MUSIC, AND PEOPLE ARRIVING & LEAVING PREMISES. VIDEO EVIDENCE RECORDED.	HAD TO TURN VOLUME OF TV UP! (EVEN WITH CLOSED) DELAYED SLEEP TIME
				09/2/13	05.20		EXCESSIVE NOISE FROM COMMERCIAL WASTE DISPOSAL - IE. PICK UP OF GLASS WASTE	WOIKEN UP!
				10-12-13	21-42		GARDEN STILL OPEN AND BEING USED	
				13/12/13	8.30 PA		ROCK GARDEN - DOOR) WERE OPEN ONTO GARAGE MUSIC LOUD - (MAYBE A LITTLE TOO LOUD FOR PEOPLE STOP PARKING) INTERNAL DOOR BANGING	HAD TO TURN COFFER UP -

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
14/12/13	7.50	-	POODS WEREN'T OPEN (ONE SET OF BARRIERS CLOSED) GROUP OF MEN STANDING OUTSIDE IN GARDEN (CLOSED)	
21/12/13	8.50 P.M.	-	NOISY GROUP IN GARDEN - RAISING INTERIOR EXTERIOR NOISE. (FILMING) GARDEN CLOSED AT TIME BUT NOISE REVENING DOES NOT SHUT - STILL HEAR MUSIC	HAD TO TURN UP TELEVISION
22/12/13	10.20 P.M.	-	PEOPLE STILL IN GARDEN DRINKING + KILLING FOOTBALLS MANAGER CAME OUT + CLEARED IT WHEN I STANDING AT 10.20 AM	
23-12-13	05.20 05.28		COMMERCIAL WASTE COLLECTED OF BOTTLES TWO BINS EMPTIED	WOKEN UP!
26-12-13	11.00 21.50		GARDEN OPEN AND BEING USED - PEOPLE ARE VERY LOUD AND NOISEY - CLOSED GARDEN AT 22.00 NOISE OF GROUPS STARTING AND VERY LOUD - NO MANAGEMENT INTERVENTION (VIDEO OF GROUPS NOISEY OUTSIDE MAIN ENTRANCE SHOT) + SHOUTING. ONLY A FEW PEOPLE BUT COULD HEAR EVERYTHING. (WHAT IS IT SOUND TO BE LIKE IN THE SUMMER?) VERY LOUD MUSIC (INDEPENDENTLY CROSSED OUT) ALMOST AS BAD AS IT WAS IN THE SUMMER	CAN HEAR PEOPLE SHOUTING AND DRINKS TURNED UP TELEVISION (THIS) + SHUT WINDOWS LOUDEST UP - WOKEN (SOUND) HAD TO WEAR EAR-PLUGS TO SLEEP
30/12/13	17.50	-		
4/1/14	10.45 P.M.	-		
11/1/14	10.45	-		

VIDEO TH

* VIDEO TIPS.

* ALL VIDEOS ARE FILMED ON CAM LEFT BY KARC MARQUIS FROM THE COUNCIL'S COMMUNITY SAFETY.

203078

"FILM ->"
FOR THIS
SHEET



TORBAY COUNCIL
10 OCT 2014
COMMUNITY NUISANCE
Case Reference:
Community Safety, C/o Town Hall, Castle Circus, Torquay, TQ1 3DR

COMMUNITY NUISANCE Diary Sheet

NOTE: PLEASE READ THE ATTACHED GUIDANCE BEFORE MAKING DIARY ENTRIES.

Your name and address		Description of incident / noise nuisance		How did the incident / noise affect you?
Date	Start time	Finish time	Name and address of person / address being complained about	
10/9/14	9.00 PM	-	The Rock Garden 40-42-Swan Street Torquay TQ2 5ES	' - CLOSED ' - WOUND -
"	10.45 PM	-	GARDEN WAS ALREADY PEOPLE. CAT UNDER NEW ARRIVAL (COULD CLEARLY HEAR PEOPLE'S CONVERSATIONS) CLEARLY COULD HEAR MUSIC FROM INSIDE NOISEY GROUPS OUTSIDE + LOUDEST - MESSY SITUATION "SIT UP!!" IT WAS FOR LOU?	FILMED - AFTER THEY HAVE SHOWER!
20.9.14	20.00	22.10	NOISEY PEOPLE IN GARDEN EVEN THOUGH UNDER SUN SHADES. BIG GROUPS OF LOUD PEOPLE DOOR STAFF TRY TO CONTRIBUTE BUT NOT MESSY GOING	COMPLAINING SLEEP
20.9.14	22.00	23.30	NOISEY PEOPLE OUTSIDE FRONT - SMOKE AND LEAVING PREMISES.	

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
22/9/14	05:45	-	COMMERCIAL BIN COLLECTION IN SWAN ST - THINK IT WAS DEWON COLLECTING WASTE BLUE DEWST LORRY, CAN AND SWAN ST - FILMED	TWICE UP (WITH EAR PLUGS)
23/9/14	07:20	-	COMMERCIAL BOTTLES COLLECTED FROM ROCK GARDEN	ANOTHER MORNING WOKEN UP TO SMASHING GLASS
25/9/14	7:00 PM	-	1 MINUTE SILENCE IN GARDEN - NOISE FROM DISRUPTIVE - ALL SAILS 'A' UP - TOW MONY	(COPD WITH NOISES 270 DEGREE) FILMED
25/9/14	7:45	-	GROUPS NOISE DOWN TO 19 GROUP BUT CAN CLEARLY HEAR CONVERSATIONS - UNDER SAILS -	HAD NERVE ALL AFTERNOON - FILMED
27/9/14			NOISE FROM SWANERS IN GARDEN (ONLY A SECTION IS OPEN - OTHER HALF OF GARDEN BLOCKED OFF. A LOT OF	FILMED. TURNED ON TV. SWANERS (SECURITY HAD TO STOP AND INTERVIEW)
28/9/14	06:30 AM	-	ROAD SWANER VAN IN SWAN ST.	WOKE UP -
30/9/14	06:25	-	WINDOR COLLECTOR BINS (4) IN SWAN ST	WOKE UP (WITH EARPLUGS)
2/10/14	05:50 AM		BIFFA (FOR DRESS PASS) REFUSE LORRY	WOKE UP " " "
3/10/14	06:35 AM		WINDOR COMMERCIAL WASTE IN SWAN ST	WOKE UP AGAIN "

(NOT FILMED - NO SOUND)

D

Date	Start time	Finish time	Description of incident / noise nuisance	How did the incident / noise affect you?
3-10-14	21:00	22:45	UNACCEPTABLY LOUD NOISE FROM PEOPLE IN GARDEN AND LETTING AT FRONT, COULD HEAR MUSIC FROM INSIDE ALSO	HAD TO TURN TV UP COULDN'T SLEEP.
4-10-14	20:30	23:30	UNACCEPTABLY LOUD NOISE FROM PEOPLE IN GARDEN AND LETTING AT FRONT, COULD HEAR MUSIC FROM INSIDE (ABLES "ROWLING IN THE DEPT")	HAD TO TURN TV UP - COULDN'T SLEEP BENT VIDEO FROM PHONE





Harry Brewer
Rock Garden
40-44 Swan Street
Torquay
Devon
TQ2 5ES

Please reply to: Karl Martin
Licensing and Public Protection
Community Safety, c/o Town Hall, Castle Circus,
Torquay
TQ1 3DR

My ref: SRU/193776

Your ref:

Telephone: 01803 208025

E-mail:

Website:

Date: 12 September 2013

Dear Mr Brewer

**Licensing Act 2003 and Environmental Protection Act
Alleged Nuisance arising at Rock Garden 40-44 Swan Street Torquay Devon TQ2 5ES**

I write following a meeting at Rock Garden on the 11th September 2013 with you and David Walsh. Also present at the meeting was Craig Noble, Licensing Officer, Torbay Council. During the meeting we discussed the on-going noise complaints we have received in relation to noise breakout from amplified music emanating from within the premises and noise escaping from the beer garden.

I will first summarize my thoughts regarding live and amplified noise breakout from the premises. Observations by Steve Cox and me on Saturday 7th between 9-11:30pm indicate music breakout is occurring when the door from the premise to the beer garden is opened. As this door is not currently lobbied this is frequently causing the volume of music escaping to increase and this may be causing a statutory nuisance but I will come back to that point later in this letter.

The practicable choice in this situation is to build an acoustic enclosure in the form of a lobby that has two sets of doors ensuring that at least one set of doors is closed at any one time, though I accept on the odd occasions both doors will be open as customers move through the area. I believe a lobby could significantly reduce noise breakout of pre-recorded and live amplified music.

I will however, cautiously warn live music may be more problematic even with the installation of a lobby. On Saturday August 31st recordings made by a nearby resident suggests breakout out is occurring throughout the duration of the performance. A closed door to the beer garden appears to only make a marginal difference. I have spoke with Neil Carpenter who happened to be monitoring levels on this evening and his view differs from what the resident has recorded. I would suggest you continue to monitor live music performances for the time being.

It has been suggested by a number of sources some of the music heard by the complainants may have originated from other nearby premises. Recordings and visits to the area made by officers does not suggest this is the case. However without wishing to discuss other premises in detail, there are a number of premises along Fleet Street that are not complying with their licensing conditions and we are addressing this issues with the owners.

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

Moving on to the beer garden, On Saturday the 7th is was the opinion of Steve Cox and myself that the noise levels experienced by a complainant could well be a statutory nuisance if they had been using their garden or had their windows open. Owing to the change of weather on this night and the evenings drawing in it wasn't possible to make a final judgment. Recordings made by a resident during warmer periods support the view a statutory nuisance may be arising from the beer garden reinforcing the view shared by Steve Cox and myself.

As we move into the winter months any nuisance may resolve itself until the return of warmer weather next spring. I welcome your positive attitude and willness to resolve the problem and I strongly suggest you use the winter months to put in place any engineering or management controls we discussed during our meeting.

I have summarised below the main points discussed during the meeting

1. Agreed to close the beer garden on Friday and Saturday nights by 11:00pm in accordance with the management plan submitted as part of your planning application;

'Although the area is licensed until midnight on a Friday and Saturday, the area would be cleared at 11pm, to assist this furniture would start to be stacked and customers encouraged to move inside from 10:30pm.'
2. Investigate the best possible means of installing a lobby at the entrance to the beer garden.
3. Remind staff and door stewards to actively manage unacceptable behavior in the beer garden.
4. Explore further possible engineering solutions to remedy noise from the beer garden.
5. Ensure you are fully complying with all conditions on your licence relating to public nuisance.

I will stress though I welcome your co-operation and invite you to respond to this letter with any remedies you have already implemented or propose I must advise you of the course action the Council will have to take if together we cannot find a suitable solution.

As you are aware we have a number of complainants or in other words a 'cohort of her majesty's servants' which may mean the nuisance from the beer garden could be a public nuisance. Effectively this means the matter may have to be referred to Torbay Council licensing sub-committee for their consideration by way of reviewing your premises licence.

As you aware the Council would present its evidence and you would be able to put your case forward with a right of appeal if the outcome is not favorable. The licensing committee could choose to reduce the operating hours of the beer garden and/or impose other conditions. Although I will be willing to broker a 'comprise' between you and the neighbours please however note, with such a large number of complainants it may not be possible to find a position that is acceptable to all parties.

In an addition if a statutory nuisance can be proven, then there is a legal obligation upon the department to either serve a noise abatement notice, or require within 7 days a written statement from you advising the department how you will abate that nuisance. Failure to provide this statement will result in the service of that legal notice after those 7 days have passed. Failure to comply with a Noise Abatement Notice is a criminal offence failure to comply with a noise abatement notice could result in a licensing review.

Please do not hesitate to contact me should if you would like to discuss the contents of the letter and I look forward to your reply.

Yours sincerely

Mr Karl Martin
Public Protection Officer
Licensing and Public Protection

cc: David Walsh, DPS, Rock Garden,
cc: Licensing Department East, Devon & Cornwall Police HQ, Middlemoor, Exeter, Devon, EX2
7HQ

Appendix 5



Please reply to: Mr Karl Martin
Community Safety
c/o Town Hall
Castle Circus
TORQUAY
Devon
TQ1 3DR

Mr. Harry Brewer
The Royal Exeter Hotel
Exeter Road
Bournemouth
Dorset
BH2 5AG

My ref: U:001775/KJM
Your ref:
Telephone: 01803 208025
Website:
Date: 24 September 2013

Dear Mr Brewer

**Re Section 80 Environmental Protection Act 1990
Statutory Noise Nuisance arising from Rock Garden, 40-44 Swan Street, Torquay, Devon,
TQ2 5ES**

I write in reference to my letter dated 12th September 2013. In this letter I informed you the Council is duty bound to serve an abatement notice under Section 80(1) of the Environmental Protection Act 1990 should your premises found to be causing a statutory nuisance. I write to confirm noise levels have been witnessed by officers in a nearby residential premise at a volume giving rise to a statutory nuisance on the evening of Saturday the 21st September 2013.

On this occasion officers monitored noise levels for more than one hour and concluded the customer noise emanating from the beer garden and the frequent noise breakout from a live performance both gave rise to unacceptable interference with the complainant's enjoyment and amenity of their home. Both were deemed a statutory nuisance.

In addition the same complainant is also experiencing cigarette smoke entering their home. They have described frequently it feels like leaving with a smoker inside their home. This was not witnessed on the occasion officers visited. Cigarette smoke, I should warn, may be considered prejudicial to health and/or a nuisance if migrating into another property.

I understand it is already your intention to write to the department outlining action you have already taken and plan to undertake following the letter to you dated 12th September 2013, however it is now imperative that you write to us with the next 7 days from the date of this letter doing the same. I am legally bound to serve a Abatement Notice at the end of the 7 days if you have not replied in writing within this timescale or you are unable to demonstrate to the satisfaction of Torbay Council that the control measures you are to put in place will work and that the timescales proposed for the work to be completed are reasonable. You should be made aware that you do have a best practicable means defence in law, which I suggest you take legal advice on.

Rather disappointedly despite reassurance from yourself during our meeting on the 11th September 2013 that the beer garden will close at 11:00pm on Friday and Saturday nights, I witnessed myself the Beer garden was not cleared until 11:20 on Saturday 21st September 2013 and a video and statement provided by a complainant shows the beer garden was still in open at 11.15 pm on Friday the 20th September.

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

With regards to any proposed control measures I would strongly recommend that you consider closing the beer garden at an earlier time until it is possible to demonstrate proposed controls are proven effective and potentially to increase the level of supervision within that area.

Can you please ensure you respond by no later than 5:00pm on Wednesday the 2nd October 2013.

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

Yours sincerely



Mr Karl Martin
Public Protection Officer
Licensing and Public Protection

Cc David Walsh, Rock Garden, 40-44 Swan Street, Torquay, Devon, TQ2 5ES

Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.



1st October 2013

Dear Mr Martin,

Your ref: U:001775/KJM

I am writing in response to both your letter dated 24th September and also your visit on 28th September evening when you and your colleagues met with David Walsh (the manager at the Rock Garden).

Firstly and most importantly I would like to express that we as a company do have regard for our neighbours and are willing to invest time, money and effort into finding an ongoing solution to the problems highlighted. I do hope that all parties understand that these issues have not arisen through any mismanagement or disregard for either local authority or residents. As and when anyone directly affected by the noise has contacted us we have tried to return calls, in some cases unfortunately to no avail. We have no intention of ignoring either the problem or those it affects.

We have invested money into the area and as a result problems with vermin, vagrancy and drug use have significantly diminished along Swan Street. Some may say that the aesthetics of the street have also improved. This all in no way detracts from the issues in hand, the issues we will try to resolve.

The two problems as I understand them, are the occasional breakout of noise which occurs as people enter and leave the building and the effect noise from conversation in the garden is having. To attempt to resolve the problem of breakout of amplified music, a lobby will be installed as previously discussed. This will be started on Friday of this week (4th October) and aimed to be completed by the following Friday (11th October). It will consist of an enclosed double glazed double door lobby. I am hopeful that will help enormously. The design of which will be in line with our conversations with yourselves and which I believe the local authority is happy. I also invite you to come down and agree limits on the limiter within our amplified music arrangement. This has previously been set by Mr Neil Carpenter, so to lower levels, particularly the bass levels. I believe that David Walsh was asked about a limiter during your visit, he was not aware that it exists within the processor unit and cannot be altered without expert knowledge. Please let us know when is convenient.

I would point out that the Rock Garden is not using "DJ's". Our aim is to provide good local live music. This is aimed at customers who are looking for a different evening experience. One in which a conversation can take place. As such it is not our preference to have overly loud oppressive music.

Our garden is very important to our business and we are looking at a number of measures to limit the noise entering resident's properties. I really cannot stress enough that we do wish to manage this problem. On Friday and Saturday evenings there is always a member of security dedicated to the area. Anyone being overly loud in conversation is spoken to and if the problem persists, asked to leave. I believe there was one occasion when a table of customers were singing on a Saturday in August. This group were ejected from the premises after they did not quieten down. We will be carrying out a further refreshing training session with both security and bar staff as to the management of noise. The area in question is there as an amenity space for our customers to enjoy and a rare one in Torquay Town Centre. Any "rowdiness" will not be tolerated. There is no music played outside at anytime and the problems caused just seem to be from conversation. It has been reported back to me that although the noise level in the garden has not been "too bad" that the level on the road above has been higher. This seems to be as the noise bounces off of the hard surfaces as it emanates up from the garden. We are working with Mr Carpenter and ask for a little time to explore measures that we can take to mitigate what seems to be this natural amplification. This will involve use of professional and specialist materials and solutions. I do think these measures will help and ask that Mr Carpenter would be permitted to monitor levels on our behalf to see what works. We would naturally keep you closely informed on our progress.

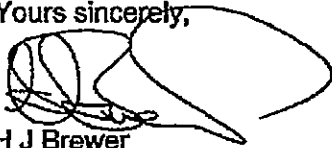
I am also happy at present to close the garden at 11pm. I do apologise for there being a 15-20 minute extension past 11pm two weeks ago. There was miscommunication revolving around "drinking up" time out there. It will not happen again. I feel that the noise problems can be significantly eased, so to reach a level that is not any higher than any other comparable town centre on a Saturday night. We have also reduced the numbers allowed outside by some 20%.

You also made mention that a complainant felt smoke was entering his home although you did not witness it when you visited. Considering the distance from our garden, this surprises me, but please keep me informed.

I would have liked to write back in response to your letter earlier, however I did want to give definite dates of action for the lobby.

I would finally like to thank you for your suggestions on courses of action, and also your acknowledgement that there are other licensed premises that also may need to do more. In the meantime we are giving this our utmost attention and hope that measures taken now will allow not only customers enjoyment but also residents peace.

Yours sincerely,



H J Brewer
Halix Ltd
Rock Garden



Harry Brewer
C/O Rock Garden
40-44 Swan Street
Torquay
Devon
TQ2 5ES

Please reply to: Karl Martin
Licensing and Public Protection
Community Safety, c/o Town Hall, Castle Circus,
Torquay
TQ1 3DR

My ref: SRU/183776
Your ref:
Telephone: 01803 208025
E-mail: Karl.martin@Torbay.gov.uk
Website:
Date: 2 July 2014

Dear Mr. Brewer

**Licensing Act 2003 and Environmental Protection Act 1990
Statutory Nuisance arising from at Rock Garden 40-44 Swan Street Torquay Devon TQ2 5ES**

I am writing to inform you on Saturday 28th June 2014, officers from this department witnessed noise from customers in the beer garden and in the area outside the front door. The noise levels were significant enough to give rise to nuisance amounting to statutory nuisance. Torbay Council therefore has a legal duty to consider what action should be taken.

In my letter dated 24th September 2013 Torbay Council gave you the opportunity to supply this department with your proposals to prevent a recurrence of the statutory nuisance witnessed on the 21st September 2014 within 7 days, as is required by law. In your letter dated 1st October 2013 you informed us of your intentions, which we accepted and agreed during a meeting at Rock Garden on the 28th September 2013. It was agreed the works would be completed by summer 2014. This course of action mitigated the need to serve a noise abatement notice under Section 80 of the Environmental Protection Act 1990. Although Torbay Council would have anticipated that the work would have been completed by this date, it also accepts that there have been significant challenges to find a solution.

It was made clear in my letter dated 24th September 2013 that the Council is duty bound to serve an abatement notice if an agreement could not be reached. I consider as the works have now started and are expected to be completed within the next 2 weeks these works fall within the scope of the work agreed last year. Therefore it is proportionate that a noise abatement notice will not be served at this time.

It is my opinion that the situation is delicate and currently there is a fine balance between neighbours making new or further complaints if the beer garden was to open later. I would therefore strongly recommend that you do not open the beer garden past the current 10:00pm until an appropriate period of assessment is completed to establish the effectiveness of the sails and associated remedial works. I am concerned if the garden is open later than 10:00pm before a suitable assessment period has concluded you could run the risk of some additional residents complaining about nuisance whom currently appear to be comfortable with the beer garden closing at 10:00pm. Clearly we would have a duty to investigate any complaint, should they arise and may subsequently conclude either a Statutory or Public Nuisance is occurring.

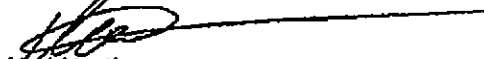
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If you require this in a different format or language, please contact me.

Furthermore if the remedial measures do not remedy the nuisance the Council retains the statutory duty to serve a noise abatement notice should statutory nuisance be witnessed at a future date.

Please do not hesitate to contact on the above number if you wish to discuss the contents of this letter.

Yours faithfully



Kari Martin
Public Protection Officer



Appendix B.

Please reply to: Mr Karl Martin

Community Safety
c/o Town Hall
Castle Circus
TORQUAY
Devon
TQ1 3DR

THE COMPANY SECRETARY
HALIX LIMITED
THE ROYAL EXETER HOTEL
EXETER ROAD
BOURNEMOUTH
DORSET
BH2 5AG

My ref: U:001775/KJM

Your ref:

Telephone: 01803 208025

Website:

Date: 7th October 2014

Dear Mr. Brewer

I am writing to inform you that on Saturday 27th September 2014, Officers of this department witnessed noise amounting to statutory nuisance in the home of a nearby residence. The source of nuisance was identified as coming from customers using the beer garden of 'The Rock Garden' public house.

There are two letters I would like to refer you to, the first dated the 2nd July 2014 and the second 24th September 2013. In my letter dated 2nd July 2014 I outlined that a noise abatement notice would be served if further statutory nuisance was witness. It was deemed proportionate at this time to not serve a notice because the work fell within the scope of works agreed in September 2013.

The Council has a duty in circumstances where the authority is satisfied that a statutory nuisance exists, or it is likely to occur or reoccur an noise abatement notice must be served under Part III of the Environmental Protection Act 1990. Enclosed is an abatement notice severed under Section 79(1)(g) of the Environmental Protection Act 1990 requiring you to abate the nuisance forthwith.

Failure to comply or if you contravene the notice you are committing an offence and you may be prosecuted. Upon conviction, the maximum fine for offences in respect of a business premises is £20,000.

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

Yours sincerely

A handwritten signature in black ink, appearing to read "Karl Martin".

Mr Karl Martin
Public Protection Officer
Licensing and Public Protection

COPY

Please note that, apart from personal details subject to the Data Protection Act, information contained in this letter may be divulged to members of the public under the Freedom of Information Act 2000.

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



COPY

To: Halix Ltd

Of: The Royal Exeter Hotel, Exeter Road, Bournemouth, Dorset, BH2 5AG

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

Rock Garden, 40-44 Swan Street, Torquay, Devon, TQ2 5ES

within the district of the said Council arising from **VOICES OF PATRONS USING THE BEER GARDEN AT THE PREMSIES ("the nuisance")**

HEREBY REQUIRE YOU as the person responsible for the said nuisance to **abate the nuisance** forthwith and thereafter neither to cause, permit or otherwise allow its recurrence.

THIS is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisance (Appeals) Regulations 1995 applies and, in consequence, in the event of an appeal this notice shall NOT be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council the nuisance to which this notice relates is (injurious to health) (likely to be of a limited duration such that suspension would render the notice of no practical effect) (the expenditure which would be incurred by any person in carrying out work in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance).

IF without reasonable excuse you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be 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.

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

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

(Signed)
Mr Karl Martin
Public Protection Officer
(The officer appointed for this purpose)

Dated: 7/10/14.

Name, address and telephone number for all communications: Executive Head, Community Safety, Torbay Council, c/o Town Hall, Castle Circus, Torquay, Devon TQ13DR Telephone: 01803 208025

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
2NB Ehp0/EPAct1990 - S.80 - Noise