

Memorandum

To:		From :	Community Safety
c.c	<div style="border: 1px solid blue; padding: 5px; text-align: center;">TORBAY COUNCIL 08 APR 2016 COMMUNITY SAFETY</div>	Contact :	Mr Karl Martin
c.c.		Ext :	01803 208025
c.c		My Ref :	1ZV SRU No: 227285/KJM
For the attention of: Licensing Steve Cox		Your Ref :	
		Date :	8 th April 2016

Subject: Premises– Licensing Act 2003

**Premises Name & Address: Lime Tree, 9/11 Dartmouth Road,
Paignton, Devon, TQ4 5AA**

- a) I have no comments to make on the above application
- b) The application does not meet the following licensing objectives:
- i) Prevention of crime and disorder
 - ii) Protection of children from harm
 - iii) Public safety
 - iv) Prevention of public nuisance
1. I wish to object to the above named application as I do not believe the application promotes the licensing objective 'Prevention of Public Nuisance'.
2. The Lime Tree is situated at the junction of Commercial Road and Dartmouth Road Paignton. Please see appendix 1, fig 1.
3. The surrounding area is predominately residential accommodation, with a number of business occupying ground floors on both Dartmouth Road and Commercial Road. Gerston Road adjacent to Commercial Road is a long Street of residential properties where a number of residents have complained in the past. A number of flats directly attached to the Lime Tree on the Dartmouth Road side have also experienced noise disturbance emanating from the Lime Tree. Fig 2 highlights the nearest predominately residential accommodation in red. The blue box indicates a derelict former church building.
4. The Lime tree is a 'managed' public house. Stars Pubs & Bars Limited holds the license and employee a manager to run the premises whose duties include acting as the nominated Designated Premises Supervisor.

5. Stars Pubs & Bars Ltd applied for a transfer and was granted the premises licence in August 2014. I raise the concern since this time the premise has seen 6 different managers run this premises, with a 7th application currently being processed by the licensing section. The poor retention is concerning when considering how the premises will be managed in the future. Though I understand the premises has had a major refurbishment recently carried out and this may improve manager retention rates.
6. Fig 3 demonstrates how a given noise source will attenuate over a known distance. The red circles are plotted 10 meters apart. A conservative assumption live music inside the pub is playing at 95dB(A), the diagram demonstrates after an initial loss of 24dB(A) due absorption of the building for every doubling of the distance from the premises there is approximately a 3dB(A) attenuation. At a distance of 80m noise has reduced to 54dB(A).

At the times the applicant seeks to have regulated entertainment the background noise in the area surrounding the Lime Tree would expected to be around 45dB(A). Regulated entertainment at 80m from the premises would therefore be nearly 10dB(A) above background levels and at this level music would be audible.

Numerous other factors need to be taken into account to quantify the likelihood of noise complaints occurring but the figures shows there is sufficient risk of noise complaints. The Council has received 6 separate noise complaints since 2007 (see appendix 2, Fig 1) further re-enforcing future complaints are likely. The applicant needs to carefully consider how they intend to manage noise breakout.

7. The majority of noise complaints received in the past occurred during a lengthy management of one individual who marketed the premises as a live music venue. Complaints where received by residents in adjoining buildings and further a field in Gerston Road. This draws me to the conclusion this premises is not suitable as a live music venue due to the poor sound attenuation properties of the building and the close proximity of noise sensitive dwellings. If residents where disturbed by music at 11:00pm at night its highly likely noise will disturb residents at 4:00am.
8. A further concern relates to the increase noise from patrons leaving the premises at 4:30 am. The applicant has not offered any further conditions and has failed to contact the responsible authorities despite being advised by Licensing officers.
9. Applicants are encouraged to consult with all responsible authorities prior to submitting an application:-

'In order to reduce the risk of relevant representations and the cost and delay of a contested hearing, applicants are strongly recommended to consult with the relevant Responsible Authority...'

Licensing Statement of Principles, Torbay Council, 2016-21, s3 p14

Unfortunately the applicant has chosen to disregard this advice leaving little option but to submit this representation and thereby missing an opportunity to avoid a committee hearing. The applicant's agent advised the application as submitted would lead to representations and an opportunity was offered to withdraw the application to give time to consult with responsible authorities. The applicant was quoted as saying 'no' and 'lets put the application in and see what happens'. This is a reckless and irresponsible attitude of a licensee and that does not instill confidence the applicant would work effectively with responsible authorities in the future when problems occur.

10. When considering an application for later hours an applicant must consider Torbay Councils Licensing Policy which leans towards refusing an application beyond 11pm in a residential area unless remedial measures can be demonstrated:-

'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.'

Licensing Statement of Principles, Torbay Council, 2016-21 p40

Though this premise already operates beyond 11:00pm, this does not exempt them from the policy if they choose to further extend operating hours. The surrounding environs contain a significant enough density of residential accommodation for this requirement to apply and the applicant should have considered Torbay Council Licensing Statement of Principles when making this application. I have found no evidence in this application that the applicant has considered further mitigations measures.

11. Part M of the application offers applicants an opportunity to state additional steps they intend to take to promote the licensing objectives. The applicant has not offered any further steps or amended any existing conditions. In relation to live music which the applicant wishes to extend until 4:00am Monday to Sunday though this is at odds with a conditions the applicant has not sought to amend:-

'For amplified live music and entertainment, wind down music of a gentler nature shall be played during the period of 23:00 - 00:00hr'

This annex 3 conditions imposed by a licensing sub-committee implies that if this application is granted as applied for the licensee has to wind down music to a gentler level for one hour and then after midnight carry on as normal. This perhaps minor overlooked issue demonstrates this application has been poorly thought out with no regards the licensing principles or consideration of the need and wishes of local residents.

This contradiction has perhaps been overlooked by the applicant but again as no prior consultation took place before the application was submitted I cannot be sure of the applicant's intentions. Again this demonstrates the application been poorly considered.

12. Conditions 1 under Annex 3, The prevention of Crime and Disorder requires:-

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

How will the management ensure compliance with this condition? Will there be a written procedure in place? Will records be kept and available for inspection?

13. Conditions 2 under Annex 3, The prevention of Public Nuisance requires:-

'All doors and windows shall remain closed during amplified live music and entertainment to reduce noise breakout. A management scheme will be in place to ensure this situation remains'

The applicant wishes to extend the hours of regulated entertainment therefore I would expect the applicant to provide supporting evidence of how this condition will

be complied with. During various late night visits in the past it has been noted the outer door has always been open rendering the lobby ineffective. How will this be managed up till 4:30am in the morning.

14. Conditions 2 under Annex 2 requires:-

'Customers must be reminded to respect neighbours when departing the premises at night.'

How will customers be reminded? Will suitable signage be displayed? Will customers be reminded via the PA to respect neighbours and leave quietly?

No additional thought has been given to controlling noise from customers in the early hours of the morning. There is a likely risk some customers leaving the Lime Tree will disturb residents in Gerston Road as they make their way towards Station square which hosts the late night refreshment premises and the main taxi rank. The application has failed to identify these significant risks and offer suitable control measures?

15. Will the beer garden remain open until 4:30am? Will numbers be limited to reduce noise breakout? Will smokers be allowed to smoke on the street and how will they be monitored and managed? No thought has either been given to how dispersion of customers at 4:30am will be managed. A simple sign advising people to be respectful of neighbours at the exits is not enough. The premises is still accountable for the actions of its customers when they have left, a concept often not understood.

16. Condition 5 Annex 3 states:-

'There shall be no entry/re-entry to the premises after 1.00am'

This condition offers some much sought after reassurance the premises cannot accept anymore new customers after 1:00am but how will the smokers be managed? If they leave the premises to smoke outside this condition states they won't be allowed back in after 1:00am. I raise this as another example of a poorly considered application.

17. Conditions 3 under Annex 2 requires:-

'A decibel meter shall be used each time music entertainment is provided and recorded in a log book'

Can the applicant provide evidence of a log book? Have these checks been undertaken? Using decibel meters at best is only a guide and does not tell a licensee whether or not the music is causing a statutory nuisance. The right, calibrated noise limiter will offer more reassurance than someone holding a meter in the street.

18. There are no existing conditions nor has the applicant suggested any further conditions to manage noise from customers or from live and recorded music, the applicant states under Part M (a):-

'Given the extensive conditions currently on this premises licence, it is not considered that any further steps are necessary in order to promote the four Licensing objections as a result of this variation'

Perhaps this statement might be the case under the existing licence but I strongly disagree with this casual statement when the applicant is applying for live and recorded music until 4:00am 7 days a week. The application as applied for falls

significantly short of addressing concerns of increase noise nuisance from music and Patrons.

Conclusion and Recommendations

19. The lack of prior consultation coupled with the consistent omissions in the application demonstrates neither the applicant or its agents have taken the implications of the proposed variation seriously. The 'see what happens' cavalier approach is not a redeemable quality for a manager wishing to open a premises until 4:00am 7 days a week.
20. To submit an application for live and recorded music until 4:00am in the morning that has failed to acknowledge the significant risks the changes will introduce and fail to identify remedial measures is nothing short of negligence.
21. The Lime Tree has been the subject of noise complaints in the last ten years and although in recent years the department has not received any noise complaints there is a tangible risk new noise complaints will be received if this application is granted. This is further compounded by the recent high turnover of managers.
22. The applicant has failed to submit a variation application that has considered Torbay Council Licensing Statement of Principles I therefore respectfully ask members of the licensing sub-committee to refuse outright the variation application as applied for on the grounds the application will undermine the licensing objectives 'The Prevention of Public Nuisance'.

Mr Karl Martin
Public Protection Officer

Appendix 1

Fig 1 - Street view of the Lime Tree



Fig 2 - Aerial view. Yellow Box is the Lime Tree, red boxes nearest residential accommodation and Blue box is a proposed redevelopment of a former Church into residential accommodation.



Fig 4 – Noise attenuation distance map



Appendix 2

Fig 1 - History of noise complaints

9/9/08	Noise from amplified music
21/04/09	Noise from amplified music
20/05/09	Noise from amplified music
9/08/13	Noise from amplified music
8/10/13	Noise from amplified music
16/01/14	Noise from amplified music
6/8/14	Noise from amplified music

Fig 2 - Data from Lalpac licensing database – Since Star pubs acquired the premises licence

14/08/2014	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Transfer	PL0411	28/08/2014	28/08/2014	indefinite	Completed
14/08/2014	TLT SOLICITORS	Lime Tree	Notification of Intent to Have G...	Notice of Intent	GM0230	14/08/2014	14/08/2014	indefinite	Completed
18/11/2014	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Change Super...	PL0411	19/11/2014	19/11/2014	indefinite	Completed
01/12/2014	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Amendment	PL0411	01/12/2014	01/12/2014	indefinite	Completed
26/01/2015	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Change Super...	PL0411	09/02/2015	09/02/2015	indefinite	Completed
18/02/2015	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Change Super...	PL0411	04/03/2015	04/03/2015	indefinite	Completed
01/04/2015	WHEELER Susan	Lime Tree	Temporary Event Notice WITH...	Temp Event N...	TE2344	02/04/2015	02/05/2015	02/05/2015	Completed
05/06/2015	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Change Super...	PL0411	18/06/2015	18/06/2015	indefinite	Completed
03/09/2015	BRADSHAW Timothy ...	Lime Tree	Licensed Premises Gaming Ma...	Annual Fee	GMP0003	03/09/2015	19/08/2008	indefinite	Completed
16/09/2015	TLT SOLICITORS	Lime Tree	Notification of Intent to Have G...	Cancel/Surrend	GM0230	16/09/2015	14/08/2014	16/09/2015	Completed
30/09/2015	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Change Super...	PL0411	14/10/2015	14/10/2015	indefinite	Completed
14/12/2015	STAR PUBS & BARS ...	Lime Tree	Licensed Premises Gaming Ma...	Transfer	GMP0003	14/12/2015	14/12/2015	indefinite	Completed
02/02/2016	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Minor Variation	PL0411	15/02/2016	15/02/2016	indefinite	Completed
14/03/2016	STAR PUBS & BARS ...	Lime Tree	Premises Licence WITH Alcohol	Variation	PL0411				Open