

Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of The Bierkeller, 7 Braddons Hill Road West, Torquay**

Wards Affected: **Tormohun**

To: **Licensing Sub-Committee** On: **3rd November 2016**

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1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a Variation to a Premises Licence. The Premise is located within the Cumulative Impact Area.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 The matters raised relate to the Licensing Objectives “The Prevention of Crime and Disorder”, “The Prevention of Public Nuisance”, “Public Safety” and the Protection of Children from Harm”.
- 1.4 The matter must be considered on its own merits having received details of the issues arising either at a hearing or by written Representations if all parties have agreed that a hearing is not necessary. Having regard to the Representations and issues arising, a decision must be made to take such steps as are necessary for the promotion of the licensing objectives. These are either:-
 - (a) to modify the conditions of the licence, or
 - (b) reject the application in whole or in part.

For this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

- 1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Interested Parties and Responsible Authorities at the determination of the matter.

2. Introduction

- 2.1 An application has been made under Section 34 of the Act for a Variation to a Premises Licence. Details of the application are shown in Appendix 1. Only the relevant pages of the application are shown.

A brief description of the proposed Variation is as follows:-

To remove the following 3 conditions:-

- i) On the ground floor of the premises alcohol will only be consumed by persons sat at tables having a table meal at the premises. The upper floor of the premises will be used for the consumption of alcohol by persons who are seated, provided that those persons have just consumed a table meal within the premises. (Annexe 2, The Prevention of Crime and Disorder, condition 1).
- ii) Performances of live music must be stage at the rear of the building. (Annexe 2, The Prevention of Public Nuisance, Condition 3).
- iii) To remove the wording for live music under the standard timings which states music can only be played on the stage at the rear of the premises.

There is also a change to the plan to show the new stage location.

- 2.2 A copy of the current premises licence showing the licensable activities, timings, conditions and the plan of the premise is shown at Appendix 2 of this report.
- 2.3 Torbay Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 35(1) but is unable to issue the variation to the Premises Licence, as relevant Representations have been received from Responsible Authorities. The Licensing Authority is also satisfied that the Representations were received within the appropriate time-scale, have not been subsequently withdrawn and are not vexatious or frivolous.

We have received a Representation from the Police in relation to the Licensing Objectives "The Prevention of Crime and Disorder", "The Prevention of Public Nuisance" "Public Safety" and the Protection of Children from Harm". This is shown as Appendix 3 of this report.

We have received a Representation from the Licensing Authority in relation to the Licensing Objectives "The Prevention of Crime and Disorder", "The Prevention of Public Nuisance", "Public Safety" and the Protection of Children from Harm". This is shown as Appendix 4 of this report.

There have been no Representations received from any other Responsible Authority or any other Interested Party.

- 2.4 The Authority is required to conduct a hearing by the provisions of Section 35(3) unless all parties agree that this is not necessary.
- 2.5 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representations and the procedure to be followed at the hearing.

- 2.6 If the application is refused, in whole or in part, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 1 of Schedule 5, to the Applicant.
- 2.7 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 4(2) of Schedule 5 to :-
- (a) The applicant for the variation of the licence against any decision to modify the conditions
 - (b) Any person who made a relevant representation in relation to the application who desires to contend
 - (i) that any variation made ought not to have been made, or
 - (ii) that, when varying the licence, the Licensing Authority ought to have modified the conditions of the licence or ought to have modified them in a different way.
- 2.8 Following such Appeal, the Magistrates' Court may:-
- (a) dismiss the appeal,
 - (b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
 - (c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,
and may make such order as to costs as it thinks fit.

Frances Hughes
Assistant Director (Community and Customer Services)

Appendices

Appendix 1	Relevant sections of the application form
Appendix 2	Copy of the current Premises Licence and Plan
Appendix 3	Representation from the Police
Appendix 4	Representation from the Licensing Authority

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

The current Premises Licence for the above Premise.
Torbay Council Licensing Policy 2016-2021.