



Devon & Cornwall Police

Licensing Team
Torbay Council
C/O Torquay Town Hall
Castle Circus
TORQUAY
TQ1 3DR

Licensing Department East
Devon and Cornwall Constabulary
Force Headquarters
EXETER
EX2 7HQ

Telephone: 01803 218900

6 October 2016

Dear Sir/Madam

The Bierkeller, 7 Braddons Hill Road West, Torquay, TQ1 1BG

I refer to an application for the Variation of a Premises Licence in respect of the above named premises, submitted by the applicant, The Bierkeller (Torquay) Ltd, the directors of which are Mr Ashley Sims and Mr Keith Byron.

The Bierkeller currently has the benefit of Premises Licence Number PL1140 which was granted by Torbay Council on 26 August 2016.

This premises is situated within the Torbay Council Cumulative Impact Area and No Drinking Zone. This premises was previously known as Blu Cargo and the licence in respect of this premises was cancelled or surrendered on 31 December 2015.

For your information, Mr Sims and Mr Byron are also directors of Harbourside Leisure Ltd and this company is the Premises Licence Holder in respect of the Apple and Parrot, 17 The Strand, Torquay, TQ1 2AA.

The Premises

In June 2016 my Police Licensing Officer, Mrs Julie Smart, was contacted by Mr Sims and he asked for her opinion as to whether the police would support an application for the grant of a new licence in respect of 7 Braddons Hill Road. Following receipt of this request, Mrs Smart consulted with Sergeant Mike Norsworthy (Licensing Sergeant – Devon) and a decision was made that the police would only support an application for a

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restaurant type premises, with the sale of alcohol not exceeding midnight, and Mrs Smart prepared a document outlining some draft conditions for consideration by Mr Sims.

On 8 June 2016 Mrs Smart, Sgt Norsworthy and Mr Karl Martin (Public Protection Officer of Torbay Council) attended the Apple and Parrot, where they met with Mr Sims and his colleague, Mr Micky Sheehan. At that time Mrs Smart advised Mr Sims that the police would not support any application for a vertical drinking establishment within the CIA but that he was entitled to apply if he so wished, and the matter would be decided by a hearing of the Licensing Authority. Mrs Smart showed Mr Sims the draft conditions she had prepared and Mr Sims indicated that he was satisfied with the majority of those conditions, including that the consumption of alcohol on the ground floor would only be by persons seated and having a table meal, but he asked whether it would be possible for the upstairs of this premises to be used for the consumption of alcohol by persons once they had finished their meal downstairs. Mrs Smart and Sgt Norsworthy agreed to this and Mrs Smart amended the wording of the proposed condition in relation to this matter to reflect the agreement reached.

On 28 July 2016 a draft application for the Grant of a Premises Licence in respect of 7 Braddons Hill Road West was received by the police from a male named Mr Stephen Darke, a director of Harbourside Leisure Ltd, who indicated that Mr Sims had requested him to make the application. Whilst considering this draft application Mrs Smart noticed that numerous additional conditions had been included in the operating schedule and she formed the opinion that these had been copied from the Apple and Parrot licence. Mrs Smart subsequently forwarded Mr Darke her recommendations in respect of this matter. At that time Mrs Smart was also copied into an email Mr Martin sent to Mr Darke in respect of this application and within that email Mr Martin points out that it appeared that some of the conditions included within the draft application appeared to have been 'borrowed' from other licences and that they should only be included if the applicants were confident that they could comply with them. A copy of this email is attached (dated 28/07/16).

On 9 August 2016 a formal application for the Grant of a Premises Licence was received in respect of this premises and the last date for representations was 25 August 2016. As this application had been submitted in line with the agreement reached between the police and Mr Sims on 8 June 2016, and the advice provided by Mrs Smart on 28 July 2016 had been taken into consideration, the police did not make representation. The DPS in respect of this application was Mr Micky Sheehan.

On 23 August 2016 Mrs Smart and Mr Martin attended a meeting at the Apple and Parrot with Mr Byron, Mr Sheehan and the DPS of that premises, Ms Sweeney, in order to discuss a number of issues in respect of the Apple and Parrot. At that time discussions moved on to the Bierkeller. Mrs Smart advised those present that she had seen on Facebook that a pool table had been installed in the Bierkeller and she asked

how they intended to manage the consumption of alcohol in the premises bearing in mind that the premises licence (when it was granted, ie 2 days later) would restrict the consumption of alcohol to persons who are seated throughout the entire premises. Mr Sheehan then stated that there had been a mistake on the application; they wanted customers to be able to stand up drinking and wished to remove the condition in relation to this matter and replace it with "Substantial food shall be available". Mrs Smart gave advice re this matter and wrote detailed notes concerning this meeting, which are attached for your information.

On 26 August 2016 the Premises Licence in respect of the Bierkeller was granted. On 1 September 2016 an application to Vary the DPS of the premises to Mr Thomas Crowe was received and this application was subsequently granted on 15 September 2016. The premises opened to the public on Friday 16 September 2016.

On 15 September 2016 an application to Vary the Premises Licence was received. This application seeks to remove condition 1 under the heading the Prevention of Crime and Disorder, which states "On the ground floor of the premises alcohol shall only be consumed by persons sat at tables and 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". The applicant proposes within this application that an alternative condition of "Substantial food to be available between the hours of 1100 and 2100" be imposed on the licence. The application also seeks to remove condition 3 under the heading the Prevention of Public Nuisance to allow the stage area to be located in a different position within the premises.

On Wednesday 28 September 2016 Mrs Smart and Mr Martin attended the Bierkeller and met with the DPS, Mr Crowe. At that time Mrs Smart advised Mr Crowe that she had seen a photograph on Facebook of a male stood up drinking what appeared to be alcohol and numerous other photographs of customers within the premises and the outside area, the majority of whom do not appear to be eating meals. Mrs Smart then carried out a licensing inspection and identified that at least 16 conditions on the licence were not being complied with. As a result of this, letters were sent to the Premises Licence Holder, The Bierkeller (Torquay) Ltd, and the DPS, Mr Crowe. Copies are attached for your information. Mrs Smart advises me that whilst conducting these types of inspections it is usual to find 1 or 2 breaches of conditions, but in the 8 years that she has been a Licensing Officer she has never identified so many breaches as she did on this occasion.

On 28 September 2016 Mrs Smart also noted that the premises contained 2 pool tables, 4 gaming machines and some large screen TV's. The premises has also been advertising football matches to be shown on Sky Sports on their Facebook page and acts such as the Vinyl Avengers. The police do not consider that these facilities fit in

with the operation of a restaurant premises and it appears that the premises are promoting themselves as a sports bar.

On Wednesday 5 October 2016 Mrs Smart received information from a reliable source who stated that he and 3 other persons had recently attended the Bierkeller. On ordering drinks at the bar they were advised that alcohol could only be consumed if food was being ordered and it was therefore agreed that they would purchase 2 hotdogs to be shared between the 4 persons, and they would be charged a total of 40p for the food. This group then awaited the arrival of their food order but it never appeared. On leaving the premises they were advised by a member of staff that the hotdogs they ordered would be taken down to the harbourside and given to 'homeless' persons. This source indicated that whilst he was within the Bierkeller, he noticed that very few people were consuming food and several persons were consuming alcohol whilst stood up.

The Premises Licence Holders

As already mentioned, Mr Sims and Mr Byron, the directors of The Bierkeller (Torquay) Ltd, are also the directors of Harbourside Leisure Ltd, who is the Premises Licence Holder for the Apple and Parrot, Torquay.

For your information, the licence for the Apple and Parrot lapsed on 28 January 2016 due to the insolvency of the then Premises Licence Holders. In April 2016 Mr Sims contacted Mrs Smart and requested advice and assistance concerning him applying for a Premises Licence for this premises. After discussions, it was agreed that the police would support an application for the Grant of a Premises Licence in respect of this premises providing that the hours were no later than the hours stipulated within the Premises Licence that had lapsed and that a number of conditions were agreed. Harbourside Leisure Ltd subsequently applied for the licence and it was granted on 17 May 2016.

In respect of this application for the Apple and Parrot, the police deviated from our usual policy of objecting to any vertical drinking establishments within the CIA as the Apple and Parrot had never been a cause of concern for the police and the applicants had agreed to all conditions proposed by the police which we considered would ensure that the licensing objectives would be met.

However, since 17 May 2016 there have been a number of concerns in relation to this premises and Mrs Smart has produced a document providing full details of these, as attached.

In addition, Mrs Smart has also had dealings with Mr Sims in relation to an event he proposed to hold at Torre Abbey. In relation to this matter Mrs Smart saw an advertisement on Facebook on the 15 June 2016 for an Abbey Days Beer Festival to

take place at Torre Abbey on 3 and 4 September 2016. On the Facebook article there was a link to a website for the event and it was evident that tickets were already on sale. As beer festivals are deemed high risk events by the police Mrs Smart made contact with Mr Sims and requested that he send her a copy of his Event Management Plan. At that time Mr Sims indicated that the event was to be held under the authority of a Premises Licence held by Torbay Council and Mrs Smart gained the impression that he thought an Event Management Plan was not necessary due to this. Mrs Smart advised him that due to the nature of the event the police would require an Event Management Plan and for the event to be considered by the Public Safety Advisory Group.

There then followed various meetings, telephone discussions, and email correspondence between Mr Sims, Mr Sheehan, Mrs Smart, Mr Martin and representatives of Torbay Council Events Team in an attempt to obtain full details of the event, including how it will be managed. During this time Mr Sims and Mr Sheehan were given advice in relation to the documentation and information required by various persons.

On 14 July 2016 the Abbey Days event was discussed at PSAG and Mr Sims provided those present with a large pile of paperwork however this was inadequate and did not contain sufficient information in order for the event to be properly assessed.

On 21 July 2016 Mrs Smart received an email from Mr Sheehan which contained a link to a file containing what appeared to be an EMP and associated documents. However on reading through these documents some of them were templates which had not been filled in and in general Mrs Smart was not satisfied with the information provided.

On 17 August 2016 a meeting was held at Torre Abbey to discuss this event. On that date Mr Sims was unable to attend due to the birth of his baby that morning but Mr Sheehan was present. At that time Mr Sheehan could not answer any questions put to him and he stated that he could only pass on any comments to Mr Sims. At this meeting Mr Sheehan was advised to ensure that all the requested information was provided by no later than 22 August 2016.

On 24 August 2016 Mrs Smart was advised by Mr Phil Black of the Torbay Council Events Team that Mr Sims had cancelled the event.

From 15 June 2016 until 24 August 2016 it was apparent that Mr Sims and Mr Sheehan were either unable or unwilling to provide adequate documentation or information to enable the PSAG attendees to fully consider the impact of this event.

As you will see from above it is evident that the conditions on the licence for the Bierkeller have not been complied with. In respect of the Apple and Parrot there has been an increase of police concerns since Mr Sims and Mr Byron took over the

management of the premises. From Mrs Smart's dealing with Mr Sims and Mr Byron it appears that they do not heed her advice, despite indicating verbally that they will do so. At the current time the police are not satisfied with the management of the Bierkeller and the Apple and Parrot and we do not have any confidence that any future concerns in relation to these premises will be addressed to a satisfactory level.

As you will be aware, your Cumulative Impact Policy states that an application for variation will normally be refused, where it is anticipated that the application will add to the problems of crime and disorder and/or public nuisance in the area, unless the applicant can demonstrate within their Operating Schedule, that there will be no negative cumulative impact on one or more of the licensing objectives.

It is the opinion of the police that whilst the operating schedule does contain suitable conditions, these were merely copied over from the Apple and Parrot licence without the applicants giving any consideration as to their relevance in accordance with the operation and management of the premises, and in any case these have obviously not been complied with since the premises opened.

In addition, the removal of condition 1 under the heading the Prevention of Crime and Disorder will change the operation of this premises from a restaurant to a vertical drinking establishment. As I'm sure you are aware the likelihood of crime and disorder in a controlled restaurant environment is minimal and the capacity of the premises is restricted to the number of tables and chairs available. In a vertical drinking establishment the number of persons present in the building will be governed by the capacity as indicated in the Fire Risk Assessment. On 28 September 2016 Mr Crowe indicated to Mrs Smart that he believed the capacity to be around 300. Furthermore, in vertical drinking establishments where large numbers of persons may stand there is an increased likelihood of conflict, therefore leading to increased levels of crime and disorder. It is the opinion of the police that should this variation be granted, the premises will operate as a sports bar and this in itself carries a significant risk of increased levels of crime and disorder.

In considering this application, the police would remind you that Section 35(3)(b) of the Licensing Act 2003 states:

*"Where relevant representations are made, the authority must –
(b) having regard to the representations, take such of the steps mentioned in subsection 4 (if any) as it considers necessary for the promotion of the licensing objectives.*

Section 35(4) states:

The steps are –

(a) To modify the conditions of the licence;

(b) To reject the whole or part of the application.

The police object to this application on the grounds that the granting of it will impact on the existing levels of crime and disorder and public nuisance both at the premises and in the area and, the police respectfully request that the Licensing Authority refuse this application.

Should you require any further information, please do not hesitate to contact Julie Smart on 01803 218900.

Yours faithfully



Superintendent M Lawler
Territorial Policing & Partnership Department

Guy, Mandy

From: Martin, Karl [Karl.Martin@torbay.gcsx.gov.uk]
Sent: 28 July 2016 12:07
To: SMART Julie 50403; 'sj_darke@'
Cc: 'Micky Sheehan'; Rackley, Shaun; 'ashley@'
Subject: RE: License application for The Bierkeller

Good Afternoon Steve

Re: Prevention of Public Nuisance conditions

Some of the conditions you have put forward seem very familiar! Some of these conditions are quite prescriptive and precise and as you have 'borrowed' them from other licences please ensure you are confident you can comply with them. You will be audited against these conditions and failure to comply could have serious consequences. That said however your proposed conditions in my view are appropriate for this premises and I have no further comments to make except you may wish to amend conditions 2 to read:-

All regulated music should be played through a noise limiter which is to be set at a reasonable level as agreed with the local responsible authority for public nuisance; this is to be independently calibrated and copies of reports forwarded to the responsible authority for public nuisance within 21 days of any recalibration. must be kept on site and available on request by an authorised officer. It shall be sealed in a tamper proof box and adjustments shall only be made with the written permission of the responsible authority for public nuisance.

Any questions please don't hesitate to get in touch.

Kind regards
Karl.

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

01803 20 80 25

From: Julie.SMART@devonandcornwall.pnn.police.uk [mailto:Julie.SMART@devonandcornwall.pnn.police.uk]
Sent: 28 July 2016 10:33
To: 'sj_darke@'
Cc: Walker, Dave; Martin, Karl; Jennings, Lisa; 'Micky Sheehan'; Rackley, Shaun; 'ashley@'
Subject: FW: License application for The Bierkeller

Steve

Thanks for forwarding me your draft application. I've had a read through and would recommend the following:

I note on page 16 you have included a reference to Gambling machines – just a reminder that you need to submit the relevant notification/application under the Gaming Act in order to have these.

Remove all references to "an additional hour on the day that British Summer Time commences". This usually appears on the licences for premises that are open after 2.00 am as on the day that British Summer Time commences

the clocks go forward at 2.00 am and they lose an hours trading. As your premises will not be open at 2.00 am it is not relevant to your premises and therefore should not be included.

I recommend you remove all references to "For the nights preceding bank holidays, Christmas Eve and Boxing Day until 0200 (or 0130) the following morning". From my discussions with Ashley and Micky and in agreement reached with the police, the premises are to be run as a restaurant, ie alcohol only with a meal downstairs, but with the facility for some of these customers to have a further drink upstairs after their meal. It is the view of the police that customers will not be eating a table meal at your premises at 1.00 am in the morning and therefore we do not feel it appropriate to have this included on the licence. However, should you wish to open later on some occasions, you will of course be able to submit Temporary Event Notices, but the police would wish for your premises to trade for a period of time before further considering this matter. As your premises are within the Torquay Cumulative Impact Area, if you wish for this to remain within your application I would have to discuss this matter with my line manager (who is currently on 2 weeks leave) and Superintendent Hawley, and they may wish for me to object if they consider that the premises are to be run as a bar until 2.00 am on certain days and not as a restaurant.

In box b) The prevention of crime and disorder on page 18 remove "No persons aged 16 or 17 years shall be permitted on the premises after 2200 hrs. Any 16 or 17 year olds allowed entry to the premises before this time must be accompanied by a responsible adult and shall be required to vacate the premises at 2200 hrs". Whilst this condition does adequately deal with 16 and 17 year olds, how does this deal with younger children, for example 8 year olds. They would be allowed in the premises until closing time. However, you have outlined 2 conditions in relation to under 18's in box e) on page 18 and I am satisfied with these. Lisa Jennings of the Child Safeguarding Team also has responsibility for assessing all applications and I have therefore copied her into this email for her information.

You will see that I have also copied 3 members of staff at Torbay Council - Dave Walker as he has responsibility for Public Safety matters, Karl Martin, who has responsibility for noise issues and Shaun Rackley who ensures that all aspects of the application are correct. They will contact you if they identify any issues.

Should you wish to discuss any of the above, please do not hesitate to contact me.

Regards

Julie Smart
Police Licensing Officer
01803 218900
07921 933974

From: stephen Darke [mailto:stephen.darke@devonandcornwall.pnn.police.uk]
Sent: 27 July 2016 17:37
To: SMART Julie S0403 <Julie.SMART@devonandcornwall.pnn.police.uk>
Subject: License application for The Bierkeller

Hello Julie,


Ashley Sims has asked me to make the licence application for The Bierkeller (former Blu Cargo. Ashley said you may be good enough to check this for us.
If you are happy to do so, please let me know what you think of the attached application and any amendments you feel should be made.

Many thanks,

Steve Darke

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Force Licensing Team > Licensing Items – Active > Apple and Parrot and Bierkeller Torquay

Item Type	Other
Prem Name	Apple and Parrot and Bierkeller Torquay
Date Rec'd	23/08/2016
Date Due	
Event Start Date	23/08/2016 11:00
Event End Date	
Submitting Officer	SMART Julie 50403
Applicant Surname	
Applicant First Name	
Proposed DPS Surname	
Proposed DPS First Name	
Prem Street	
Prem District	
Prem Town	Torquay
Prem County	Devon
Prem Postcode	
Premises risk rating	
Hub Location	EAST - Exeter
Logic outcome	Fail
Licensing Office	Torbay
Allocated To	Julie SMART
Item Report Summary	Meeting at Apple and Parrot re Harbourside Leisure Premises.
Comments	<p>SMART Julie 50403 (25/08/2016 10:50):</p> <p>At 11.00 am on Tuesday 23 August 2016 myself and Karl Martin attended a meeting at the Apple and Parrot with Keith Byron, Micky Sheehan and Michelle Sweeney to discuss issues concerning customers consuming alcohol outside of the Apple and Parrot in breach of the licence and crowding of the pavement at the weekend which wasn't being managed by door stewards. Advised that in respect of the Pavement Cafe Permit area the premises must ensure that no customers are drinking outside until a variation has been granted to authorise this. Discussed 3 photos of Pavement Cafe Permit area from the weekend. Michelle stated that a group called Beans on Toast had been playing and when they finished lots of customers went outside to cool off and smoke. It was pointed out that these customers were blocking the pavement causing pedestrians to walk into the road and they were advised to ensure that door stewards</p>

make sure that an area of the footpath is kept clear at all times.

Discussed recent L10's and I explained that officers submit these reports either on the night or sometimes several days later and the report gives their impression of a situation but if the premises has a different opinion I am happy to hear it and note it on the relevant item on the computer. Michelle then outlined 2 such L10's where she wished to make comments, which have now been input onto this system

Also discussed issues around the proposed management of Abbey Days Festival, which is also being put on by Ashley Sims and Micky Sheehan. I explained that I was concerned that the Bierkeller would be opening on Friday 26 August 2016 but the following weekend Micky, the DPS, would be at Abbey Days for 2 days. Micky stated that he was also concerned about this. I also pointed out that the Event Management Guide for Abbey Days indicates that Michelle will be responsible for the bar staff at that event and I advised her that that caused me some concern as I felt she should be at the Apple and Parrot. Michelle stated that she wasn't aware that she was going to be at Abbey Days and I advised her that that is what Ashley has written in his event plan.

Whilst at this meeting I mentioned that I had seen on Facebook that Harbourside Leisure have put a pool table in the Bierkeller and I asked how they intend to manage the consumption of alcohol in that premises bearing in mind that the premises will have primarily a restaurant licence, ie all persons seated and alcohol only to be consumed by persons having a table meal. An application for this premises is currently in the consultation period and is due to be granted on 25/08/16. Micky stated that there had been a mistake on the application/licence and they want people to be able to stand up drinking. Keith stated that they would have staff on duty watching and CCTV would also cover the area but that there probably would be occasions when people would be stood up. They said as the premises were going to be a Bierkeller there could be conflict issues between staff and customers if customers keep standing up and are told to sit down and that the premises would point out to customers that the police won't allow standing up.

Micky also stated that the stage as shown on the plan on the application is in the wrong place and ideally he would like to move this to another position within the premises. This stage will be where the Oompah band are located. Karl gave advice re this matter.

I advised Keith and Micky that there was no mistake on the application, and that in fact Ashley had consulted with both the police and Karl before he submitted the application and he was advised that as the premises are within the CIA, the police would not support any application for vertical drinking but he was entitled to apply which would result in a hearing of the licensing authority. He was advised that the only type of application that the police would support would be for a restaurant licence with everyone sat down. Ashley stated that he would be happy with that and it was therefore agreed that the police would draft some conditions for his

consideration. At the meeting to discuss those conditions Ashley asked for a few minor amendments which the police agreed to but it was noted that when the application was actually submitted someone had copied most of the conditions from the Apple and Parrot licence onto that application. Karl stated that he had also noticed this and he actually sent an email to Ashley or Steve Darke (who put in the application on behalf of Harbourside Leisure) stating that the conditions were a bit onerous for a restaurant licence and he should be sure that the premises could comply with them.

Micky stated that he had looked at the licence of Salt and Pepper next door and wants to remove the condition on the Bierkeller licence and replace with "substantial food shall be available". I advised him that it was not quite as simple as that. The premises are within the CIA and the removal of the restaurant condition would completely change the type of premises which will become a pub. I also advised him that not only do the police need to consider the impact of this application with the current PLH we have to consider the lifetime of the licence and a pub is more likely to impact on the licensing objectives than a restaurant. I advised Micky that in my opinion the premises would need to apply for a full variation due to the substantial change in the operation of the premises and I advised Micky that I would need to discuss this matter with my managers but they were not going to be impressed that the premises aren't even open and the licence hasn't been granted but Harbourside Leisure were already seeking to move away from the original agreement.

Micky and Keith then advised me that if a customer enters and doesn't want any food they will give them free food in order to fulfil the requirement of the condition but they accepted that this may cause a few issues as all customers will be seated at long tables with mixed groups and it may become apparent that some customers had paid for food whilst others had been provided it free. Keith stated he had researched the meaning of a 'table meal' and he thinks this could be a sandwich with chips or similar and I said that it must be eaten with a knife and fork. I advised them that although this practice may be legal it could be viewed as an attempt to circumvent the conditions on the licence if customers weren't having a proper meal.

During discussions about the management of the Pavement Cafe Permit in respect of the Apple and Parrot, Micky mentioned that he was concerned about the Pavement Cafe area outside of the Cider Press, Salt and Pepper and the Bierkeller as this is a small through road and he thinks that there will be an accident there one day between a pedestrian and a vehicle.

I advised those present that in my opinion it appears that Ashley has too many projects on the go and whilst I can't fault him for his ideas and inspiration I feel he needs to slow down a bit and focus on one premises at a time, ensuring that it is being run in a professional way before taking on a new challenge. In respect of the Apple and Parrot Harbourside Leisure have now been responsible for the premises since the licence was granted in June 2016 but

there have been a number of issues, he's now applying for a licence for the Bierkeller, whilst at the same time trying to run a 2 day beer/music festival and his partner has recently had their first child. I also advised Keith that I think he and Ashley should undertake some licensing training as it is apparent that their knowledge in this area is poor and they need to better understand their responsibilities as Premises Licence Holders. Micky stated that he would arrange some on-line training for them.

Also discussed an issue with the bins in the lane that runs beside the premises. Myself and Karl went to look at these bins and I noted that the bins for the Apple and Parrot were not locked and there were lots of glass bottles in the top of them. We went back into the premises and I asked what the position with the bin locks is (2 incidents recently where glass bottles had been taken out of these bins) and Micky advised that a key had been ordered. I pointed out that the key appeared to be the triangle type similar to gas and electric meters and Keith then stated that he would go to a hardware store and get some that day.

Discussed possible variation application for the Bierkeller with Sgt Norsworthy and decision made that we should object to any application based on concerns around the Apple and Parrot, lack of licensing knowledge of PLH, lack of confidence in Ashley and Micky following Abbey Days, and the fact that this will be a substantial change of operation, ie a pub.

Visit tasked NO
 LA Time Taken
 LO Time Taken 150
 Item Briefed
 Representation/Objection No
 Hearing No
 Status COMPLETE

Version: 1 0
 Created at 25/08/2016 10:50 by SMART Julie 50403
 Last modified at 25/08/2016 10:50 by SMART Julie 50403

Close



Devon & Cornwall Police

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TQ1 1BG

Licensing Department East
Devon and Cornwall Constabulary
Force Headquarters
EXETER
EX2 7HQ

Telephone: 01803 218900

29 September 2016

Dear Sirs

The Bierkeller, 7 Braddons Hill Road West, Torquay, TQ1 1BG

I write to you in your capacities of Premises Licence Holder of the above premises, which has the benefit of Premises Licence Number PL1104 issued by Torbay Council.

At approximately 1045 hrs on Wednesday 28 September 2016 my Police Licensing Officer, Mrs Julie Smart, attended your premises in the company of Mr Karl Martin, Public Protection Officer of Torbay Council. At that time they met with your Designated Premises Supervisor, Mr Thomas Crowe, in order to introduce themselves and carry out a licensing inspection.

During the course of this inspection it was apparent to Mrs Smart and Mr Martin that many of the conditions contained within your Premises Licence were not being complied with. These breaches are now outlined below:

The Prevention of Crime and Disorder

Condition 1

On the ground floor of the premises alcohol will only be consumed by persons sat at tables and 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.

This condition stipulates that customers must be seated whilst consuming alcohol.

Furthermore, it is the opinion of the police that this condition restricts your premises to **Contact the police**

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operating as a restaurant on the ground floor, ie customers can only consume alcohol whilst 'having a table meal'. Should customers wish to consume further alcoholic drinks within your premises after they have finished their table meal, they can only do so on the first floor of your premises. This condition also applies to the outside seating area of your premises. Mrs Smart advises me that she has a photograph of a male stood up drinking what appears to be alcohol within your premises. Mrs Smart states that your Facebook page contains photographs of customers within your premises, but the proportion of customers seen with food on the ground floor is much less than 50% and certainly lower than the number the police would expect to see in a restaurant type premises. In addition Mrs Smart has a photograph of your outside seating area which clearly shows customers consuming what appears to be alcoholic drinks but no food is visible.

Condition 2

A CCTV system capable of providing images of an evidential standard in all lighting conditions, particularly with regard to facial recognition, shall operate throughout the times the premises are open to the public, with monitors behind all bars and a recording system. All recordings shall be kept for a minimum of 14 days and copies of recordings shall be supplied to the police within 7 days of any request.

Mrs Smart checked behind the ground floor bar and there was no CCTV monitor present. On asking Mr Crowe about this matter he advised her that the premises did have monitors but they were located in a cupboard. However, immediately after this he asked what size monitors the police would prefer.

Condition 5

The premises shall join the Nitenet Radio System and actively participate in this initiative.

Mrs Smart asked Mr Crowe if the premises had a Nitenet Radio and he advised her that they don't, but that a radio would be arriving next week.

Condition 8

A record of all staff training, including copies of all relevant BIIAB certificates, shall be kept at the premises for a minimum period of 12 months and be available to the police or Local Authority Licensing Officers for inspection on demand.

Mrs Smart asked Mr Crowe if he had documents outlining staff training and he said that he did not. Mrs Smart asked Mr Crowe what training the staff had received on commencing employment and Mr Crowe stated that they had received Challenge 25 and Fire Safety training.

Condition 10

Notices regarding the refusal of sale of alcohol to persons who appear drunk shall be prominently displayed at all points of sale on each floor of the premises and at the entrance to the premises, for the attention of all customers.

Mrs Smart checked the ground floor area of the premises and could not find any such poster by the entrance. Behind the bar was a small black sign relating to underage sales and drunkenness however the writing on this is very small and in her opinion this notice is not 'prominently displayed'.

Condition 11

The DPS shall ensure that an Incident Book is kept on the premises and that all incidents are recorded therein on a daily basis. This record shall include the full names of all persons involved if possible or practical to do so. The incident book shall be made available for inspection by a police officer, a police licensing officer or officers of the local authority on demand, and such records shall be kept at the premises for a minimum of 12 months.

Mrs Smart asked Mr Crowe if there had been any incidents at the premises and he said that there had not. Mrs Smart asked if he had an Incident Book ready for use if there was an incident and he stated that he did not.

Condition 12

The premises shall maintain a refusals log and record all reasons for refusing entry, and where practical, record details of all persons refused entry. This record shall be made available for inspection by a police officer, a police licensing officer or officers of the local authority on demand, and such records shall be kept at the premises for a minimum of 12 months.

Mrs Smart asked Mr Crowe if he had a Refusals Log ready for use and he stated he did not.

Condition 15

The premises shall have a zero tolerance to controlled drugs and have a written drugs policy outlining what action will be taken in respect of individuals found in possession of drugs. A copy of this policy shall be retained on the premises and shall be made available for inspection by a police officer, a police licensing officer or officers of the local authority on demand.

Mrs Smart asked Mr Crowe if he had written drugs policy and he advised her that he did not. It was however noted that there was a small notice positioned outside the entrance to the toilets regarding drug issues. Whilst it could be construed that a notice could be regarded as a written drugs policy, the police consider that such a policy is a statement of intent which outlines the procedure for staff to follow if drug use is suspected. In addition all staff should receive training on drugs issues on the commencement of their employment at the premises.

Condition 17

The premises shall display clear signage which states when persons under 18 years are permitted on the premises.

Mrs Smart checked the premises and could not find any such signage.

Public Safety

Condition 3

The licensees shall ensure that at all times there are adequate first aid arrangements. The arrangements for first aid provision include a first aid box, an adequate and appropriate supply of first aid equipment and materials to be used by patrons. Suitable protective equipment shall be provided to deal with hypodermic needles, blood spillages and other body fluids. Procedures shall be in place to ensure that body fluids are dealt with in a safe manner to avoid the risk of communicable diseases.

Mrs Smart asked Mr Crowe if the premises had a first aid box and he advised her that they did not.

Condition 5

CCTV must be in operation in areas not visible from the bar.

Mrs Smart had a look at the location of the CCTV cameras and established that on the ground floor, there is an area to the right of the front door as you enter, which leads to the stairs to the toilet area, which does not contain a CCTV camera. Mrs Smart stood in front of the bar and this area was not visible from that location.

The Prevention of Public Nuisance

Condition 2

All regulated music should be played through a noise limiter which is to be set at a reasonable level as agreed with the local responsible authority for public nuisance; this is to be independently calibrated and copies of reports must be kept on site and available on request by an authorised officer. It shall be sealed in a tamper proof box and adjustments shall only be made with the written permission of the responsible authority for public nuisance.

Mr Martin is aware that a noise limiter has been installed in the premises however he has not been consulted regarding the level this limiter should be set at, and therefore this condition has not been complied with.

Condition 6

Entrances must be provided with lobbies with automatic door-closers. The lobbies shall be in use throughout the time of entertainment.

Mr Martin looked at the lobby and only the internal set of doors had automatic door-closers.

Condition 7

Lobbies shall be constructed and operated in such a way to ensure that if regulated entertainment is being played inside the premises, only one door shall be opened at any one time to prevent noise breakout. These doors shall be fitted with automatic closers.

As above, only the internal lobby doors had automatic closers.

Condition 11

Suitable signage at exits requesting that patrons make as little noise as possible when leaving the premises shall be displayed

Mrs Smart looked for the above signage at the exit door but no signage was present.

The Protection of Children from Harm

Condition 4

The premises shall display clear signage which states when persons under 18 years are permitted on the premises.

No signage on display within the premises.

In relation to your premises, Mrs Smart advises me that in June 2016 one of your directors, Mr Sims, contacted her regarding the possibility of applying for a licence for this premises. An agreement was reached that the police would support an application for a restaurant type premises on the ground floor but with customers consuming drinks on the first floor if they had consumed a table meal within the premises and are seated. At that point Mrs Smart supplied Mr Sims with a list of proposed conditions and these were agreed. However, Mrs Smart noted that when the application was submitted, you had proposed numerous other conditions which she believed you may have copied from the Apple and Parrot licence. At that time this matter was brought to your attention by Mr Martin who advised you that you should only include conditions on the licence if you were confident you could comply with them.

Mrs Smart further advises me that on 23 August 2016 she met with Mr Micky Sheehan (former DPS of the Bierkeller) and Mr Keith Byron (a director of Bierkeller (Torquay) Ltd) at the Apple and Parrot, in the company of Mr Martin. During discussions, Mrs Smart indicated that she had seen on Facebook that a pool table had been installed in the Bierkeller and she asked how Mr Sheehan and Mr Byron intended to manage the consumption of alcohol in the premises bearing in mind that the Premises Licence that had been applied for (but not yet granted) restricted the consumption of alcohol to persons who are seated. Mr Sheehan stated that there had been a 'mistake' on the application in relation to this specific condition and he was therefore advised of the agreement reached between Mr Sims and the police. Mr Byron indicated that staff would be on duty watching customers and CCTV would also cover the area but there probably would be occasions when people would be stood up drinking.

Mr Sheehan and Mr Byron then advised Mr Martin and Mrs Smart that if customers entered and didn't want any food they would be given a free meal in order to fulfil the requirement of the licence and they indicated that this may cause a few issues as it may become apparent to customers that some customers had paid for food but others had been given it free of charge. Mrs Smart advised them that whilst this practice may be legal it could be viewed as an attempt to circumvent the conditions on the licence, particularly if customers weren't having a proper table meal.

At the conclusion of the meeting on that date Mrs Smart advised Mr Byron that she thought he and Mr Sims should undertake some licensing training as it was apparent that their knowledge in this area was poor and as Premises Licence Holders it was imperative that they understood their responsibilities.

I must say that I am disappointed that despite an agreement being reached in relation to the licence, it had not even been granted when representatives of your premises were seeking to adopt operational practices that appear to be an attempt to circumvent the conditions on the licence.

I am aware that you have submitted a variation application to remove condition 1 under the heading the Prevention of Crime and Disorder on the licence. As previously mentioned at the beginning of this letter, the police consider that you are not complying with this condition. I would advise you that you must comply with all the conditions on the Premises Licence, including condition 1 under the heading the Prevention of Crime and Disorder, at all times.

In respect of the numerous breaches of the conditions on the Premises Licence, I am extremely disappointed by the lack of responsibility you have demonstrated in respect of this matter. Once the Premise Licence had been granted on 26 August 2016, your premises should not have commenced any licensable activities until yourselves and your DPS were confident that every condition stipulated on the licence was being complied with. For your information, failure to comply with the conditions on a Premises Licence constitutes an offence under Section 136 of the Licensing Act 2003 and a person found guilty of such an offence is liable on conviction to an unlimited fine, or 6 months imprisonment, or to both.

Mrs Smart advises me that she discussed the above matters with Mr Sims on Wednesday 28 September 2016 and he assured her that all the conditions would be complied with within the next 24 hours. However, he stated that it was difficult to stop customers walking away from the bar and sipping their drinks. Mrs Smart therefore advised Mr Sims to ensure all customers entering the premises are immediately requested to sit down, with orders for drinks and food being taken by waiter/waitress service and delivered to the table. I hope that you will bear this recommendation in mind.

I would also take this opportunity to advise you that Mr Martin and Mrs Smart noted that your premises contains 4 Category C gaming machines. For your information, in order to have these machines you need to apply for a Gaming Machine Permit, through Torbay Council. Until you have this permit in place you must ensure that these machines are switched off at all times.

I must advise you that my officers will continue to monitor your premises and if the circumstances warrant it, I will not hesitate in applying for a Review of your Premises

Licence and/or seeking a prosecution for any offences committed. I do hope that you will address the concerns raised and that this course of action will not be necessary. However, should it be necessary to apply for a Review, this letter will be used as part of our evidence. This letter may also be used as part of the police evidence in respect of any other licensing matters in respect of your premises.

As Premises Licence Holder and I would remind you that it is your responsibility to ensure that your premises is run in accordance with the conditions of your Premises Licence, in a manner that promotes the Licensing Objectives and within the confines of the law at all times.

A copy of this letter has been forwarded to the Torbay Council Licensing Team for their information.

Should you wish to discuss this matter further, please contact Mrs Smart on 01803 218900.

Yours faithfully



Superintendent M Lawler
Territorial Policing & Partnership Department



Devon & Cornwall Police

Mr T J Crowe
Designated Premises Supervisor
The Bierkeller
7 Braddons Hill Road West
TORQUAY
TQ1 1BG

Licensing Department East
Devon and Cornwall Constabulary
Force Headquarters
EXETER
EX2 7HQ

Telephone: 01803 218900

29 September 2016

Dear Sir

The Bierkeller, 7 Braddons Hill Road West, Torquay, TQ1 1BG

I write to you in your capacities of Designated Premises Supervisor of the above premises, which has the benefit of Premises Licence Number PL1104 issued by Torbay Council.

At approximately 1045 hrs on Wednesday 28 September 2016 my Police Licensing Officer, Mrs Julie Smart, attended your premises in the company of Mr Karl Martin, Public Protection Officer of Torbay Council. At that time they met with you, in order to introduce themselves and carry out a licensing inspection.

During the course of this inspection it was apparent to Mrs Smart and Mr Martin that many of the conditions contained within your Premises Licence were not being complied with. These breaches are now outlined below:

The Prevention of Crime and Disorder

Condition 1

On the ground floor of the premises alcohol will only be consumed by persons sat at tables and 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.

This condition stipulates that customers must be seated whilst consuming alcohol. Furthermore, it is the opinion of the police that this condition restricts your premises to

Contact the police

Emergency 999

Non-emergency www.devon-cornwall.police.uk/reportcrime

101@devonandcornwall.pnn.police.uk 101

Follow us  DevonAndCornwallPolice  DC_Police



operating as a restaurant on the ground floor, ie customers can only consume alcohol whilst 'having a table meal'. Should customers wish to consume further alcoholic drinks within your premises after they have finished their table meal, they can only do so on the first floor of your premises. This condition also applies to the outside seating area of your premises. Mrs Smart advises me that she has a photograph of a male stood up drinking what appears to be alcohol within your premises. Mrs Smart states that your Facebook page contains photographs of customers within your premises, but the proportion of customers seen with food on the ground floor is much less than 50% and certainly lower than the number the police would expect to see in a restaurant type premises. In addition Mrs Smart has a photograph of your outside seating area which clearly shows customers consuming what appears to be alcoholic drinks but no food is visible.

Condition 2

A CCTV system capable of providing images of an evidential standard in all lighting conditions, particularly with regard to facial recognition, shall operate throughout the times the premises are open to the public, with monitors behind all bars and a recording system. All recordings shall be kept for a minimum of 14 days and copies of recordings shall be supplied to the police within 7 days of any request.

Mrs Smart checked behind the ground floor bar and there was no CCTV monitor present. On asking you about this matter you advised her that the premises did have monitors but they were located in a cupboard. However, immediately after this you asked what size monitors the police would prefer.

Condition 5

The premises shall join the Nitenet Radio System and actively participate in this initiative.

Mrs Smart asked you if the premises had a Nitenet Radio and you advised her that they don't, but that a radio would be arriving next week.

Condition 8

A record of all staff training, including copies of all relevant BIIAB certificates, shall be kept at the premises for a minimum period of 12 months and be available to the police or Local Authority Licensing Officers for inspection on demand.

Mrs Smart asked you if you had documents outlining staff training and you said that you did not. Mrs Smart asked you what training the staff had received on commencing employment and you stated that they had received Challenge 25 and Fire Safety training.

Condition 10

Notices regarding the refusal of sale of alcohol to persons who appear drunk shall be prominently displayed at all points of sale on each floor of the premises and at the entrance to the premises, for the attention of all customers.

Mrs Smart checked the ground floor area of the premises and could not find any such poster by the entrance. Behind the bar was a small black sign relating to underage sales and drunkenness however the writing on this is very small and in her opinion this notice is not 'prominently displayed'.

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Mrs Smart asked you if there had been any incidents at the premises and you said that there had not. Mrs Smart asked if you had an Incident Book ready for use if there was an incident and you stated that you did not.

Condition 12

The premises shall maintain a refusals log and record all reasons for refusing entry, and where practical, record details of all persons refused entry. This record shall be made available for inspection by a police officer, a police licensing officer or officers of the local authority on demand, and such records shall be kept at the premises for a minimum of 12 months.

Mrs Smart asked you if he had a Refusals Log ready for use and you stated you did not.

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The premises shall have a zero tolerance to controlled drugs and have a written drugs policy outlining what action will be taken in respect of individuals found in possession of drugs. A copy of this policy shall be retained on the premises and shall be made available for inspection by a police officer, a police licensing officer or officers of the local authority on demand.

Mrs Smart asked you if you had a written drugs policy and you advised her that you did not. It was however noted that there was a small notice positioned outside the entrance to the toilets regarding drug issues. Whilst it could be construed that a notice could be regarded as a written drugs policy, the police consider that such a policy is a statement of intent which outlines the procedure for staff to follow if drug use is suspected. In addition all staff should receive training on drugs issues on the commencement of their employment at the premises.

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Mr Martin is aware that a noise limiter has been installed in the premises however he has not been consulted regarding the level this limiter should be set at, and therefore this condition has not been complied with.

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Entrances must be provided with lobbies with automatic door-closers. The lobbies shall be in use throughout the time of entertainment.

Mr Martin looked at the lobby and only the internal set of doors had automatic door-closers.

Condition 7

Lobbies shall be constructed and operated in such a way to ensure that if regulated entertainment is being played inside the premises, only one door shall be opened at any one time to prevent noise breakout. These doors shall be fitted with automatic closers.

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The Protection of Children from Harm

Condition 4

The premises shall display clear signage which states when persons under 18 years are permitted on the premises.

No signage on display within the premises.

In respect of this premises I note that you became Designated Premises Supervisor on 15 September 2016 and that the premises opened to the public on 16 September 2016. As you were not an employee of the company at the time that the licence was granted, I will now provide you with some information in relation to discussions that had taken place which may be of interest to you.

Mrs Smart advises me that in June 2016 one of your directors of The Bierkeller (Torquay) Ltd, Mr Sims, contacted her regarding the possibility of applying for a licence for this premises. An agreement was reached that the police would support an application for a restaurant type premises on the ground floor but with customers consuming drinks on the first floor if they had consumed a table meal within the premises and are seated. At that point Mrs Smart supplied Mr Sims with a list of proposed conditions and these were agreed. However, Mrs Smart noted that when the application was submitted, The Bierkeller (Torquay) Ltd had proposed numerous other conditions which she believed may have copied from the Apple and Parrot licence as Mr Sims and Mr Byron are also directors of the company that hold that licence. At that time this matter was brought to the company's attention by Mr Martin who advised them that they should only include conditions on the licence if they were confident the premises could comply with them.

Mrs Smart further advises me that on 23 August 2016 she met with Mr Micky Sheehan (former DPS of the Bierkeller) and Mr Keith Byron (a director of Bierkeller (Torquay) Ltd) at the Apple and Parrot, in the company of Mr Martin. During discussions, Mrs Smart indicated that she had seen on Facebook that a pool table had been installed in the Bierkeller and she asked how Mr Sheehan and Mr Byron intended to manage the consumption of alcohol in the premises bearing in mind that the Premises Licence that had been applied for (but not yet granted) restricted the consumption of alcohol to persons who are seated. Mr Sheehan stated that there had been a 'mistake' on the application in relation to this specific condition and he was therefore advised of the agreement reached between Mr Sims and the police. Mr Byron indicated that staff would be on duty watching customers and CCTV would also cover the area but there probably would be occasions when people would be stood up drinking.

Mr Sheehan and Mr Byron then advised Mr Martin and Mrs Smart that if customers entered and didn't want any food they would be given a free meal in order to fulfil the

requirement of the licence and they indicated that this may cause a few issues as it may become apparent to customers that some customers had paid for food but others had been given it free of charge. Mrs Smart advised them that whilst this practice may be legal it could be viewed as an attempt to circumvent the conditions on the licence, particularly if customers weren't having a proper table meal.

At the conclusion of the meeting on that date Mrs Smart advised Mr Byron that she thought he and Mr Sims should undertake some licensing training as it was apparent that their knowledge in this area was poor and as Premises Licence Holders it was imperative that they understood their responsibilities.

I must say that I am disappointed that despite an agreement being reached in relation to the licence, it had not even been granted when representatives of the premises were seeking to adopt operational practices that appear to be an attempt to circumvent the conditions on the licence.

I appreciate that at that point in time you were not the Designated Premises Supervisor and were not party to these discussions. However, it is apparent that since becoming the DPS, you have not taken adequate steps to ensure that the conditions on the Premises Licence are being met.

I am aware that The Bierkeller (Torquay) Ltd have submitted a variation application to remove condition 1 under the heading the Prevention of Crime and Disorder on the licence. As previously mentioned at the beginning of this letter, the police consider that you are not complying with this condition. I would advise you that you must comply with all the conditions on the Premises Licence, including condition 1 under the heading the Prevention of Crime and Disorder, at all times.

In respect of the numerous breaches of the conditions on the Premises Licence, I am extremely disappointed by the lack of responsibility you have demonstrated in respect of this matter. Once the Premise Licence had been granted on 26 August 2016, your premises should not have commenced any licensable activities until yourself and the Premises Licence Holder were confident that every condition stipulated on the licence was being complied with. For your information, failure to comply with the conditions on a Premises Licence constitutes an offence under Section 136 of the Licensing Act 2003 and a person found guilty of such an offence is liable on conviction to an unlimited fine, or 6 months imprisonment, or to both.

Mrs Smart advises me that she discussed the above matters with Mr Sims on Wednesday 28 September 2016 and he assured her that all the conditions would be complied with within the next 24 hours. However, he stated that it was difficult to stop customers walking away from the bar and sipping their drinks. Mrs Smart therefore advised Mr Sims to ensure all customers entering the premises are immediately requested to sit down, with orders for drinks and food being taken by waiter/waitress

service and delivered to the table. I hope that you will bear this recommendation in mind.

I would also take this opportunity to advise you that Mr Martin and Mrs Smart noted that your premises contains 4 Category C gaming machines. For your information, in order to have these machines you need to apply for a Gaming Machine Permit, through Torbay Council. Until you have this permit in place you must ensure that these machines are switched off at all times.

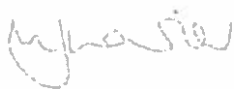
I must advise you that my officers will continue to monitor your premises and if the circumstances warrant it, I will not hesitate in applying for a Review of your Premises Licence and/or seeking a prosecution for any offences committed. I do hope that you will address the concerns raised and that this course of action will not be necessary. However, should it be necessary to apply for a Review, this letter will be used as part of our evidence. This letter may also be used as part of the police evidence in respect of any other licensing matters in respect of your premises.

As Designated Premises Supervisor and I would remind you that it is your responsibility to ensure that your premises is run in accordance with the conditions of your Premises Licence, in a manner that promotes the Licensing Objectives and within the confines of the law at all times.

A copy of this letter has been forwarded to the Torbay Council Licensing Team for their information.

Should you wish to discuss this matter further, please contact Mrs Smart on 01803 218900.

Yours faithfully



Superintendent M Lawler
Territorial Policing & Partnership Department