

Memorandum

To:		From :	Community Safety
c.c	COMMUNITY SAFETY	Contact :	Mr Gary O'Shea
c.c.	0 7 OCT 2016	Ext :	01803 208025
c.c.	TORBAY COUNCIL	My Ref :	1ZV SRU No: 232492
	For the attention of: Licensing Mandy Guy	Your Ref :	
		Date :	6 th October 2016

Subject: Premises– Licensing Act 2003

Premises Name & Address: The Bierkeller, 7 braddons Hill Road West, Torquay, TQ1 1BG

1. The Licensing Authority (Torbay Council) in making this representation seeks not to make recommendations on the virtues of the Variation Application but instead to furnish members of the Licensing Committee with information that offers an overview of the Licensing Authority experiences with the premises and the Licence Holders.
2. At the time of writing this report the Licensing Authority is satisfied the premises known as 'The Bierkeller' is not operating in accordance with the authorisation of the licence, licence number PL 1140.
3. The Licence is issued to The Bierkeller (Torquay) Ltd. The directors of this company are Mr Ashley Sims and Mr Keith Byron. Mr Crowe is the DPS.
4. A joint Authority inspection with Devon and Cornwall Police Licensing and Torbay Council Public Protection Officer on Wednesday 28th September 2016 found the premises was in breach of 16 separate licensing conditions:-
 - 4.1 9 conditions under the 'Prevention of Crime and Disorder'
 - 2 conditions under the 'Prevention of Public Safety'
 - 4 conditions under the 'Prevention of Public Nuisance'
 - 1 condition under the 'Protection of Children from harm'
5. Consequently the Licence holders may be in breach of Sec 136 (1)(a) of the Licensing Act and thereby they are deemed by the Licensing Authority to be undermining the four Licensing Objectives.
6. At the time of writing this report a criminal investigation is not considered proportionate. Instead the Licensing Authority has written to the Licence holder to highlight concerns and provide opportunity to comply with the conditions of the premises licence (see appendix 1).

7. On 9th August 2016 following consultation with Responsible Authorities the Licensing Authority received a new application for a Premises Licence in respect of the Bierkeller (Torquay) Ltd. (See Appendix 1).
8. During consultation with Police licensing, Ms Julie Smart advised the applicants a licence for a vertical drinking establishment will not be supported by the Police as the proposed premises is situated in the Cumulative Impact Area (CIA).
9. Torbay Councils Licensing Statement of Principles 2016-21 lays out the Councils Special Saturation Policy. It states were applications are received for a premises licence in the CIA the application will normally be refused :-

'The effect of this measure is to indicate that, where relevant representations have been made, an application for a new Premises Licence, or the variation of an existing Premises Licence, would normally be refused, where it is anticipated that the application will add to the problems of crime and disorder or/and 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. For example, while a large nightclub or high capacity public house, or takeaway might add to problems, a small restaurant or theatre may not.'

Appendix 1 p33

10. The application received by the Licensing Authority on the 9th August 2016 contained under the heading 'The Prevention of Crime and Disorder' the following condition:-

'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.'

11. The Licensing Authority holds the view the addition of these conditions effectively promotes the premises as a 'restaurant'. Such premises contribute less to crime and disorder and Public nuisance as recognised by the Special Saturation Policy. It is worth noting the licence holder agreed to this condition despite being offered the option of a Licensing Committee hearing had they applied for a 'vertical' drinking establishment. In view of this agreement the police and other Responsible Authorities were satisfied that in operating as a Restaurant, the premises would not be likely to add to the cumulative impact on the licensing objectives and no representations were made.
12. On the 23rd August at a meeting with the Licence holders and the DPS, Mr Sheehan stated the condition outlined in point 9 was a mistake as they would like people to consume alcohol whilst stood and expressed to Ms Julie Smart they would instead replace the condition with 'Substantial food shall be available'.
13. On the 26th August having received no relevant representations from either Responsible Authorities or Interested Parties the Council granted the application for a New Premises Licence for the Bierkeller. Mr Sheehan was named as the DPS.
14. On the 1st of September an application was received by the Authority to transfer the DPS from Mr Sheehan to Mr Crowe. The Authority did not receive an objection from the Police and the application was granted on the 15th September.
15. On the 15th September the Authority received and accepted an application for a full variation. The application seeks to remove the following condition outlined in point 9 and replace it with:-

'Substantial food to be available between the hours of 11:00 and 21:00'

The application also seeks to amend the following condition:-

'Performances of live music must be staged at the rear of the building'

16. During the inspection on the 28th September 2016 Officers also noted the licences had installed two pool tables on the 1st floor. Four Category C gaming machines were also on site without the correct authorisation, though this was remedied by the Licence holder within 48 hours. Julie Smart also provided the Licensing Authority information about football matches being shown and live music Acts, although neither of these are unlawful under the terms of the Licensing Act 2003 as amended.
17. The Licensing Authority in highlighting these issues to the Licensing Committee seeks to demonstrate these premises are not operating in a manner consistent with a 'restaurant' licence.
18. This view is further reinforced by information provided to the Licensing Authority by Devon and Cornwall Police. The Licence holder appears to be attempting to circumnavigate conditions of the licence by offering cut price food which must be purchased by customers. It is further alleged, however, that the food is not provided either as a table meal or indeed at all to customers drinking alcohol on the premises but instead that a proportion (an unknown quantity) is being donated to the homeless. It is the Licensing Authority view that under terms of the current premises licence, substantial food must be both provided to and consumed by all customers when taking alcohol and that these customers should be seated at tables.
19. Police Licensing Officers and Torbay Councils Public Protection Officers have previously expressed their concerns to the Licensing Authority regarding other enterprises Mr Sims and Mr Byron are engaged in. Specifically The Apple and Parrot and the Abbey day's festival.
20. The Licensing Authority is concerned if the application as applied for is not granted then the premises licence holders may continue to attempt to circumnavigate the Licensing Act. This is clearly not a reason to grant the licence application, for which it remains the duty of the Council when acting under its role as licensing authority, to consider the individual merits of the application and to make determination based on these individual facts.
21. The applicants by their own admissions state the original application was mistake, however the Authority does not consider this an acceptable reason to not comply with conditions of a Alcohol Premises Licence.
22. As indicated in paragraph 1, the Licensing Authority in exercising its role as a responsible authority on this occasion is not objecting to the grant of the application as such. However, it is important that Members are furnished with a complete history and background relating to the premises and the Licence holders in order that an informed decision may be made. The key consideration being whether or not the proposed activity and conditions of licence (including any additional conditions that Members may consider appropriate) should the variation application be granted will be of a nature that will ensure promotion of all licensing objectives and not add to the cumulative impact on those objectives in the area.

Gary O'Shea
Principle of Licensing

Appendix 1



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

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

My ref: R:233350/KJM
Your ref:
Telephone: 01803 208025
Website:
Date: 6TH October 2016

Dear Mr Crowe

RE: The Bierkeller, 7 braddons Hill Road West, Torquay, TQ1 1BG

The Licensing Act 2003

I write further to a meeting with you on Wednesday the 28th September 2016 at the above premises. Also Present at the meeting was Julie Smart, Police Licensing Officer for Devon and Cornwall Police. The purpose of the meeting was to introduce ourselves to you and to undertake an inspection following concerns from Police Officers that licensing conditions attached to Premises Licence PL1104 are not being complied with.

Unfortunately at the time of the visit it was noted by Julie Smart that 16 conditions were not being complied with. I refer you to the letter dated 29th September 2016 from Superintendent M Lawler which gives a detailed explanation of each condition but I reproduce those deemed not to be complied with which are as follows:-

Annex 2

The Prevention of Crime and Disorder

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.
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.

Schools and services for children and young people • social care and housing • recycling, waste disposal and clean streets • community safety • roads and transportation • town planning • tourism, harbours and economic regeneration • consumer protection and licensing • leisure, museums, libraries and arts

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

5. The premises shall join the Nitenet Radio System and actively participate in this initiative.
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.
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.
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.
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.
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.
17. The premises shall display clear signage which states when persons under 18 years are permitted on the premises.

Public Safety

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

The Prevention of Public Nuisance

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

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

The Protection of Children from Harm

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

Failure to comply with the conditions attached to the licence is a matter the Licensing Authority takes seriously and you could find the licence being subject to a review by Torbay Councils Licensing Committee or enforcement action being taken. A person commits an offence under section 136(1) of the Licensing Act 2003 if he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation. A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.

Council officers and officers of Devon and Cornwall Police will continue to monitor the situation. I strongly recommend you ensure that you comply with the conditions of the licence at all times and provide the Council and the Police at the earliest opportunity the evidence that the 16 conditions are being complied with.

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

Yours sincerely

Mr Karl Martin
Public Protection Officer
Licensing and Public Protection

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.