

Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of Murphy’s Roadhouse, 18 Esplanade Road, Paignton TQ4 6BD**

Wards Affected: **Roundham with Hyde**

To: **Licensing Sub-Committee** On: **3<sup>rd</sup> 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.
- 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” and “The Prevention of Public Nuisance”.
- 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 and 2. Only the relevant pages of the application are shown.

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

To remove 30 conditions from the current premises licence and to include 6 new conditions. These are listed in the application form (appendix 1).

To change the plan of the premises. The amended plan is shown as Appendix 2.

- 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 3 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 a relevant Representation has been received from an 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” and “The Prevention of Public Nuisance”. This is shown as Appendix 4 of this report.

It is important to note that the Police only seek to object to the removal of Condition 13 of the current premises licence under the heading, ‘The Prevention of Crime and Disorder’ which states ‘No alcohol shall be consumed in the outside area after midnight’.

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 amended Plan
Appendix 3	Copy of the current Premises Licence and Plan
Appendix 4	Representation from the Police

### **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.