



Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Variation to a Premises Licence in respect of Seamus O'Donnells, 28 Victoria Parade, Torquay TQ1 2BD

Wards Affected: **Tormohun**

To: **Licensing Sub-Committee** On: **22 December 2011**

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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 situated within the Cumulative Impact Area.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 As the Licensing Authority has no powers under the Act to raise a Representation, Officers are unable to make any recommendation.
- 1.4 The matters raised relate to the Licensing Objectives "The Prevention of Crime and Disorder", "Public Safety" and "The Prevention of Public Nuisance"
- 1.5 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.

- 1.6 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. The plan of the Premise's is shown as Appendix 2

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

The Variation is for the upstairs function room and not the whole premises.

To extend the hours for the sale of alcohol by 3 hours in the evening from 10:00 until 03:00 seven days a week. The existing Licence allows the sale of alcohol from 10:00 until midnight.

To extend the hours of the exhibition of films, indoor sporting events, live music, recorded music, performance of dance and anything of a similar description to the above from 10:00 until 03:00 seven days a week. The existing Licence allows the following the activities seven days a week as follows; films from 0:700 until midnight, indoor sporting events from 10:00 until midnight, live music from 10:00 until 23:45, recorded music from 10:00 until 00:30, performance of dance from 10:00 until midnight, and anything of a similar description from 10:00 until midnight.

To extend the hours for making music, and the facilities for dancing by 3 hours from 10:00 until 03:00 seven days a week. The existing licence allows these activities from 1000 until midnight.

To extend the hours for late night refreshment by 2.5 hours from 23:00 until 03:00 seven days a week. The existing licence allows this activity from 23:00 until 00:30.

To add an additional entertainment activity of a similar description to making music and the provision of facilities for dancing, from 10:00 until 03:00 seven days a week.

To extend the opening hours by 2.5 hours from 07:00 until 03:00 seven days a week. The existing hours allow the premises to be open from 07:00 until 00:30.

- 2.2 There is a current Premises Licence in place which is shown as Appendix 3.
- 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 amended Premises Licence, as relevant Representations have been received from a Responsible Authorities and Interested Parties. The Licensing Authority is also satisfied that 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 "Public Safety". This is shown as Appendix 4.

We have received a Representation from Public Protection in relation to the

Licensing Objective “The Prevention of Public Nuisance”. This is shown as Appendix 5.

The Licensing Authority has also received 2 Representations from an Interested Parties in relation to the Licensing Objective “The Prevention of Public Nuisance”. These are shown as Appendix 6.

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

At the time of writing this report, additional information has been provided by Public Protection to support their Representation which is shown as Appendix 7 and Appendix 8. Public Protection have provided this additional information to the Applicant in advance of this hearing.

- 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**  
**Executive Head Community Safety**

**Appendices**

Appendix 1	Relevant parts of the application form
Appendix 2	Plan of the Premises
Appendix 3	Copy of the current Premises Licence
Appendix 4	Copy of the Representation from the Police
Appendix 5	Copy of the Representation from Public Protection
Appendix 6	Copy of the Representations from the Interested Parties
Appendix 7	Letter dated 1 December 2011 from Public Protection to the Designated Premises Supervisor and Licence Holder of Seamus O'Donnells warning about statutory noise nuisance.
Appendix 8	Further letter 9 December 2011 from Public Protection to the Designated Premises Supervisor and Licence Holder of Seamus O'Donnells giving further information about their Representation.

**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 2011.