

Memorandum

To:	<div style="border: 1px solid black; padding: 5px; text-align: center;">TORBAY COUNCIL 27 SEP 2019 COMMUNITY SAFETY</div>	From :	Community Safety
c.c.		Contact :	Mr Karl Martin
c.c.		Ext :	01803 208025
c.c.		My Ref :	No18REP
For the attention of: Gary O'Shea		Your Ref :	
		Date :	27 th September 2019

Premises Name & Address: No 18, 18 Esplande Road, Paignton

Subject: Variation application – Licensing Act 2003

- a) I have no comments to make on the above application
- b) The application does not meet the following licensing objectives:
- i) Prevention of crime and disorder
 - ii) Protection of children from harm
 - iii) Public safety
 - iv) Prevention of public nuisance
1. The applicant seeks to licence the basement area of an existing licensed premise knows as Hyde Dendy.
2. One half of the basement is currently licensed until 1:00am (PL1132) and the second half in recent years has been used as storage.
3. In the past the basement area adjacent to Kernou Road has been a fully licensed premises with a terminal hour of 03:00hrs.
4. Due to insolvency the premise licensed lapsed in 2017 requiring a former operator to submit a new license application. At hearing in March 2018 representations put forward by members of the public and responsible Authorities for Public Nuisance and for Crime and disorder. Please see appendix 1 for the decision notice.
5. At this hearing oral submission were given explaining the historical problems with noise nuisance from live and recorded music and from general nuisance from customers leaving the premises. Evidence to support a Public Nuisance had and was occurring contributed to a premises license only be granted with a terminal hour of 1:00am.

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6. In November 2018 a meeting was arranged at the request of Mr Steve Narvidge with his legal representative, Julie Smart, Police Licensing and myself. The aim of the meeting was to discuss proposals for reopening the basement area as a licensed area until 3:00am. During this meeting in respect of noise I outlined the two issues I believe the applicant needs to examine in more detail:-
- Noise breakout- Historical problems of live and recorded music breaking out of the building disturbing nearby residents. Compounded by numerous changes to the buildings configuration, location of fire exits and lack of management.
 - Noise in the street- Despite numerous attempts, previous operators have never been successful in mitigating the impact of the community by customers leaving the area via Kernou Road.
7. In July 2019 a second meeting took place at the premises with Mr Steve Narvidge. Also present Mr Xander Narvidge, Neil Carpenter of Future Technical Solutions, Carrie Cottell, Torbay Council Licensing Officer and Julie Smart, Police Licensing Officer.
8. Mr Narvidge has commissioned Mr Carpenter to produce a noise impact assessment of the building. The report was not available to view at the meeting but a broad range of proposals was discussed. In relation to :-
- Noise Breakout – A number of proposals were put forward to prevent noise breakout which included a combination of physical improvements to the building such as improvements to fire exits, windows etc and installing in house PA equipment with noise limiters.
 - Noise in the street – A proposal to barricade of an exit on to Kernou Road and use of door stewards was put forward as a suggestion to control the way customers leave.
9. The application accepted by the Council does not contain Mr Carpenters Noise impact assessment. This maybe because the operator at this stage does not want this to become a public document. However without it there is no fine detail to comment on.
10. The application does however by way of suggested conditions indicate the operators is installing noise limiters.
11. The application does not fully address the impact of customers leaving the premises and this remains the greater concern.

Conclusion and recommendations

12. At this time I fully expect to continue working with Mr Narvidge and therefore it is prudent to circulate an update with recommendations ahead of the committee hearing.



Mr Karl Martin
Public Protection Officer
Torbay Council

Reason for decision

Having carefully considered all the oral and written Representations, Members resolved to grant the application with modifications, as they could not be satisfied that the mitigation put forward by the Applicant would ensure that The Prevention of Public Nuisance licensing objective would be promoted, due to the premises being in such close proximity to that of residential premises and commercial premises which offered guest accommodation.

Members noted the oral submissions of the Responsible Authorities in respect of the efforts and improvements made by the previous owners who are now the current managers to address noise nuisance emanating from the premises and its patrons but in the knowledge that these persons were imminently due to vacate the premises, they could not be satisfied at this stage that the new owners would maintain the same level of firm control and therefore had serious concerns that conditions alone would not ensure that The Prevention of Public Nuisance Licensing Objective would be promoted, if a 3am licence was granted.

In coming to that decision, Members noted from all the written and oral Representations, the impact such a late licence has had and would have on the nearby residential premises and commercial premises which offered guest accommodation, in what on some occasions had gone on until 4am.

Given that this premise was the only premises operating a 3am licence in the direct vicinity, Members were satisfied that there was a causal link of noise attributable to patrons leaving this premises and to allow it to continue with such uncertainty, was in their opinion not appropriate or proportionate.

Notwithstanding the Licensing Authority's Statement of Principles which clearly sets out the expectations on Applicants where they seek licensable activities after 11pm in residential areas, Members determined that it was appropriate and proportionate to permit a 1am licence with a closing time of 1.30am, given the areas mixed use and the need for the area to have diversity of use and that other premises in the same location operated a 1am licence without significant impact of neighbouring residential premises. In coming to this decision, Members had regard to the written and oral representations from members of the public and the Responsible Authorities.

In concluding, it was disappointing to Members that despite this being the second attempt in hearing this application, it continued to lack specific detail and clarity in what was a request for a 3am licence. Only after oral submissions from the Applicant, Members questioning and consideration of proposed further amendments that Members were able to determine this application.

Appendix 2 – Maps

1.1 – Aerial view of Hyde Dendy



1.2 – Street View – Kernou Road



1.3 Street view - Esplande Road



1.4 Map View

