

TORBAY COUNCIL

Briefing Report No:

Public Agenda Item: **Yes**

Title: Licensing Act 2003 – An application for a Premises Licence in respect of Broadsands Beach Kiosk, Broadsands Beach, Paignton TQ4 6HL

Wards Affected: **Churston with Galmpton**

To: **Licensing Sub Committee**

18th June 2020

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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 new 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”, “Public safety”, “The Prevention of Public Nuisance”, and “The Protection of Children from Harm”.
- 1.4 The matter must be considered on its merits having received details of the issues arising either at a hearing or by written Representation if all parties have agreed that a hearing is not necessary. A decision must be made, having considered the Representations, either:-
 - (a) to grant the licence subject to
 - (i) such conditions as are consistent with the submitted operating Schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under Section 19, 20 or 21 be included in the licence;

(Such conditions may differ in respect of different parts of the Premises and/or different activities).
 - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
 - (c) to refuse to specify a person in the licence as the Premises Supervisor;
 - (d) to reject the application.

- 1.5 Reasons for the decision must be given for inclusion in the appropriate Notices required to be served on the Applicant and Interested Party following the determination of the matter.

2. Introduction

- 2.1 An application has been made under Section 17 of the Act for a Premises Licence to permit licensable activities at the Premise detailed above. Details of the relevant pages of the application are shown in Appendix 1.

A brief description of the application, as follows:-

The Supply of Alcohol on and off the premises from 11.00 until 21:00 7 days a week from 1st March to 31st October.

Between the 1st November and 28th February the Supply of Alcohol will be from 11:00 until 17.00 7 days a week.

To be open to the public from 9:30 until 21:30 seven days a week from 1st March to 31st October.

Between the 1st November and 28th February the premises will be open to the public from 9:00 until 17:30 seven days a week.

The Applicants have given the following description of the premises:-

“Take-away kiosk located at the southern end of the promenade at Broadsands, close to the car park. The premises has level access from the promenade. Gazebo situated to the west side of the kiosk will provide customer seating, as will the concrete apron to the north and east. In addition, an area to the south of the kiosk shown on the site plan as ‘grassed seating area’ will also provide customer seating. There is no access in to the kiosk by the general public, nor is there a kitchen. Total maximum seating capacity is 88.”

- 2.2 The Council as the Licensing Authority is satisfied that the Applicant has met the administrative requirements of Section 17(5) but is unable to issue the Licence, as relevant Representations have been received. The Licensing Authority is also satisfied that the Representations have been received within the appropriate time scale, have not been subsequently withdrawn and are not vexatious or frivolous.

We have received two Representations. One is from the Marine Leisure and Beach Services Manager for Tor Bay Harbour Authority and the other is from a Member of the Public. They are in relation to the Licensing Objectives “The Prevention of Crime and Disorder”, “Public safety”, “The Prevention of Public Nuisance” and “The Protection of Children from Harm”. These are shown as Appendix 2.

There have been no other Representations received.

- 2.3 The Authority is required to conduct a hearing by the provisions of Section 18(3) unless all parties agree that this is not necessary.
- 2.4 Appropriate Notices have been issued to all parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including, where appropriate, details of the Representation and the procedure to be followed at the hearing.

- 2.5 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.
- 2.6 If the application is granted, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 2(1) of Schedule 5 to :-
- (a) The holder of the licence against any decision
 - (i) to impose conditions on the licence, or
 - (ii) to take any step to exclude a licensable activity or refuse to specify a person as Premises Supervisor.
 - (b) Any person who made a relevant Representation who desires to contend
 - (i) that the licence ought not to have been granted, or
 - (ii) that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or taken any step to exclude a licensable activity or refuse to specify person as Premises Supervisor.
- 2.7 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.

Steve Cox
Environmental Health Manager (Commercial)

Appendices

Appendix 1 Details of the application.

Appendix 2 Two Representations received against the application.

Documents available in Members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council Licensing Policy 2016-2021.