

Wednesday, 11 November 2020

LICENSING SUB-COMMITTEE

A meeting of **Licensing Sub-Committee** will be held on

Thursday, 19 November 2020

commencing at **9.30 am**

The meeting will be held remotely via Zoom (the links to the meeting are set out below)

<https://us02web.zoom.us/j/81781799655?pwd=R3V4Y0NDckZLYkc5SVJPWIVNOUJyZz09>

Meeting ID: 817 8179 9655

Passcode: 444385

One tap mobile

+441314601196, 81781799655#, 0#, 444385# United Kingdom

+442030512874, 81781799655#, 0#, 444385# United Kingdom

Dial by your location

+44 203 051 2874 United Kingdom

+44 203 481 5237 United Kingdom

Meeting ID: 817 8179 9655

Passcode: 444385

Members of the Committee

Councillor Ellery

Councillor Kavanagh

Councillor Foster

Together Torbay will thrive

Download this agenda via the free modern.gov app on your [iPad](#), [Android Device](#) or [Blackberry Playbook](#). For information relating to this meeting or to request a copy in another format or language please contact:

Lisa Antrobus, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the meeting.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent.
5. **Rock Garden, 40 - 44 Swan Street, Torquay**
To consider an application for a Review of a Premises Licence in respect of Rock Garden, 40 – 44 Swan Street, Torquay.

(Pages 4 - 35)

Instructions for the press and public for joining the meeting

If you are using an iPad you will need to install Zoom which can be found in the App Store. You do not need to register for an account just install the software. You only need to install the software once. For other devices you should just be taken direct to the meeting.

Joining a Meeting

Click on the link provided on the agenda above and follow the instructions on screen. If you are using a telephone, dial the Zoom number provided above and follow the instructions. (**Note:** if you are using a landline the call will cost up to 13p per minute and from a mobile between 3p and 55p if the number is not covered by your inclusive minutes.)

You will be placed in a waiting room, when the meeting starts the meeting Host will admit you. Please note if there are technical issues this might not be at the start time given on the agenda.

Upon entry you will be muted and your video switched off so that only the meeting participants can be seen. When you join the meeting the Host will unmute your microphone, ask you to confirm your name and update your name as either public or press. Select gallery view if you want see all the participants.

If you have joined the meeting via telephone, your telephone number will appear on screen and will be displayed for all to see until the Host has confirmed your name and then they will rename your telephone number to either public or press.

Speaking at a Meeting

If you are registered to speak at the meeting and when it is your turn to address the Meeting, the Chairman will invite you to speak giving the Host the instruction to unmute your microphone and switch your video on (where appropriate) therefore please pause for a couple of seconds to ensure your microphone is on.

Upon the conclusion of your speech/time limit, the Host will mute your microphone and turn off your video.

Meeting Etiquette for Registered Speakers - things to consider when speaking at public meetings on video

- Background – the meeting is public and people will be able to see what is behind you therefore consider what you will have on display behind you.
- Camera angle – sit front on, upright with the device in front of you.
- Who else is in the room – make sure you are in a position where nobody will enter the camera shot who doesn't want to appear in the public meeting.
- Background noise – try where possible to minimise background noise.
- Aim to join the meeting 15 minutes before it is due to start.



: Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – An application for a Review of a Premises Licence for Rock Garden, 40 – 44 Swan Street, Torquay TQ2 5ES**

Wards Affected: **Tormohun**

To: **Licensing Sub Committee** **19th November 2020**

Contact Officer: **Gary O’Shea**
☎ Telephone: **01803 207631**
✉ E.mail: **Licensing@torbay.gov.uk**

1. Key points and Summary

- 1.1 To consider and determine an application, in respect of the Premise detailed above, for a Review of a Premises Licence. The Premises is in the Cumulative Impact Area.
- 1.2 The application relates to all the Corporate Priorities within the Community Plan.
- 1.3 The matters raised relate to the Licensing Objective “The Prevention of Public Nuisance”.
- 1.4 Under Regulations to the Licensing Act 2003 (the Act), the Licensing Authority (the Authority) must hold a hearing to consider the application and any relevant Representations.

The Authority must have regard to the application and any relevant Representations and take one or more of the steps as detailed below, as it considers appropriate for the promotion of the Licensing Objectives.

The steps are –

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the Designated Premises Supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;
- (f) to do nothing;

and for this purpose, the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

If the licence is subject to sections 19, 20 and 21 (requirement to include certain conditions in Premises Licences) they remain.

Where the Authority takes a step to modify the conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

- 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 The application has been made under Section 51 of the Act for a Review of the Premises Licence, at the Premise detailed above.

Full details of the application are shown in **Appendix 1** and relate to noise emanating from the garden area of the premises.

A copy of the current licence, including the plan of the premises is attached as **Appendix 2**.

- 2.2 Torbay Council as the Licensing Authority, is satisfied that the Applicant is a person as defined under the Act, as being entitled to make such application and that the application is not frivolous or vexatious. The Authority is also satisfied that the administrative requirements of Section 51(3) (a) and (b) have been met and that the application is therefore, properly made.

3. Application

- 3.1 There have been two Representations received from local residents in support of the premises, who state that they are not affected by noise. There has also been an additional Representation from the Premises Licence Holder, who also lives above the premises. These are attached at **Appendix 3**.

There have been no Representations received in support of the application for Review from any other Interested Party or Responsible Authority.

- 3.2 However, there has been one Responsible Authority Representation received from Karl Martin, the Council's Public Protection Officer. This outlines the history of the premises relating to complaints received and action taken; and is made to provide necessary background information to assist in determining the outcome of this application. This is attached at **Appendix 4**

4. Conclusion

- 4.1 The Authority is required to conduct a hearing under provision of Section 52(2) of the Act.
- 4.2 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.
- 4.3 Once the matter is determined, a Right of Appeal to the Magistrates' Court is granted by Section 181 of the Act and, by Paragraph 8(2) of Schedule 5 to :-
 - (a) the Applicant for the Review,

- (b) the holder of the Premises Licence, or
- (c) any other person who made relevant Representations in relation to the application.

In the event that an Appeal is entered, the determination will not have affect until the Appeal is either determined or withdrawn.

4.4 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 an order as to costs as it thinks fit.

Steve Cox
Environmental Health Manager (Commercial)

Appendices

Appendix 1	Application for Review
Appendix 2	A copy of the Premise Licence
Appendix 3	Representations from the Residents and Licence Holder
Appendix 4	Representation from Responsible Authority

Documents available in members' rooms

None

Background Papers:

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

Torbay Council Licensing Policy 2016-2021.

LICENSING ACT 2003

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE

NOTIFICATION

Information held by Torbay Council complies with and is held in accordance with the UK Data Protection Act 1998. The information that you provide on this form will only be used for this application form and will only be disclosed where necessary under any applicable legislation.

Information may also be shared for the prevention and detection of crime, for example with the police and other agencies as required by law, such as the Audit Commission under the National Fraud Initiative data matching exercise.

You have a right of access to your personal information. If you wish to access your personal information or exercise any of your rights under the legislation then please contact Torbay Council's Information Governance team on 01803 20 7467. Further information can be found on the Information Governance pages on Torbay Council's Internet site at, www.torbay.gov.uk

Completed forms should be returned to:

Environmental Health Manager (Commercial)

Torbay Council

Community Safety

C/O Torquay Town Hall

Castle Circus

Torquay

TQ1 3DR

Contact Details:

Tel: 01803 208025

Web: www.torbay.gov.uk

Email: licensing@torbay.gov.uk

FORM J



**Application for the review of a premises licence or club premises certificate
under the Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Stuart Gibbons & Daniel Burridge

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

**Rock Garden
40 - 45 Swan Street**

Torquay

TQ2 5ES

Mr D Walsh

PL 0576

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority
(please read guidance note 1, and complete [A] or [B] below)

✓

2) a responsible authority (please complete [C] below)

3) a member of the club to which this application relates
(please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

Gibbons

First names

Stuart

Please tick ✓ yes

I am 18 years old or over

Current postal address if different from premises address

[REDACTED]

Post town

Torquay

Post Code

[REDACTED]

Daytime contact telephone number

[REDACTED]

E-mail address (optional)

[REDACTED]

(B) DETAILS OF OTHER APPLICANT

Name and address

Mr D Blake



Telephone number (if any)



E-mail address (optional)



(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

This application to review relates to the following licensing objective(s)

Please tick one or more boxes ✓

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please state the ground(s) for review (please read guidance note 2)

Our grievance is under the licensing objective which relates to :-

THE PREVENTION OF PUBLIC NUISANCE

Please provide as much information as possible to support the application (please read guidance note 3)

The applicants have submitted in excess of 100 noise recordings since 11th July 2020, via the council's mobile application for submitting noise complaints (The Noise App). The complaints are in reference to the levels of noise emanating from the premises known as Rock Garden, 40-44 Swan Street, Torquay TQ2 5ES (Licence: PL0576).

Since the premises reopened on the 4th July 2020, the applicants have been subjected to excessive noise from the garden area of the above premises, whilst inside their residential homes. The noise ranges from loud voices, shouting, screaming and high levels of profanity, which the applicants believe is unreasonable.

A review of premises licence was conducted in 2014, under the prevention of public nuisance. Following the subsequent hearing, several additional conditions were attached to the premises licence to try and mitigate the noise emanating from the premises, in particular from the outside garden area.

The applicants accepted the outcome of the review in 2014, which reduced the hours permissible for the use of the garden, however, the noise levels continue to persist while the garden is in use.

Subsequent to these conditions being attached to the licence, the premises appears to have pursued a policy of applying for Temporary Event Notices (TENs) for extended opening hours in the garden, covering virtually every weekend throughout the Spring, Summer and into Autumn. Effectively, these TENs were circumventing the conditions attached at the earlier review. As neighbours, there was no notice of the intention to apply for the TENs received from the licensed premises or its designated premises supervisor and the understanding is that as neighbours there was no right of appeal the issuance of these TENs.

In December 2019 the premises applied to have some of the conditions attached from the previous review in 2014 removed, most notably to be permitted to utilise the garden up to 23:00, 7 nights per week. The applicants were disappointed with the removal of these conditions, as the premises continues to fail to control its patrons or take responsibility for the noise emanating from their premises.

Prior to the outside garden being built, the applicants had never raised any issues relating to noise emanating from the venue at 40 - 44 Swan Street under any of its previous owners, or indeed, a night club venue directly adjoining their homes. The problem of noise has arisen, and persisted since the garden was built by the current landlord of the premises, sometime between 2011 and 2013. This would appear to suggest that the outdoor space is not suitable for a premises licence due to its vicinity to the residential street and dwellings adjacent to the licensed premises.

Please tick ✓ yes

Have you made an application for review relating to the premises before



If yes please state the date of that application

Day Month Year

? / 11 / 2014

If you have made representations before relating to the premises please state what they were and when you made them

Noise diaries submitted to Torbay Council dating back to 2013.
Applied for a Licence Review which was conducted in November 2014.

[Empty rectangular box for form content]

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

Form is submitted electronically. Therefore will be forwarded to relevant authorities by Torbay Council



IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature  Also signed on behalf of D Burrige & D Blake

Date 20th September 2020
.....

Capacity Applicant
.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Licensing Act 2003

Premises Licence

576

LOCAL AUTHORITY



Torbay Council
Licensing & Public Protection
Town Hall
Castle Circus
Torquay
TQ1 3DR

Part 1 - Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

Rock Garden

40-44 Swan Street, Torquay, Devon, TQ2 5ES.

Telephone 01803 200558

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- an exhibition of a film
- a performance of live music
- any playing of recorded music
- provision of late night refreshment
- the sale by retail of alcohol

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
B. Exhibition of films (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
E. Performance of live music (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
F. Playing of recorded music (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES continued ...

Activity (and Area if applicable)	Description	Time From	Time To
F. Playing of recorded music (Indoors) continued ...	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
	On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		
	<hr/>		
L. Late night refreshment (Indoors)	Thursday to Saturday	11:00pm	2:30am
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Friday, Saturday and Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
M. The sale by retail of alcohol for consumption ON and OFF the premises	Monday to Wednesday	11:00am	11:00pm
	Thursday to Saturday	11:00am	2:00am
	Sunday	Noon	10:30pm
	Christmas Eve	11:00am	2:00am
	Boxing Day	11:00am	2:00am
	New Year's Day	11:00am	2:00am
	To extend on Sunday until 02.00 on and until 00.00 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Wednesday	11:00am	11:30pm
Thursday to Saturday	11:00am	2:30am
Sunday	Noon	11:00pm
Christmas Eve	11:00am	2:30am
Boxing Day	11:00am	2:30am
New Year's Day	11:00am	2:30am
To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- M. The sale by retail of alcohol for consumption ON and OFF the premises

Part 2

NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Rock Garden Ltd

40-44 Swan Street, Torquay, Devon, TQ2 5ES.
Telephone 01803 200558**REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)**

Rock Garden Ltd

12246833

Licensing Act 2003

Premises Licence

576

NAME, ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

David Edward WALSH

78 Westhill Road, Torquay, Devon, TQ1 4PD.

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL

Licence No. PA2682

Issued by Torbay



Steve Cox
Environmental Health Manager (Commercial)
2 November 2020



ANNEXES**ANNEXE 1****MANDATORY CONDITION: WHERE LICENCE AUTHORISES SUPPLY OF ALCOHOL**

- 1) No supply of alcohol may be made under the premises licence:-
 - (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.
- 2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3)
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises:-
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:-
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- 4) The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 5)
 - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
- 6) The responsible person must ensure that:-
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures:-

ANNEXES continued ...

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

Minimum Drinks Pricing

- 1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 2) For the purposes of the condition set out in paragraph 1

(a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979

(b) “permitted price” is the price found by applying the formula $P = D + (D \times V)$

Where:-

- (i) P is the permitted price
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence:-

- (i) The holder of the premises licence
- (ii) The designated premises supervisor (if any) in respect of such a licence, or
- (iii) The personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

- 3) Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

- 4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

ANNEXE 2

CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE

The Prevention of Crime and Disorder

1. Staff shall receive training in respect of all aspect of management of the bar and licensing law and the Barsafe policy identifies staff training as fundamental to the good conduct of premises. Training will be ongoing.
2. The manager shall be an active member of the Local Pubwatch scheme.
3. There shall be no irresponsible drink promotions and under the Barsafe policy the company operates its own minimum pricing scheme and will always adhere to any local pricing policy.

ANNEXES continued ...

4. On any Thursday, Friday, Saturday and Sunday night that the premises remain open for the sale of alcohol after midnight and then closes after 00.30, SIA Door Supervisors shall be employed on the premises from 22.00 until close, at a ratio of one Supervisor per one hundred customers (this condition shall also apply on Christmas Eve and New Year's Eve when they do not fall on a Thursday, Friday, Saturday or Sunday). On all other occasions, the Premises Licence holder shall risk assess the requirement for Door Supervisors and employ such Door Supervisors, if at all, in such numbers and at such times determined by that risk assessment.
5. All drinks must be served in toughened, strengthened, polycarbonate or plastic glasses. No alcohol shall be served in glass bottles from which it is intended or likely that customers shall drink, from 23:00 onwards.

The Prevention of Public Nuisance

1. Customers shall be advised by staff and doorstaff to leave the premises quietly and respect the neighbours.
2. Doorstaff shall ensure doors and windows remain closed from 9pm.
3. Music shall not be played at a level which would be intrusive for neighbours and any advice from the Environmental Health Officer shall be followed.
4. The premises shall remain open 30 minutes after the sale of alcohol has ceased and more sedate music shall be played at a much lower level to provide a wind down period before closing.
5. Deliveries of kegs, bottles, food or other materials necessary for the operation of the business must be carried out between 8am and 9pm and in such a manner as to prevent nuisance and disturbance to nearby residents.
6. The handling of beer kegs, bottles and other similar items must not take place between 9pm and 8am outside the building or in the beer garden.
7. The fabric of the lobby at the entrance to the premise and the entrance to the beer garden must be of an acoustic material to reduce noise outbreak from the premises. The acoustic material must not be changed or removed without the approval by officers of the Council's Public Protection Team.
8. The premises beer garden shall cease to be used by all persons by 11pm.
9. A management scheme shall be in place to ensure that the beer garden is emptied of all persons and glasses by 11pm.
10. After 11pm the designated smoking area shall be at the front of the premises. This area should be clearly defined as the designated area and the numbers of people using this area should be limited to 10 people.
11. A management scheme shall be in place to ensure that the maximum number of 10 people using the designated smoking area after 11pm shall be maintained at all times.
12. The placing of refuse, such as bottles, into receptacles outside the premises must take place between 8am and 9pm to prevent disturbance to nearby properties.

The Protection of Children from Harm

1. The premises shall operate a Challenge 25 policy. Any individual who appears to be under 25 will be required to produce an approved form of photographic id as outlined within Torbay Council's Statement of Principles.
2. Challenge 25 posters will be on display within the premises.
3. No under 18's shall be permitted on the premises after 21:00hrs, unless they are consuming a table meal in the company of a responsible adult in which case they can remain until 22:00hrs.
4. An exception to under 18's being permitted on the premises after 22:00hrs shall be to attend a pre-arranged private function in the company of a responsible adult and where the premises are closed to the public.
5. Only photographic identification shall be accepted being a passport or driving licence.

Additional Conditions Transferred from the Licence

ANNEXES continued ...

1. Substantial food to be available at all times the premises are open.
2. Full CCTV be installed at the premises, to include a recording monitor behind the bar server. Recordings to be retained for a minimum of 14 days, during which time they will be available to a police officer on demand at any reasonable time. Such system to be installed in liaison with the Police Licensing Department.

ANNEXE 3

CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY

Prevention of Crime and Disorder

1. The premises shall join and maintain their membership to the "Nitenet" system currently in operation within Torbay.
2. All persons employed to serve alcohol to members of the public must be over the age of 18.

The Prevention of Public Nuisance

1. Noise or vibration shall not emanate from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed. In general terms, noise from the premises should not be audible within any noise sensitive premises (e.g. dwelling) with windows open for normal ventilation especially after 11pm. This will be assessed from the boundary to the nearest residential properties, on all sides of the licensed premises. The criteria that will be applied are;
 - (i) Before 11pm - Noise emanating from the premises shall not be clearly distinguishable above other noise.
 - (ii) After 11pm - Noise emanating from the premises shall not be distinguishable above background levels of noise.
 - (iii) The local authority shall reserve the right in cases of tonal noise and where premises are attached to others (i.e. semi's and terraced properties), to make further assessments from within the residential property.
2. A noise limitation device must be installed to control the system to which all amplification equipment is fitted. This device shall be regularly maintained to ensure that the noise produced within the premises will not be audible within any residential properties in the vicinity.
3. The volume at amplified sound used in connection with the entertainment provided shall at all times be under the control of the Licensee/Management and the controlling mechanism shall be operated from a part of the premises not accessible to the public.
4. Noise levels within the premises resulting from the operation of any musical instrument or amplified equipment shall be regulated so as to protect the hearing of any employee therein in accordance with current standards.
5. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect of the needs of local residents and to leave the premises and the area quietly.
6. Patrons shall be asked not to stand around talking in the street outside the premises or any car park, and asked to leave the vicinity quickly and quietly.
7. An announcement shall be made prior to closing requesting patrons' cooperation in leaving the premises and vicinity as quietly and quickly as possible.
8. Staff shall check prior to entertainment, and periodically during the entertainment, that all windows and doors are shut.
9. A senior member of staff (manager) shall assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment to ensure levels of noise have not increased.
10. Provision of mechanical ventilation and air conditioning system shall not allow noise breakout from the premises or cause a nuisance by its operation.
11. Regular maintenance shall be carried out on all plant and machinery to ensure that noise disturbance from such sources is kept to a minimum.
12. Cooking, noxious or persistent smells from the premises shall not cause a nuisance to nearby properties and the premises must be properly vented.

ANNEXES continued ...

13. When food for consumption off the premises is sold, adequate waste receptacles for use by patrons shall be provided in the local vicinity. All the rubbish produced by the premises shall be stored securely in a designated area or in a bin with a tight fitting lid. This will help prevent litter being blown around.
14. Facilities for depositing litter and the collection of litter generated by patrons shall be available and maintained, where outside areas are provided for the use of patrons.

CONDITIONS ATTACHED AFTER A REVIEW HEARING BY THE LICENSING AUTHORITY

1. There should be a minimum of 5 prominent, clear and legible notices displayed within the beer garden stating that patrons are required to respect neighbours by keeping noise to a minimum and that any noisy or disorderly patrons will be asked to leave the beer garden.
2. A Management Scheme shall be in place to ensure compliance of that stated within the notices in the beer garden.
3. A Management Scheme must be in place to ensure that both sets of the lobby doors are not open at the same time after 9pm.
4. To reduce noise breakout, doors and windows must be kept shut during the playing of amplified music. A Management Scheme shall be in place to ensure this situation remains.

ANNEXE 4**PLANS**

Copy attached to Licence.

LOCAL AUTHORITY



Torbay Council
Licensing & Public Protection
Town Hall
Castle Circus
Torquay
TQ1 3DR

Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

Rock Garden

40-44 Swan Street, Torquay, Devon, TQ2 5ES.

Telephone 01803 200558

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- an exhibition of a film
- a performance of live music
- any playing of recorded music
- provision of late night refreshment
- the sale by retail of alcohol

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
B. Exhibition of films (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
E. Performance of live music (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
F. Playing of recorded music (Indoors)	Monday to Wednesday	11:00am	11:30pm
	Thursday to Saturday	11:00am	2:30am
	Sunday	Noon	11:00pm
	Christmas Eve	11:00am	2:30am

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES continued ...

Activity (and Area if applicable)	Description	Time From	Time To
F. Playing of recorded music (Indoors) continued ...	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
	On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		
	<hr/>		
L. Late night refreshment (Indoors)	Thursday to Saturday	11:00pm	2:30am
	Christmas Eve	11:00am	2:30am
	Boxing Day	11:00am	2:30am
	New Year's Day	11:00am	2:30am
	To extend on Friday, Saturday and Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday.		
M. The sale by retail of alcohol for consumption ON and OFF the premises	Monday to Wednesday	11:00am	11:00pm
	Thursday to Saturday	11:00am	2:00am
	Sunday	Noon	10:30pm
	Christmas Eve	11:00am	2:00am
	Boxing Day	11:00am	2:00am
	New Year's Day	11:00am	2:00am
	To extend on Sunday until 02.00 on and until 00.00 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Wednesday	11:00am	11:30pm
Thursday to Saturday	11:00am	2:30am
Sunday	Noon	11:00pm
Christmas Eve	11:00am	2:30am
Boxing Day	11:00am	2:30am
New Year's Day	11:00am	2:30am
To extend on Sunday until 02.30 on and until 00.30 Monday on Easter Bank Holiday, both May Bank Holidays and August Bank Holiday. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.		

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- M. The sale by retail of alcohol for consumption ON and OFF the premises

NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Rock Garden Ltd

40-44 Swan Street, Torquay, Devon, TQ2 5ES.

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

Rock Garden Ltd

12246833

NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

David Edward WALSH

STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED

Access is restricted only under the terms of the Licensing Act 2003.



Steve Cox
Environmental Health Manager (Commercial)
2 November 2020

Representation One

In reference to the noise complaint about Rock Garden, I live in the flats in front of Rock Garden and my front door is directly opposite the pub.

I'm emailing in Rock Gardens defence, Dave the manager has been brilliant, when the pubs reopened he checked in about noise levels and the only times I struggled was when new door staff were shouting to ensure the line and social distancing were kept. Dave addressed it that day and it's not happened again

I live with my xxxxxxxx 7 year old and his bedroom is the closest one in the building to rock garden and he sleeps through without any issues.

Yes the noise late at night has increased but that has very little to do with Rock garden and much more to do with the clubs on the marina being closed which brings more people down Fleet Street.

I have lived here for over two years and Dave and his team have always been considerate neighbours and while you can hear the music it's not overly intrusive. If I do get disturbed generally get woken by drunk couples arguing in the small hours well after the Rock Garden has closed

Many thanks

xxxxxxxxxxxxx

Representation Two

Hi

My name is xxxxxxxx and I am the owner of Swan Court, Swan Street, Torquay which is directly overlooking the garden.

The property comprises of 5 flats of which 3 flats occupants lounge/bedrooms windows face the garden.

Since Rock Garden has opened I haven't received any complaints from Tenants about the garden during that time.

I have had multiple tenants during the period of Rock Garden being open and can confirm again of no complaints.

If you require to discuss any matters with me I can be contacted on xxxxxxxxx or office number xxxxxxxxx

Best regards

xxxxxxxxxxxxx

Representation Three

Dear Councillors

I am writing to put forward a positive representation concerning Rock Garden and the planned review

Firstly I must disclose I am the director of Rock Garden Ltd however I am not writing this representation as a local independent businessman. I am writing it as a council tax paying resident of Swan Street

My address is xxx and is directly above the venue.

The reason I feel I can put forward an unbiased and relevant representation is due to the fact I live above the venue (also directly atop the beer garden side) with my 2 year old daughter Eloise. She has a bedtime routine of around 8pm (If I'm lucky) and is a fairly light sleeper. If the garden really was as disruptive as the complainants are insisting I can assure you all it is not something I would subject my own daughter to.

I will keep this letter brief and leave it at that however I did feel as myself and my family are residents of the street that we should at least be able to voice our opinions from that perspective.

Many thanks for your time and stay safe at this difficult and testing time

All the best
David Walsh

Memorandum

To:	Licensing and Public Protection Team	From	:	Mr Karl Martin
c.c		Contact	:	
c.c.		Ext	:	01803 208025
c.c		My Ref	:	1ZV SRU 259072
.		Your Ref	:	
For the attention of:		Date	:	22 ND October 2020
Gary O'Shea, Principle Licensing Officer				

Subject: Review Application - Rock Garden, 40-44 Swan Street, Torquay.

1. The Review application submitted by residents is the second Review hearing requested since the premises opened in 2014. The first Review in November 2014 and the current application both relate to noise nuisance emanating from the beer garden. Therefore the 2014 review is relevant to the current application and documentation can be accessed here:-

<https://www.torbay.gov.uk/DemocraticServices/mgAi.aspx?ID=14592#mgDocuments>

2. For convenience please see Appendix 1 of this report for a copy of Karl Martins representation for the 2014 hearing. The document details the history of the premises, reference to planning applications and the noise nuisance experienced by local residents at that time.

Chronology December 2014 to September 2020

3. In December 2014 the Authority accepted the argument put forward by the owners legal counsel that in effect the review hearing had remedied the nuisance. Therefore the noise abatement notice was considered by the Authority as complied with and would not pursue further enforcement. The Environmental Protection Act 1990 does not offer a formal route to withdrawn notices so in effect the notice stood until transfer of the company from 'Halix Ltd' to 'Rock Garden Ltd' in December 2019. Currently the premises is not subject a noise abatement notice.
4. Between November 2014 and July 2020 no further noise complaints received by the Authority (please see point 8).
5. In April 2017 Mr Walsh requested a meeting to discuss the potential for the beer garden operating hours to be extended from 21:00 until 23:00. There had not been any recorded noise complaints for nearly 3 years and therefore reasonable to conclude the review hearing in 2014 had succeeded.

Mr Walsh argued the business has fundamental changed from a predominately wet pub to a food led establishment in conjunction with noise abatement measures. (Further checks were made with Police Licensing who confirmed the premises had low reported crime and disorder and have no concerns about the management of the premises).

The use of Temporary Events Notices was discussed and Mr Walsh was warned TENS are useful to determine if noise levels can be managed without causing nuisance but the opposite is also true and may prove the review hearing in 2014 was the right outcome.

In May 2017 Mr Walsh submitted eight TEN notifications. No objections to the TENS was lodged by either the Public Protection Officer or the Police Licensing Officer. For eight weeks from June to August bank holiday the beer garden remained open until 22:00pm on a Friday and Saturday evening. Please see Appendix 2 for further details.

A 'Gentleman's agreement' offered furthered reassurance as Mr Walsh agreed he would not use any remaining TENS if noise complaints were received regardless of validity.

No complaints or enquires received by any resident during the summer of 2017

6. The Government introduced TENS into the Licensing Act 2003 to make provision for small scale one off events, or situations where Premises Licences do not meet the needs of a particular function on a particular night. However it is common practice to use TENS as a 'test bed' for a particular licensable activity to evaluate the risk of undermine the licensing objectives. The approach, though not formally recognised in Torbay Councils Licensing Statement of principles, is common place and encouraged in situations where doubt remains. Useful in situations where it is anticipated a minor or full variation application may lead to representation.
7. In April 2018 during a meeting with Mr Walsh he proposed he would like to submit an application to vary the beer garden operational times. However, it was recommended to use TENS to build confidence among Responsible Authorities and residents. Mr Walsh agreed and submitted 10 TENS beginning with May bank holiday lasting until the August Bank Holiday.

No objections to the TENS was lodged by either the Public Protection Officer or Police Licensing.

8. In May 2018 a resident contacted the Authority and lodge a complaint about the use of TENS to extend the timing of the beer garden. A complaint about noise levels was logged but no further supporting information was provided. The complainant did not make any further contact with the Authority.
9. Mr Walsh submitted three further TENS in the summer of 2019. No complaints received by the Authority.
10. In November 2019 during a meeting with Mr Walsh he informed the Authority that he was purchasing the lease for the business. Part of his business plan to improve growth included the beer garden to remain open until 11:00pm to allow customers to consume food and alcohol.
11. On the 22nd November 2019 Mr Walsh submitted a minor variation application to remove the 9pm time limit on the beer garden and replaced it with 11pm. Site notices were placed by the application and with no objections from Responsible Authorities or Interested parties the application was granted on the 9th December 2019.
12. On the 20th March 2020 Rock Garden was closed by order of the Government.
13. July the 4th 2020 Rock Garden could re-open.
14. 11th July 2020 the first recording using the Councils Noise app logged a by a complainant.

15. Three separate complainants representing two households used the noise app from the 11th July 2020. Approx. 80% of complaints logged on a Thursday, Friday and Saturday. Overall approx. 70% of complaints logged before 9:00pm.
16. Mr Walsh was informed in mid-August that continued complaints were being made to the Authority regarding noise nuisance from the beer garden and that the complainants wished to seek a review of the licence.
17. A meeting was brokered between the complainants and Dave Walsh on Friday the 28th August 2020.

The three complainants of which two are the applicants for the Review application argued the noise nuisance has never been resolved but they tolerated it in line with the outcome of the 2014 Review.

Mr Walsh argued he has been operating the beer garden beyond 9pm under TENS without complaints for three summers in a row and suggested he will examine further ways to improve the situation.

One of the residents proposed a cooling off period of two weeks where they would work with Mr Walsh. It was agreed they would contact Mr Walsh on occasions where the noise was creating a nuisance as this would enable Mr Walsh to investigate further arrangements to mitigate nuisance.

18. Sunday 23RD August Officers visited and inspected the beer garden at Rock Garden at approximately 22:10. An SIA door steward was present and directing customers to lower their voices where appropriate. The recently installed dB meter was observed and appeared to assist management when further intervention may be required. Around 10-15 customers were using the garden at the time of the visit and Officers did not have cause for concern and credited Mr Walsh for his management of the area.
19. Following the meeting with Mr Walsh and the complainants further noise app recording where submitted:-
 - Sunday 23rd August
 - Monday 31st August
 - Friday 4th September
 - Friday 11th September
 - Saturday 12th September (after 9pm)
 - Saturday 19th September (after 9pm)
20. Review application received and accepted by the Licensing Authority on the 24th September 2020.
21. 25th September 2020 Government regulations require licenced premises to close at 22:00

Considerations and recommendations for the Licensing Sub-Committee

22. The Responsible Authority supports Mr Walsh's assertion that the 2014 review forced the business to change direction and develop a brand based around food and grassroots entertainment. This has been evidenced by direct observation of Officers and is reflected by Rock Gardens own online presence:- <https://www.rockgardentorquay.co.uk/restaurant-torquay> and <https://www.facebook.com/rockgardentorquay/>

This change of direction has been an important consideration in any decisions to overturn the 9pm limit imposed by the review in 2014.

23. Mr Walsh since 2014 has continued to engaged with Responsibility Authorities and seek advice, including from independent noise consultants in decisions or ideas about the beer garden. For example in February 2020 he discussed proposals for a limited number of live music events to take place in the garden both with the Authority and his noise consultant. He listened to the advice and decided to not explore this idea any further.

24. The Responsible Authority has struggled with the available evidence to determine if statutory nuisance is occurring under the Environmental Protection Act 1990 and if the Licensing Objective 'the Prevention of Public Nuisance' is being undermined for the following reasons:-

- Noise levels not what they were in 2014. In part due to the clientele the business attracts and its reputation as a predominately food led business but significantly because Mr Walsh learned from 2014 and continues to demonstrate a high level of due diligence towards managing outside spaces.
- No noise complaints received during the 42 occasions the beer garden operated until 10:00pm under TENS.
- Numerous late night visits to Rock Garden since 2014 has not raised any concerns about poor management or noise nuisance.
- The nearest residential dwellings have submitted representations supporting the business and confirm a nuisance is not present.
- To what degree has Covid restrictions played a part in the sudden increase in noise complaints.

Between July and early October 2020 the Government has encouraged the use of outdoors spaces to facilitate social distancing based on the understanding a virus is harder to spread outdoors.

Rock Garden is quite unique as a Torquay town centre premises because of the large beer garden. Encouraged by the Government Mr Walsh has used the beer Garden to ensure his premises can be covid secure. It has been noted by Officers, Premises that excel at social distancing measures greatly increase the confidence of the public and benefit from a dramatic upturn in business. Rock Garden is one of those premises to benefit.

This has beyond all doubt increased the numbers of customers using the beer garden over a similar trading period and will affect the measurable and indeed tolerable noise levels. However a pandemic is not normal life and it reasonably forcible once covid restrictions are no longer necessary the use of the beer garden will return to a pre-covid state.

25. The review applicants have submitted conclusive evidence of noise emanating from the beer garden. Voices are audible in their homes and it is understandably that up to 12 hours a day of this type of intrusion would have unwanted and detrimental effect on their own right to peaceful enjoyment.

The noise nuisance in 2014 was unacceptable and effected a wide range of nearby residential properties. In 2020 the Responsible Authority cannot within the framework of the Environmental Protection Act 1990 or the Licensing Act 2003 determine if the

threshold of nuisance is breached when environmental factors are examined for the following reasons.

- Rock Garden is situated in the established late night economy area where there is an expectation of elevated 'reasonably' noise from licensed premises.
- Lack of complaints or representation from the nearest residential dwellings.
- Mr Walsh noise abatement procedures may offer a Best Practicable Means defence.
- Patrons using the beer garden are not behaving unreasonable.
- Due to the location and the built environment unwanted noise cannot be removed. Numerous options have been explored. The only option is to cease use of the beer garden completely.
- Reported nuisance is not occurring during the sensitive night time hours of 11:00pm-7am.
- Reported nuisance is not as frequent or intense and effecting a wider audience as it has in the past.
- The Covid pandemic and subsequent Government restrictions have distorted the general view of nuisance and the ability for the Responsible Authorities to assess the Review application that is both fair and reasonable to residents and the business operator.

26. At the time of writing this report negotiations continue with Mr Walsh to explore what further measures can be put forward to reduce unwanted noise disturbing the applicants.

27. Ahead of the Review hearing Officers final recommendations will be circulated for consideration by Members of the Licensing Sub-Committee.



Karl Martin
Public Protection Officer
Licensing and Public Protection
Community Safety
Torbay Council

