

Wednesday, 23 March 2022

**LICENSING SUB-COMMITTEE**

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

**Thursday, 31 March 2022**

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,  
Torquay, TQ1 3DR

**Members of the Committee**

Councillor Ellery  
Councillor Kavanagh

Councillor Mills

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# 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. **Minutes** (Pages 4 - 12)  
To confirm as a correct record the Minutes of the meetings of a Sub-Committee held on 10 March 2022.
4. **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.)
5. **Urgent items**  
To consider any other items that the Chairman decides are urgent.
6. **Torquay Thai Restaurant, 171 St Marychurch Road, Torquay** (To Follow)  
To consider an application for a Premises Licence in respect of Torquay Thai Restaurant, 171 St Marychurch Road, Torquay.

**Meeting Attendance**

Whilst national Covid-19 restrictions were lifted on 19 July 2021, Torbay Council has taken the decision to continue operating in a Covid-19 secure manner in order to protect staff and visitors entering Council buildings and to help reduce the spread of Covid-19 in Torbay. This includes social distancing and other protective measures (e.g. wearing a face covering (unless exempt), signing in and using hand sanitiser). Our public meetings will continue to operate with social distancing measures in place and as such there are limited numbers that can access our meeting rooms. Also, to help prevent the spread of the virus, anyone attending meetings is asked to take Covid lateral flow test the evening before - if you have a positive test result please follow the Government's guidelines and do not attend the meeting.

If you wish to attend a public meeting please contact us to confirm arrangements for your attendance.

**Minutes of the Licensing Sub-Committee**

**10 March 2022**

**-: Present :-**

Councillors Douglas-Dunbar, Ellery and Foster

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**34. Election of Chairman/woman**

Councillor Ellery was elected as Chairman for the meeting.

**35. Opening**

The meeting was opened with a minute's silence for a serving member of staff, Amanda Coote, who had sadly passed away.

**36. Franx Lifestyle Café, 343 Torquay Road, Paignton, TQ3 2EP**

Members considered a report on an application for a Premises Licence in respect of Franx Lifestyle Café, 343 Torquay Road, Paignton.

Written Representations received from:

Name	Details	Date of Representation
Member of the Public	Representation objecting to the Application for a Premises Licence on the ground of the 'Prevention of Public Nuisance'.	19 January 2022
Member of the Public	Representation objecting to the Application for a Premises Licence on the ground of the 'Prevention of Public Nuisance'.	23 January 2022
Member of the Public	Representation objecting to the Application for a Premises Licence on the ground of the 'Prevention of Public Nuisance'.	Received on 11 February 2022
Public Protection	Representation in respect of the 'Prevention of Public Nuisance'.	14 February 2022

Oral Representations received from:

Name	Details
Applicant	The Applicant presented the application and responded to Members questions.

Public Protection Officer	The Public Protection Officer outlined their representation and responded to Members questions.
Member of the Public	The Member of the Public outlined their representation.

**Decision:**

That the application for a Premises Licence in respect of Franx Lifestyle Cafe, 343 Torquay Road, Paignton be approved as applied for, subject to the following conditions:

- 1) That all licensable activities shall only take place between 8 am and 11 pm, 7 days a week.
- 2) That the premises shall close at midnight.
- 3) The number of patrons using the premises outside rear courtyard area shall not exceed more than 8 patrons, between 8 pm and when the premises closes.
- 4) The number of patrons outside the front of the premises shall not exceed 8 patrons between 10 pm and when the premises closes.
- 5) After 8 pm, no drinks intended to be consumed on the premises shall be taken to the premises outside areas.
- 6) Staff shall monitor the use of the premises outside areas to ensure noise nuisance does not unreasonably disturb nearby residents.
- 7) There shall be no entry or re-entry to the premises after 11:00 pm.
- 8) Signage is to be displayed throughout the premises and its outside areas, requesting patrons to be mindful of nearby residents and to keep noise to a minimum.

**Reasons for Decision:**

Having carefully considered all the written and oral representations, Members were unanimously satisfied that the amended application and additional conditions would uphold the Licensing Objectives and alleviate the concerns of residents.

Members were encouraged by the Applicants oral presentation, demonstrating that they had considered the impact their business operation may have upon nearby residents, how these could be mitigated and their willingness to work with the Responsible Authorities, should issues arise as a result of granting this Premises Licence.

Members were further reassured by the oral submission of the Public Protection Officer that he would be able to work constructively with the Applicant, to successfully resolve any noise issues, should they arise.

Chairman/woman

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## Minutes of the Licensing Sub-Committee

10 March 2022

-: Present :-

Councillors Dart, Ellery and Foster

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### 37. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

### 38. Minutes

The Minutes of the Licensing Sub-Committee held on 9 December 2021, were confirmed as a correct record and signed by the Chairman.

### 39. Hennessey Cocktail Lounge, 2 King Street, Brixham, TQ5 9TF

Members considered a report on an application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.

Written Representations received from:

Name	Details	Date of Representation
Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	10 January 2022
Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	9 January 2022
Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	10 January 2022
Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	9 January 2022

Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	11 January 2022
Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	13 January 2022
Member of the Public	Representation in support of the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham.	27 January 2022
Member of the Public	Representation objecting to the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham on the grounds of 'The Prevention of Crime and Disorder' and 'The Prevention of Public Nuisance'.	26 January 2022
Member of the Public	Representation objecting to the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham on the grounds of 'The Prevention of Crime and Disorder' and 'The Prevention of Public Nuisance'.	Received on 27 January 2022
Member of the Public	Representation objecting to the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham on the grounds of 'The Prevention of Crime and Disorder' and 'The Prevention of Public Nuisance'.	Undated
Member of the Public	Representation objecting to the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham on the ground of 'The Prevention of Public Nuisance'.	2 February 2022
Police	Representation and additional information objecting to the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street,	3 February 2022 and 28 February 2022

	Brixham on the grounds of 'The Prevention of Crime and Disorder' and 'The Prevention of Public Nuisance'.	
Public Protection	Representation objecting to the Application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham on the grounds of 'The Prevention of Crime and Disorder' and 'The Prevention of Public Nuisance'.	4 February 2022

**Additional Information:**

Following a request from the Police, the Chairman agreed to extend the normal time allowed for oral representations from 10 minutes to 20 minutes for all interested parties.

**Oral Representations received from:**

Name	Details
Applicant	The Applicant outlined the application and responded to Members questions.
Police	The Police Representative outlined their objection to the Application and responded to Members questions.
Public Protection	The Public Protection Officer outlined his objection to the Application and responded to Members questions.
Member of the Public	A Member of the Public outlined her representation in support of the Application and responded to Members questions.

**Decision:**

That the application for a Premises Licence in respect of Hennessey Cocktail Lounge, 2 King Street, Brixham, be refused.

**Reasons for Decision:**

Having carefully considered all of the written and oral representations, it was clear to Members that the Applicant had not completed or submitted the application form for a Premises Licence himself. In coming to that decision, Members noted the Applicant's oral submissions, and resolved that he was not familiar with the content of the application, nor did he fully comprehend the extensive list of conditions contained therein when asked questions about them, nor did he appear to have in person, the due diligence required to ensure all conditions would be complied with.

Members were alarmed and concerned to hear from the Applicant when pushed, that it was the previous Premises Licence Holder, Mr Ross Hennessey, who had

drafted and submitted the application in the Applicants name, and when consulted on its contents over the telephone, the Applicant stated to Mr Hennessey that he did not agree with certain conditions but was told by Mr Hennessey, as his intended employer, to agree them. Members therefore had no confidence that the Applicant would comply with all conditions set out in the application form, having not agreed with them in the first place.

On the evidence before them, Members were of the opinion that the suite of conditions submitted, was no more than an attempt to get the application through. Furthermore, Members could not be satisfied that the conditions had been considered individually against the intended operation, in a way which ensured that the Licensing Objectives would be promoted. Instead, it appeared to Members that conditions had merely been lifted from another Premises Licence and a Consent Order, drafted by Torbay Council, with an expectation that these would be accepted, and the application granted.

On the evidence before them of the operational history of this premises and its geographical location, Members resolved that careful consideration of each condition was required to mitigate noise nuisance emanating from the premises, along with strong management to uphold compliance of those conditions. In Member's opinion, this application nor the Applicant in person, demonstrated the attributes required.

Members noted that the application contained the following two conditions:

'Mr Ross Hennessey, the previous Premises Licence Holder and Designated Premises Supervisor, be prohibited from entering the premises during operational hours.

Mr Ross Hennessey, the previous Premises Licence Holder and Designated Premises Supervisor, shall not be involved in or influence the operation of these premises.'

In doing so and on the evidence before them, Members were extremely concerned to learn that Mr Hennessey's previous licence for these premises had been revoked by a Licensing Committee in June 2021 and on appeal of that decision in December 2021, his application was dismissed by the Court. Therefore, forming the opinion that Mr Hennessey in making this application, was seeking to circumvent the decision of the Licensing Committee and the outcome of his appeal and was using the Applicant, who is his employee, as a front to enable him to continue operating these premises.

Given the sequence of events leading to this application coming before them, Members were of the strong opinion that the Applicant would not, or would not be able, to comply with these conditions, despite what may be his best efforts and therefore unanimously concluded, that granting this application would inevitably lead to the Licensing Objectives being undermined.

In addition to the above, Members resolved that the following specific examples also cemented their unanimous decision to refuse this application. The application

itself was poorly drafted, in that it was littered with contradictory and duplicated conditions, some of which could not be complied with, as the necessary measures were not in place. Such as a lobby, and when asked about this, the Applicant said he had a builder working on their other nearby premises who he could bring down to build this. Again, of concern, it appeared to Members that there was no real thought or understanding by the Applicant in this off the cuff proposal, other than to provide a reactive response, having had the oversight brought to his attention. In Members opinion, to be an effective lobby which prevented noise outbreak, the input of an acoustic engineer may be necessary and without knowing the qualifications of the builder, what was being proposed as a build, whether the owner's permission would be required or granted in changing the layout of the premises, Members could not be satisfied that this proposal would be permitted or effective. Furthermore, it was of concern to Members to note that the application sought to include an outside seating area but on the evidence before them, no steps had been taken to engage the appropriate authorities to enable this provision and no conditions were proposed in the application, as to its operation which ensured that the Licensing Objectives would be promoted. Instead, the Applicant said they thought they would throw it in as they saw that a nearby premises had it. Hearing from the Responsible Authority Public Protection Officer, it was clear that Officers with that Premises Licence Holder had undertaken extensive work, to enable this provision. This in Members opinion, further showed a lack of experience and foresight in what was required to operate a premises in a responsible manner and understanding the impact an outside area could have on nearby residents and the necessity to mitigate this.

A further concern for Members which highlighted one of many contradictions, was Applicant's submission that the premises would operate with a focus upon families and food. Yet this appeared to be contrary to what was contained within the application. Also being impeded by the premises not having a kitchen. Combined with this, Members noted the Police's oral and written representation, that they tried to negotiate with the Applicant a terminal hour and that all persons would be seated within the premises and served by waiter/waitress service but the Applicant indicated he would not agree to this as it would not work for them, instead wanting to run the premises as a pub/bar.

Members also noted the submissions of the Applicant and that of the Police, that the Applicant will be responsible for these premises and that he will also oversee the management of two other premises owned by Mr Hennessey, one of which is subject to a second licensing review, within a short period. Noting that all three premises are classed by the Police as a high risk, due to ongoing issues and previous concerns and the late licences of the two other premises, Members unanimously resolve that to grant this licence would in their opinion, certainly undermine the Licensing Objectives, as the Applicant would not have the capacity nor capabilities to operate these premises in the manner required.

In concluding and as an alternative to refusal, Members carefully considered what if any modifications could be made to the application, such as adding or removing conditions, along with granting the application but refusing to appoint the Applicant as the Designated Premises Supervisor. However, after careful consideration of all options available to them, they unanimously resolved that such modifications

could ultimately result in them changing the business model in a way which was not agreeable to the Applicant and for the reasons outlined above, an outright refusal was in their opinion, the only way to ensure that the Licensing Objectives would not be undermined.

Chairman/woman

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