

Appendix 5

Memorandum

To:	From	:	Community Safety
c.c	Contact	:	Mr Karl Martin
c.c.	Ext	:	01803 208025
c.c	My Ref	:	QuayclubREP
.	Your Ref	:	
For the attention of: Sarah Clarke	Date	:	18 th May 2021

Premises Name & Address: Quay Night Club, Victoria Parade, Torquay.

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 | <input type="checkbox"/> |
| ii) | Protection of children from harm | <input type="checkbox"/> |
| iii) | Public safety | x |
| iv) | Prevention of public nuisance | X |

1. The location of the proposed variation application occupies part of the building complex known locally as 'Harbour point building'. Please see Appendix 1 for maps and google street view imagery.
2. The harbor point building is occupied by commercial business but flanking either side and above is a mixture of residential and commercial properties. In one case the building is physically attached to a neighboring residential property.
3. The building lower ground levels has for many decades on and off been used as a 'nightclub' venue. More recently the premises has been used as boxing club with a terminal hour for alcohol at 11pm.
4. The most recent use is reflected in the current planning class of D2, which includes indoor boxing clubs. To operate a nightclub the Sui Generis class is required and to date the applicants have not submitted a planning application for change of use.
5. In the last 15 years the premises has been occupied by a number of operators running nightclubs with the last one closing in 2014. All these premises attracted noise nuisance complaints from nearby residents and businesses. Historical noise nuisance issues can be grouped into two points:-

- Noise breakout from live or recorded amplified music leaving the premises due to poor sound attenuation properties of the building.
 - Post 2007 noise from customers using an adjacent outdoor smoking area.
6. Attempts to reduce noise breakout has been made and in some cases resolved, however largely due to successive rebuilds the current state of the building when the applicants took over at best can be described as 'poor' and not fit for purpose as a modern venue for late night entertainment.
 7. The current applicants I understand took on the leasehold in the summer of 2019 and in September 2019 contacted myself and Julie Smart regarding re-opening the premises as a nightclub. Mr Adam Hamade was advised by email of the historical noise issues and at a meeting with him and his business partner Kirsti Garent-Thomas in late September 2019. During the site visit it was evident the premises was in a poor state of repair.

During the meeting it became evident neither of them had any experience of running entertainment venues of this nature. Whilst they appeared enthusiastic and confident they could succeed they could not perceive what lay ahead. They hoped the nightclub would be open to the public by Christmas 2019 and this seemed naïve and foolhardy to expect the necessary works to be completed by this date with the proposed budget. It was mentioned they may apply for a 'Temporary Event Notice' for Halloween 2019.

8. The applicants submitted a TEN for the 1st-3rd November 2019. I objected to the TEN, please see Appendix 2, but as the applicant agreed to withdraw the TEN no committee hearing was required.

Promotion of Public Safety

9. Members of Committee should be aware the building contains a fibrous ceiling. In this case plaster of Paris was directly applied over a wire mesh framework which in turn is supported by the ceiling trusses with wooden and metal ties between the two. Prolonged contact with water can weaken the plaster and ties.

In the last decade a number of partial collapses have occurred on theatre audiences. In response the HSE in conjunction with the ABTT published an industry guidance together with a certification scheme. Any building used for the purpose of entertainment must be certified by a competent contractor and any remedial works undertaken. Failure to do so would result in the service of a prohibition notice by the Local Authority under the Health and Safety at Work Act 1974.

10. The ceiling was finally certified by a competent contractor in July 2020. The certificate last 12 months and is subject to a clause that the roof must be watertight. The applicants have supplied the certificate but not a FENSA certificate demonstrating the roof is watertight. The applicants will also be required to renew the certificate in July 2021.
11. The applicant has yet to provide an electrical safety certificate (EICR) for the building. This was asked for as part of any submission due largely to the poor conditions of the building when the applicants took over and to reflect additional changes they have undertaken.
12. Failures in buildings used for entertainment can have catastrophic consequences if attention to public safety is not given due consideration. I'm not aware at the time of writing this

report if the Fire Service has raised an objection but I would urge the applicant to provide a copy of the fire safety risk assessment ahead of the hearing in addition to the EICR report.

Prevention of Public Nuisance

13. The applicant appointed a London based noise consultant and I met onsite with the consultant and Chris Widdecombe SEHO Torbay Council with Adam Hamade in November 2019. The consultant identified several weaknesses with the fabric of the building including air ventilation vents which had minimal attenuation or existing attenuation was in poor repair.

The consultant advised he would provide a written report for Mr Hamade and pass to myself. However this report did not materialise.

14. In the summer of 2020 the applicants appointed Future Technical Solutions (FTS) as their noise and sound engineering consultant.
15. Since this time I have corresponded with the director of FTS, Mr Neil Carpenter with regards to additional remedial repairs, noise attenuation solutions to the fabric of the building and the selection and control of PA equipment including noise limiters.
16. The previous smoking area located to the north of the building could hold over a hundred people. The applicants did explore using this area but agreed it would not be possible to control noise. Since this area was last used further residential properties have been built/converted and now have line of sight with this area.
17. Neither I nor the applicants desired the street to be used as a smoker area. The back of the building overlooks the cliff wall. A small single skinned annex was accessible from the first floor balcony. Due to its poor conditions it was removed. On viewing this area with Mr Hamade in August 2020 I suggested to him this could work as a smoking area using the cliff walls to deflect sound away from the residential accommodation above.
18. Mr Carpenter has developed and installed noise monitoring equipment which can be remotely accessed at any time for the purpose of monitoring sound levels. An additional lobby has been installed to prevent amplified music breaking out and I understand a limit on the numbers of customers in the area has been established.
19. I am confident that noise breakout from the building has been addressed through a combination of works to the building and careful selections of PA equipment and noise limiting controls.
20. However at this time the noise limiter remains untested but has been set by Mr Carpenter in consultation with myself.
21. As with all licensed premises who provide entertainment the physical and software controls can fail if poor management practices are systematic within the business. With regards to the prevention of public nuisance I do not have confidence in the management and therefore this forms the basis of this representation.

Authorities experience of the applicants.

22. Mr Hamade in particular exhibits much enthusiasm but has described running a nightclub as a dream and occasional as a hobby. I do not wish to be critical because his passion has led to an application but I have concerns the operators have not approached the refurbishment

and running of a nightclub with a solid business plan or professional approach required to run a high risk licensed premises.

23. The club despite being advised was not ready for an opening in November 2021 but they still applied for a TEN.
24. In December 2020 the Police passed information to the Council suggesting the premises had been accessible to members of the public. Ms Kristi Garnet-Thomas during a follow up meeting at the premises argued it was a party for the builders as they had meet a deadline. This is despite making it clear in writing the building could not be used as a place of entertainment without the roof been certified.
25. I am aware they applied for a business grant during the first national lockdown despite never actually trading. The claim was dismissed.
26. On several occasions Mr Hamade has been discovered using the premises to entertain family and friends despite national covid rules being in place. In June 2020 licensed premises where not allowed to open but despite this the applicants live stream a DJ performance and people could been seen drinking alcohol on the live stream. The Authority did not have ability to serve FPN's at this time.
27. On the 30th August 2020 myself, Julie Smart, Mr O'Shea and Councilor Darling were undertaking compliance visits along Torquay Harbourside and was approached by a person who informed us the club had been open on the 28th August. They heard music and checked their CCTV footage which captured people leaving the premises.
28. On the 13th of February 2021 myself and a colleague visited the harbor side area and observed Mr Hamade with several other males in the immediate vicinity of the premises, it appeared like they had exited from a fire escape to the side of the building. The premises does hold a premises license and should at this time been closed. The only legitimate reason to visit is for maintenance or security reasons.
29. The Police reported lights were on the Friday 19th and 20th and despite knocking no one answered the door.
30. The applicants were contacted by email and advised it may be useful for them to review their CCTV in case the premises was being used without their consent. They were also welcomed to submit any footage. They did and footage of the 19th and 20th showed no breaches of the Covid regulations took place but the footage from the 13th was no longer available. The current licensing conditions requires only 14 days of CCTV shall be kept.
31. I commend their co-operation but I remain skeptical that they have not used the building for socialising on multiple occasions in contradiction of the Government wishes at the time. I assert this view because I do not believe the applicants have taken the running of this business seriously.
32. As a potential late night premises, located in a cumulative impact area and a type of venue recognised in the Licensing Statement of Principles as high risk, one would imagine applying for the correct licence would be a priority. Instead the applicants have actively promoted the club in the local news and on social media oblivious to the fact the premises is not currently licensed for such advertised activities. In other words the application had yet to face public scrutiny.

33. Mr Hamade and Ms Garnet-Thomas have also been polite and showed willingness to work with the Local Authorities but I feel at times they believe this is just a 'bureaucratic' process they must follow to get a licence before the fun starts. This is evident in the application, one example is the taxi pick up service they wish to promote. There is no rank outside the premises. Vehicles would have to park on double yellow lines or loading bays.

Unofficial ranks can also encourage unlicensed drivers/vehicles to the area and put at risk their customers. I argue this is an example of a poorly conceived 'sweetener' for members of the licensing committee but actually reveals poor judgement and business planning.

34. Mr Hamade and Ms Garnet-Thomas are both the only active directors of the Quay Nightclub Ltd, the applicant. However neither intends to be the DPS. They claim they will take an active role in the day to day management of the club but neither seeks to be the DPS. Will the potential DPS have a say in how the premises is managed? How can the responsible authorities be reassured this will be the case. Mr Hamade describes this venture as a dream, a hobby and I don't doubt his ambition but I do doubt about handing control of his project to another individual.

Conclusion

35. I do believe noise outbreak from amplified music and customer noise has been addressed and with a professional management approach the premises can operate as a late night venue whilst being able to promote the licensing objectives. However I do not believe the current management has the experience necessary and underpinned by a weak and ever changing business plan that offers no resilience to the operation of nightclub.

36. There are many tragic accidents involving premises like the Quay Club in this country and around the world where safety of the public has not received proper attention. The ceiling will require re-certification in July 2021 and no further information has been provided in relation to electrical and fire safety. Are the applicants and the building ready to receive a licence to sell alcohol until 3:00am in a building designed in a different time?

Recommendation

There can be no doubt the applicants have invested a large sum of their own money, time and life into restoring a former nightclub. Not an easy task during a global pandemic which has hit the Late Night Economy hard. However nearly two years have passed since they took over the lease and I do not believe all necessary safety works have been completed. Planning permission has not been applied for yet and sound checks are still required prior to opening.

At this time I argue to grant as applied for risks undermining more than one of the licensing objectives.

Mr Karl Martin
Public Protection Officer
Torbay Council

