

Report by Torbay Council as the Responsible Authority
for Public and Statutory Nuisance
Submitted to the Licensing Sub-committee on the review of
Premises Licence of The Devon Dumpling, 108 Shiphay Lane, Torquay,
to be heard **05 Jan 2023 at the Town Hall, Torquay.**
Licence Number PL0460

1. Background

The Devon Dumpling is a long-established pub sitting in a suburban residential area of Torquay. It adjoins houses to the west, south and south-east (Yealm Grove, Stanbury Rd. & Dairy Hill respectively); and there is also housing across the road (Shiphay Lane). This review arises principally from noise from the beer garden, which comprises a number of levels / terraces to the rear of the pub, on the west and south sides. See photo at Appendix D taken on an upper terrace of the beer garden (taken from a public website). The noise from these outdoor areas is most likely to be heard at properties on the west, south and south-east sides. Noise is also reported from activity of people and vehicles on the car park, mainly around closing time; this is mainly heard at properties to the West side (the nearest houses on Yealm Grove) but also at houses across the road on Shiphay Lane.

2. Licence info. and conditions relevant to noise nuisance

Licensing records show the premises licence is held jointly by Mr. Raymond Lyon & Mr. Matthew Lyon; the former is shown as the DPS.

Opening hours; 11.30pm Mon – Thurs; 00.30am on FRI & SAT; and 11pm Sun.

With sale of alcohol ending 30 mins before.

There are currently no special conditions around music, so the Live Music Act applies, i.e. meaning live or recorded music is allowed indoors or outdoors to 11pm.

However, note the condition below, attached after an earlier hearing by Licensing Sub-Cmte.

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 shall be assessed from the boundary to the nearest residential properties, on all sides of the licensed premises. The criteria that shall 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.

3. Timeline and history of noise complaints to Council

The first complaint in the past five years was in **early August 2019**, from **Resident A**, whose house adjoins the pub. They reported noise from live music on Sundays and the quiz on Thursdays. An officer from the licensing team gave informal advice to the DPS in late August, and after no further reports were received, the case was closed in Feb. 2020. Flare ref. R/252257.

NOTE: the first Covid lockdown was late March '20, resulting in closure of pubs for several months.

June 2021: initial report by **2nd complainant** - Mrs. Smart (**Resident B**) – alleging noise from the beer garden to 11.30 or 12 pm (**see Appendix B**). She said she has “to use ear plugs Fridays & Saturdays” & “it’s like a garden party every night”. She asked that “beer garden be closed at a reasonable time”.

September 2021: complaint from a **3rd resident (Resident C)** living across the road; reporting frequent noise from people and their vehicles in car park around closing time, alleging shouting, drinking at cars, music from cars, and urinating on walls and cars. Said these people ignore requests by staff to move on, (**see Appendix C**). Also in September 2021, we received a **further report from the initial complainant (Resident A)**; this described issue with noise from the beer garden, and saying they’d tried to resolve this directly with Matthew Lyon for three years (**see Appendix A**)

Early August 2022: Mrs Smart makes her **first request for review**; this was turned down on procedural grounds. In it she referred to frequent loud music outdoors, and a recent “pig racing” party event with megaphone or amplified commentary (the latter was afternoon / early evening). Alleged loudness after 11pm. Flare case ref. R/271310.

Mid-august 2022: complaint by a **4th person (Resident D)** – by hand-written letter dated 18/8: complaining of noise mainly at weekends, but on occasion during the week, and “has become so loud with music that used to be inside (disco) and on occasion a group now playing in the newly extended beer garden, which appears to be used as a function area with large amounts of people outside”. They said they’ve lived close to the pub for many years, and had no problem till the beer garden was extended, and the situation is now “intolerable”. Reported “sometimes unable to sleep” and on occasion “the language is not good”. States they’d written at least four letters to the pub but got no reply. Alleged that on Sat 13 August '22 the music started at 5.30pm and went on to 10.30pm, and then noise started again in the car park as people left at 11.30pm. Asked Council to assist them in being able to enjoy their homes and gardens without feeling plagued by noise.

4. Development and Planning aspects – ref. expansion of beer garden

It is reported by some of the complainants that the beer garden was expanded by developing the upper terrace areas; this may have been about 2016 or 2017 or even later, and neighbours report not being given any notice of this work. The reported expansion of the outdoor areas means they may now be significantly larger than shown in the plan lodged with the premises licence. This would mean they can accommodate significantly more customers eating and drinking outdoors, thereby contributing to increased people noise.

However, planning records on the public portal show nil applications since June 2013 (and the latter was not relevant to the issue at hand in this review).

Engagement by Premises Licence Holder and DPS

A number of local residents (possibly facilitated by one or more Councillors) met with the licensee / DPS on 23 March '22; a council officer (from Licensing) was invited and did attend. Following this It is reported that the licensee agreed to close the top section of the beer garden by 9.30pm and the bottom by 10.30pm. It is understood that Mr. Matthew Lyon later confirmed this in writing to residents involved. However Mrs Smart reports this change in management control of the beer gardens was only maintained for a very short period and then things returned to normal.

5. Investigating officer's commentary on audio evidence submitted

Mrs. Smart submitted over a hundred recordings in the period 29 June '21 to 15 October '22. Most of these were made at their bedroom window, which is on the first-floor of the annex of her house; this part of her home is nearest to the western (lower) part of the beer garden (just 6 – 7m away). A small number were made from the window of the en-suite bathroom which faces the pub car park. The bedroom window is exposed, with no intervening sound screen, to noise emitted from the upper part of the beer garden, approx. 20m away. In terms of noise transmission these distances are very close and will provide little attenuation by distance alone. Furthermore, the walls of the pub building itself will tend to reflect noise towards adjoining houses, most likely exacerbating / adding to the noise transmitted direct from the source to the recipient. The authors have not had the opportunity to directly witness the noise in this instance, but all the audio recordings since 30 Jan '22, have been reviewed; see commentary on same at Appendix E. From professional experience, the authors can say with confidence that in this situation there will be significant noise intrusion on adjoining and nearby gardens, and habitable rooms of dwellings (with windows open for normal ventilation). This will occur even with small numbers of people in any part of this beer garden, once they begin to talk in any animated way. It will also occur when larger numbers are present, even just chatting as drinkers do but, not shouting. The recordings provided by Mrs. Smart support the authors' assessment that noise from recent usage patterns at this premises has been interfering significantly with enjoyment of nearby residential property. We are satisfied this interference will continue unless proper controls are put in place; these controls are achievable through new or amended licence conditions or management changes, or both.

6. Suggested new licence conditions & recommendation

1. The large uppermost patio areas (to be identified clearly on a new plan to be provided by the licensee) to be closed from 9.30pm every day (purpose to reduce general noise from large numbers of customers affecting residential amenity)
2. All outside areas to be closed by 10.30pm every day except for a small smoking shelter.
3. Drinks prohibited outdoors after 10.30pm (to address issue of smokers lingering)
4. Maximum of 6 persons in outdoor area at any one time after 10.30pm (to help limit noise from use of smoking shelter).

5. All doors and windows to be kept closed during indoor noise-generating event (e.g. live or recorded music, or function or quiz) - to keep noise escape as low as practicable.
6. The duty manager, or designated staff member each day, to regularly check outdoor areas – at least once every half hour when they are in use - and effectively address any excessive noise by any person or group (purpose: to prevent unreasonable noise impact on neighbours).
7. The duty manager, or designated staff member on every Friday and Saturday to effectively monitor and control people noise on the car park and front outdoor areas after 11pm.
8. That the pre-existing conditions around prevention of public nuisance remain in place and are enforceable post this review.

See Appendices below

Appendix A

Wording of complaint received online **3pm Saturday 04 Sep 2021** from Resident A:

Have spoken to Matthew (Lyon) for the past 3 years and he does nothing, maybe because he doesn't live anywhere nearby. The noise is getting worse most nights it's hell can't sit in garden because of cigarette smoke and foul language; indoors all windows have to be closed and can still hear it with tv on. Latest was Friday September 3 as early as 5pm and as late as 12.30 am they sit outside in the pub's garden which backs onto my back garden and the noise is hell. I don't understand how in the middle of a residential area this can be allowed; most residents have had enough.

Shouting, swearing, rowdy behaviour, urinating in the road outside the pub, against people's fences, playing loud music from their car stereo, then some race their cars down Shiphay Lane, while others wait for taxis mostly after 12 at night.

Flare case ref. R/265663

Appendix B

Wording of first complaint by Mrs Smart, the applicant for this review - received online at **10.50pm Sat. 12 June '21** Flare case ref. R/263973

I have messaged them through Facebook messenger and have still got the messages (16/4, 2/5, 17/5, 11/6, 12/6). They have only replied once at the beginning in April when pubs could reopen. There have been people standing on tables in the beer garden with people shouting at them to get their trousers off and the noise goes on until 11.30/12am. Now they are allowed inside I asked if they could close the beer garden at a reasonable time and last night it was noisy until 11.40pm and tonight it was midnight. The pub has made their outside area bigger because of COVID restrictions and the noise level is quite bad. I am not able to have my windows open when the weather is warm and not able to enjoy my garden. The noise level is fine during the day, but not in the evening. I have asked if they could close their garden at a reasonable time now they are allowed inside but have had no response. It was midnight again tonight before the noise stopped! I have to work at the weekend and lack of sleep is affecting my work. I have spoken to a few of my neighbours who are not happy about the beer garden and noise level.

Further info. provided by online report **Sat. 19 June '21** as follows: Have messaged (the pub) since April and my last message was today. They are not answering my messages. The beer garden is next door to our house and the noise is keeping us awake at night. On Fridays and Saturdays the noise is going on until 11.30pm/12am! We are unable to have our windows open at night when it is warm, and I am now using earplugs to try and help block the noise. We are not able to use our garden as the noise is terrible. It's like someone having a garden party every day of the week. My neighbour mentioned today that she was having trouble getting to sleep as well, but she is elderly and not able to use the internet to complain, although she said she would try. I don't know why they can't close the beer garden at a reasonable time.

Further info. received online at **11:43pm Friday 16 July '21**: Ongoing since May. Every weekend the Devon Dumpling pub is letting their customers shout and scream in their beer garden until past 11.30pm. Last Saturday I went into the pub at 11.15pm as the noise was unbearable. I was told to get out by the person behind the bar who then came out into the car park, shouted at me and sped off at high speed in his car. I am now sat in my bed trying to sleep at 11.40pm with people shouting once again! Surely they have to shut their beer garden at a reasonable time? I work on a Sunday and was late for work last Sunday as the noise didn't stop until 12.50am! Please can you help me and my neighbours as it is affecting our quality of life and we are not able to go to sleep when we want to but have to wait for the noise to stop. I have sent in three complaints now and nothing seems to have been done. Please I can't take this noise anymore. It is very hot tonight and I'm having to shut my windows. I was late for work last Sunday because the noise didn't stop until 12.50pm. And I'm now sat in bed waiting for it to go quiet so I can go to sleep. It is now 11.40pm! This is happening every Friday and Saturday and it is affecting my quality of life. My neighbours have also had enough. Please can you help us. It is baking hot and I can't have my windows open and am wearing ear plugs but can still hear them. They also are having their beer barrels delivered at 6.45/7.15am every Thursday and that is so loud that even with ear plugs in it woke me up.

Further info. received online at **11:44pm Friday 28 January '22**: The noise issue has gone on since April last year. We have messaged and text and spoken to people but still the noise issue continues! 11.15pm there were people in the Devon Dumpling beer garden shouting and singing! It happened 3/4 times a week in the spring and summer. We cannot sleep as the noise is right outside our bedroom. They don't shut the beer garden at all it is open as long as the pub is. Tonight we had to message the pub at 11.15pm as we couldn't sleep! We have had this all spring and summer last year. Lots of local residents are fed up! Please do something to help us!

Appendix C

Wording of report received online from Resident C at **00.22am Saturday 04 Sep '21**:

The pub is incredibly loud when people leave. They hang around outside of residents' houses, urinate up residents' walls and cars which has been witnessed, stand in large groups until early hours in the morning shouting and disturbing the neighbourhood. People will leave the pub when it closes and continue drinking in the car park. We have witnessed people sat in the car park playing music and continuing drinking using drinks from their cars. This is a residential area and the behaviour is totally unacceptable. This is affecting our sleep, having a knock-on impact on our stress and wellbeing levels - we work early in the morning for the council and it's affecting how well we do our job. It's also affecting our community relationships and is making the area a horrible place to live.

Pub staff ask the people to move on if we call the pub (and if they decide to answer our calls), but they are just ignored by the people and do nothing further. The pub needs to shut earlier.

Flare case ref. R/265663

Appendix D

Photo from upper patio area (from public web source).



Appendix E

Review of Applicant's audio recordings – in reverse chronological order, back to 30.01.22

Date, day of wk. & time	Officer's comments on audio clip	Impact ranking
15 Oct'22, a Sat. 11.02pm	quite noisy and clearly very intrusive, 57 secs recording; loud voices and shouting for ca. 30 secs from about 20s in.	HIGH
09 Oct'22, Sun. 00.03am (i.e. late Sat. night 08/10)	loud voices effectively throughout this 48 secs clip; clearly very likely to be intrusive and to prevent sleep.	VERY HIGH
08 Oct'22, Sat. 10.16pm	Loud voices, chatter and laughing, sometimes raised, from start of this 2m23s clip; again likely to be very intrusive (also intermittent loud dog barking, collie or similar).	HIGH
08 Oct'22, Sat. 10.14pm	As above, but including occasional foul language, likely to be quite intrusive, 2m0s clip	HIGH
08 Oct'22, Sat. 10.08pm	As above, but no swearing, would probably be quite intrusive, 1m35s	HIGH
08 Oct'22, Sat. 10.06pm	As above, but louder at beginning, with laughter; most probably quite intrusive, 1m21s	HIGH
08 Oct'22, Sat. 9.41pm	As above, but some screaming (briefly and more later); probably very intrusive, 1m56,	HIGH
08 Oct'22, Sat. 9.36pm	As above, likely to be similarly intrusive, 1m01s,	HIGH
08 Oct'22, Sat. 9.34pm	As above, 1m27s	HIGH
30 Sep'22, Fri. 11.42pm	Loud clear voices & laughter for 1st 30s (41s clip); likely to wake people, poss. from car park.	VERY HIGH
22 Sep'22, Thu. 11.09pm	Loud voices briefly and car doors and engine and car horn (briefly). Again this appears to relate to noise from pub car park; would be intrusive.	HIGH
10 Sep'22, Sat. 11.32pm	Rowdy loud voices at beginning for a few secs, very intrusive, 37s	VERY HIGH
10 Sep'22, Sat. 11.30pm	Relatively low people noise throughout, 1m04s, quite intrusive for this time of night	HIGH
10 Sep'22, Sat. 11.29pm	Loud people noise at beginning, then a little lower to end of this 57s; quite intrusive	HIGH
10 Sep'22, Sat. 11.27pm	Louder than at 11.27, with some loud shouts and shrieks, very intrusive, 1m27s	VERY HIGH

10 Sep'22, Sat. 11.25pm	People noise as above, plus car engine starting near end; very intrusive, 2m.04s	VERY HIGH
10 Sep'22, Sat. 11.23pm	People noise (not as loud as 11.25pm), vehicles driving on car park, quite intrusive, 41s	HIGH
10 Sep'22, Sat. 11.21pm	People noise as 11.25, & traffic in distance, some singing briefly, quite intrusive, 1m29s	VERY HIGH
10 Sep'22, Sat. 10.24pm	Loud people noise, chatter & laughter, throughout this 1m35s, quite intrusive	HIGH
10 Sep'22, Sat. 10.22pm	As above, quite intrusive throughout, 1m52s	HIGH
10 Sep'22, Sat. 10.06pm	As above, 1m41s	HIGH
10 Sep'22, Sat. 10.05pm	As above, but rowdy voice briefly, 1m16s	HIGH
09 Sep'22, Fri. 10.51pm	As above, sounds like people on car park, quite loud and clear; very intrusive, 2m23s	VERY HIGH
02 Sep'22, Fri. 11.08pm	Loud people noise from car park, and doors slamming, 2m05s	HIGH
02 Sep'22, Fri. 10.59pm	Similar people noise, incl. some swearing, and vehicle engine noise, 1m25s	HIGH
02 Sep'22, Fri. 10.58pm	Similar noise level and content excl. swearing, 52s	HIGH
01 Sep'22, Thu. 10.42pm	Loud people noise and vehicle noise, probably all from car park, 1m55s	HIGH
28 Aug'22, Sun. 11.17pm	Short recording – no noise confirmed – possibly submitted to Council in error, 12s	-
24 Aug'22 Wed 11.10pm	Voices briefly and car starting on car park, moderately intrusive, 29s	Moderate
20 Aug'22 Sat. 11.15pm	Loud voices, car doors, engine revving, all from car park; likely to be very intrusive, 3m36s	VERY HIGH
30 Jul'22 Sat. 7.34pm	People noise – adults and children, squealing of some kind (not human), intrusive, 3m25s	HIGH
29 Jul'22 Fri. 11.25pm	Loud voices at times amongst general people noise, intrusive, 1m29s	VERY HIGH
29 Jul'22 Fri. 10.21pm +2	As above, very intrusive, 2m30s + 1m25s + 1m04s	VERY HIGH

09 Jul'22 Sat. 10.16pm +1	Very loud singing by customers plus shouting, & music, lyrics clear, 35s + 1m.56s + 45s	VERY HIGH
09 Jul'22 Sat. 9.57pm +1	Very loud music, people singing to it, some bass beat, very intrusive as above, 1m02s + 46s	VERY HIGH
09 Jul'22 Sat. 9.40pm	As above, with brief screaming, very intrusive as above, 35s	VERY HIGH
09 Jul'22 Sat 9.25pm +1	As above, lyrics very clearly heard, very intrusive, 1m20s + 1m12s	VERY HIGH
09 Jul'22 Sat 9.23pm	As above with people chatter overlaid, music clear and dominant, very intrusive, 1m12s	VERY HIGH
09 Jul'22 Sat 7.54pm	As above with brief PA announcement within, very intrusive, 1m01s	VERY HIGH
09 Jul'22 Sat 7.08pm + 2	As above, inc. loud announcements & shouting over music, very intrusive, 34s + 1m1s + 31s	VERY HIGH
27 Jun'22 Mon. 2.45pm	Loud voices and shouting briefly, quite intrusive, 45s	HIGH
06 May'22 Fri. 6.57pm +1	Loud voices (seagulls calls in background), quite intrusive noise, 1m12s + 54s	HIGH
16 Apr'22 Sat. 6.15pm	Loud voices at start then lower, general hum of people, intrusive, 2m08s	Moderate
16 Apr'22 Sat. 3.16pm	Music and loud announcements over, lyrics very clear, very intrusive, 2m28s	HIGH
02 Apr'22 Sat. 10.52pm	Music "God Save The Queen" being sung to music out front, then other music and people and vehicle noise, possibly activity on car park. Manager apparently tried to intervene and was apparently ignored (according to commentary on clip), very intrusive, 9m29s	VERY HIGH
30 Jan'22, Sun. 00.14am (i.e. late Sat. night 29/1) +1	People and vehicle noise, incl. raised voices, apparently on car park as people were departing, quite intrusive, 2m02s	HIGH

Note: +1, +2. etc. in left hand column indicates number of similar audio clips in preceding 15 mins.

ENDS.

Dated 09 Dec. 2022

Signed: S. J. Cox & R. Flynn, Torbay Licensing Team