

Title: **Licensing Act 2003 – An application for a Review of a Premises Licence for, The Devon Dumpling, 108 Shiphay Lane, Torquay, TQ2 7BY**

Wards Affected: **Shiphay**

To: **Licensing Sub-Committee 5 January 2023**

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## **1. Key points and Summary**

1.1 To consider and determine an application, in respect of the Premises detailed above, for a Review of a Premises Licence.

1.2 The application relates to all the Corporate Priorities within the Community Plan.

1.3 The matters raised relate to the Licensing 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 Mandatory 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.

1.5 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 and application**

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

The Review application has been received from a local resident, Tracie Smart. Grounds for the Review relate to:

- The premises is causing a public noise nuisance affecting people who live locally.
- Causing the reduction of the living amenity and environment of persons living within the area of the licensed premises.
- Causing the lack of enjoyment of a person's land as a result of negligence on behalf of the licensed premises.
- Failure to use best practicable means to keep noise nuisance down.

Full details of the application are shown in Appendix 1. The application refers to several incidents. Additional documents/evidence have been submitted with the application to support these incidents including, screen shots of social media messages, letters of support from two neighbours and a noise diary, all of which are shown in appendix 2aa, ab, ac, 2b and 2c respectively. The social media messages are for 2aa are for a period 2<sup>nd</sup> May 21 to 23<sup>rd</sup> Jul 22; 2ab for a period 14<sup>th</sup> April 21 to 17<sup>th</sup> Jul 22, and 2ac is undated. Sound recordings of various noise disturbances and Video footage were also received with the application, and these are available to be played at the hearing, though assessments of these have been made within the Responsible Representation found within Appendix 6.

A copy of the current premises licence is attached as Appendix 3 and a plan of the premises is attached as Appendix 4a. The whole area of the plan is licensed for the sale of alcohol, effectively on sales. Appendix 4b, includes a wider plan of the area, and marks out the licensed area, and is referred to in paragraph 2.4 below.

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.

2.3 The area of the garden used appears to have been increased in size, which from a possible impact is a matter for discussion at the hearing. However, from a Licensing administrative point of view, as this area is not on the current licensed area, this would be deemed as an off sale. As the Premises Licence allows off sales then this is allowable within the terms of this Premises Licence.

2.4 There is reference to music being played outside, again any impact is a matter for discussion at the hearing. It should be noted, however, that exemptions between 8am and 11pm, allow live and recorded music to be played within the On Sales area of the Premises Licence (licensed area), without the need for it being written on the Premises

Licence. This would be allowable only within the area marked red on the second plan, which is the licensed area. See Appendix 4b.

### **3. Consultation**

3.1 A notice stating a Review application had been made was issued by Torbay's Councils Licensing Department and delivered by the Council's Compliance Officer On 15<sup>th</sup> November 2022. Details of the Review have been advertised on the Council's website. The Notice advised of the grounds for the Review and requested representations should be made no later than 09<sup>th</sup> December 2022 to Torbay Council in writing. All Statutory consultees were served a copy of the Review application.

3.2 There are 3 representations that were received in support of the premises during the consultation period which are attached at appendix 5, as 5a, 5b and 5c.

3.3 One Responsible Authority Representation has been received from Ronan Flynn, the Council's Environmental Protection Officer. This is in the style of a full report and 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. Within the report is suggested new licence conditions. The representation report is attached at Appendix 6.

No representation has been received from the Premises Licence Holder and no other representations have been received from any other Responsible Authority or an Interested Party other than those stated above.

### **4. Hearing**

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 Additional Documents/Evidence (Screen Shots of social media messages, Neighbours Supporting letters and a Noise Nuisance diary)

Appendix 3 Copy of the Current Premises Licence

Appendix 4 Plans of the Premises

Appendix 5 Representations supporting the premises

Appendix 6 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 2021-2026.