

## PLYMOUTH CITY COUNCIL

**Subject:** Odd Bar, 34/36 Drake Circus, Plymouth  
Variation of Premises Licence

**Committee:** Licensing Sub Committee (Miscellaneous)

**Date:** 13 November 2012

**Cabinet Member:** Councillor Brian Vincent

**CMT Member:** Director for Place

**Author:** Peter Clemens

**Contact:** Tel: 01752 305465  
e-mail: [licensing@plymouth.gov.uk](mailto:licensing@plymouth.gov.uk)

**Ref:** ERS/LIC/PREM

**Key Decision:** No

**Part:** I

---

### **Executive Summary:**

An application has been received from L & R Café Ltd in respect of premises known as Odd Bar, 34/36 Drake Circus, Plymouth for the variation of the premises licence under Section 34 of the Licensing Act 2003.

---

### **Corporate Plan 2012 – 2015:**

This report links to the delivery of the City and Council priorities. In Particular:  
I. Delivering Growth

---

### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

Not applicable.

---

### **Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

---

**Recommendations & Reasons for recommended action:**

That Members consider this report.

---

**Alternative options considered and reasons for recommended action:**

None

---

**Background papers:**

Application.

Licensing Act 2003.

Guidance issued under Section 182 Licensing Act 2003.

Council's Licensing Policy.

---

**Sign off:**

Fin		Leg 15946/ 24.10.1 2/DJB		HR		Corp Prop		IT		Strat Proc	
Originating SMT Member											

## 1.0 Introduction

1.1 On the 25 September 2012 the licensing department received an application from L & R Café Ltd in respect of premises known as Odd Bar, 34/36 Drake Circus, Plymouth for the variation of an existing licence under Section 34 of the Licensing Act 2003.

### 1.2 Details of variation

<b>Current Licensable Activities</b>
<p><b><u>(e) Live Music</u></b> (Indoors)</p> <p>Hours</p> <p>Mon to Sun      10am to Midnight</p> <p>Live music contained within the premises amplified.</p>
<p><b><u>(f) Recorded Music</u></b> (Indoors and Outdoors)</p> <p>Hours</p> <p>Mon to Sun      10am to 2am</p> <p>Amplified background music playing in all areas until 1am when it will be contained inside only.</p>
<p><b><u>(l) Late Night Refreshment</u></b> (Indoors)</p> <p>Hours</p> <p>Mon to Sun      11pm to 2am</p>
<p><b><u>(m) Supply of Alcohol for consumption ON the premises.</u></b></p> <p>Hours</p> <p>Mon to Sun      10am to 2am</p> <p><u>Non Standard Timings.</u></p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.</p>
<p><b><u>(o) Hours Premises are open to the Public</u></b></p> <p>Hours</p> <p>Mon to Sun      10am to 2am</p> <p><u>Non Standard Timings.</u></p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.</p>

### 1.3 Variation application.

The nature of the proposed variation is;

The applicants will say at present their premises licence restricts customers from taking drinks into the beer garden after 11.30pm. We would like to propose a variation to this condition to allow people to drink outside until 2am when we close. We have recently built a smoking shelter that covers half of

the beer garden and helps to contain noise. We turn off the outside music at 12am and always have a door supervisor present to keep an eye on patrons behaviour and noise levels. We are only allowed to have 30 people outside at any one time so the noise from them talking would not be affected as there are already 30 people outside until 2am smoking. We wish to remove the curfew condition that patrons may only drink outside until midnight and change the time to 2am.

- 1.4 Conditions currently attached to the licence (Appendix 1).
- 1.5 Steps the applicants intend taking to promote the four licensing objectives (Appendix 2).
- 1.6 Photographs of the beer garden supplied by the applicant (Appendix 3).
- 1.7 Representations have been received in respect of this application.
- 1.8 **Cumulative Impact Policy**

This application does fall within an area to which the Cumulative Impact Policy applies and creates a rebuttable presumption that applications for new licences or variations to existing ones which are likely to add to the existing cumulative impact will normally be refused unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives if the application were granted. However before the Licensing Authority can lawfully consider giving effect to this policy there must be a relevant representation from either a responsible authority or an interested party referring to information which was before the Licensing Authority when this special policy was developed.

## **2.0 RESPONSIBLE AUTHORITIES**

- 2.1 Devon & Cornwall Police – have made representation relating to the prevention of crime and disorder and the prevention of public nuisance (Appendix 4)
- 2.2 Environmental Health – have made representation relating to the prevention of public nuisance (Appendix 5).
- 2.3 *Devon & Somerset Fire & Rescue Service* – no representations.
- 2.4 *Trading Standards* – no representations
- 2.5 *Planning Officer* - no representations.
- 2.6 *Child Protection* – no representations
- 2.7 *Health & Safety Executive* – no representations.
- 2.8 *Health Authority* – no representations.

2.9 *Licensing Authority* – no representations

### **3.0 OTHER PARTIES**

No representations have been received.

### **4.0 CONSIDERATIONS**

4.1 The Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- the protection of children from harm.

In making its decision the Committee is also obliged to have regard to the guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy and the representations (including supporting information) presented by all the parties.

The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

1. Modify the conditions of the licence
2. Reject the whole or part of the application;

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

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be appropriate in order to promote the licensing objectives.

R. Carton  
Manager of Public Protection Service

## ANNEX 1 - MANDATORY CONDITIONS

**1.** The first condition is that no supply of alcohol may be made under the premises licence: -

- (a) At a time when 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 personal licence is suspended.

**2.** The second condition is that 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 shall take all reasonable steps to 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 in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children-

(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 (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(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;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on-

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) 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.

**4.** The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

**5.** The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

**6.(1)** The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) 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 a holographic mark.

7. The responsible person shall 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-

(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; and

(b) customers are made aware of the availability of these measures.

### **Door supervision**

(1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

(2) But nothing in subsection (1) requires such a condition to be imposed-

(a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or

(b) in respect of premises in relation to-

(i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or

(ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

(3) For the purposes of this section-

(a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and

(b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule

## **ANNEX 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

### **A Supply of alcohol**

Any existing conditions attached to existing justices licence

1. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as ancillary to meals served in the premises

The authorised hours for the sale of alcohol do not prohibit:

1. during the first twenty minutes after the end of authorised hours the consumption of the alcohol on the premises;

2. during the first twenty minutes after the end of authorised hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
3. during the first thirty minutes after the end of authorised hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
4. consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises;
5. the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
6. the sale of alcohol to a trader or club for the purposes of the trade or club;
7. the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
8. the taking of alcohol from the premises by a person residing there; or
9. the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
10. the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of alcohol so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

**Conditions agreed with Devon & Cornwall Police on 5th October 2011 in respect to an application to vary a premise licence granted on 27th October 2011**

Prevention of Crime and Disorder

1. The Premises Licence Holder will ensure that a CCTV system which is fully compliant with the guidance contained in the Information Commissioner's Office (ICO) guidance document regarding installation of CCTV.
2. The CCTV will cover all areas of the premises to which the public have access including the outside decked area
3. Images will be retained for a minimum of 31 days
4. The system will be capable of downloading images to a recognizable viewable format.
5. At all times the premises are open for business a member of staff will be present who is capable of operating the system and downloading images at the request of police or a member of a responsible authority.
6. The CCTV system will be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering or leaving the premises
7. A register will be kept detailing all requests by Police for CCTV images. This will include time and date of request, time, date and location of incident, time and date of hand on to Police.
8. 2 Door Supervisors will be employed on a Friday and Saturday night from 2300hrs until close of business



9. 1 door supervisor will be employed Sunday to Thursday Inclusive from Midnight until close of business
10. All drinks will be served in Polycarbonate receptacles to customers using the outside area after 9pm.
11. A maximum of 30 people at any one time will be allowed to use the garden area after 2330hrs.
12. After 23.30hrs no drinks are to be taken outside to the outside rear area and no consumption of drinks to occur after midnight
13. After 23.30hrs on a Friday and Saturday Night and Midnight on all other nights a door supervisor is to be permanently placed in the rear area to monitor the capacity
14. After 23.30hrs noise levels are to be monitored and controlled to minimise any potential impact on local residents
15. A sign is to be placed in the outside rear area specifying that no drinks are to be taken into this area after 23.30hrs
16. No open bottles or other vessels to be permitted to be taken from the premises.

#### Protection of Children From Harm

1. No person under the age of 18years shall be admitted to the premises.
2. Any person who looks or appears to be under the age of 21 shall be asked to provide identification that they are over the age of 18. The following are the only forms of identification acceptable:
  - [UK photo driving licence]
  - [Passport]
  - [PASS accredited cards]
3. All staff employed at the premises shall be trained in the requirements of the Challenge 21 policies The identification & recognition of drunks and the correct procedure to be followed when refusing service.
4. The Licence Holder or nominated person shall ensure that bar staff, supervisors and managers are trained in the legality and procedure of alcohol sales, prior to undertaking the sale of alcohol. Training shall be signed and documented and training records be made available to a member of any responsible authority on request.
5. The Licence Holder shall ensure a sales refusal register is maintained to include details of all alcohol sales refused and the reason for refusal. The refusals register should be made available to any responsible authority on request
6. The training will be repeated at least every 4 months for all staff and will be recorded in documentary form that will be available for inspection at the time of request by a member of any responsible authority. The records will be retained for at least 12months

**Conditions agreed with the Environmental Health Authority on 14th October 2011 in respect to an application to vary a premises licence granted on 27th October 2011**

#### Public Nuisance

Outside Area

- 1 The outside licensable area must be cleared of patrons by 23.30hrs, other than for use as a designated smoking area.
- 2 No drinks will be permitted to be taken to the outside rear area after 23.30hrs and no consumption of drinks to occur in the outside area after midnight.
3. Management will control levels of noise in the outside area and advise customers of the need to respect local residents where appropriate. Any patrons continuing to cause any disturbance or disorder will be asked to leave the premises.
- 4 Any recorded music in the outside area will cease by 23.00hours.

#### General

- 5 Doors and windows will be kept shut during indoor entertainment.
- 6 A senior member of Staff (Manager) will assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment.
- 7 Management will control the sound levels of the music/entertainment.
- 8 Before 11pm  
To prevent entertainment being intrusive, noise emanating from the premises will not be clearly audible 1 metre from the façade of the nearest residential property.
- 9 Between 11pm and 12 midnight  
To prevent entertainment being intrusive, noise emanating from the premises will not be clearly distinguishable above other noise 1 metre from the façade of the nearest residential property.
- 10 Between 12 Midnight and 2am  
Total sound containment within the premises,
- 11 The delivery of goods is restricted to taking place between 08.00hrs and 18.00hrs.
- 12 Bottle skips and bins containing cans or bottles will not be emptied outside after 11pm but will be dealt with the next day during normal working hours.

The will be no adult entertainment held at this premise.

**P** Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

**a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)**

THE CURRENT RESTRICTION OF STOPPING DRINKING OUTSIDE ACTUALLY MEANS THAT PEOPLE TEND TO DRINK MUCH FASTER THAN THEY WOULD NORMALLY AS THEY DO NOT WISH TO LEAVE THEIR DRINK UNATTENDED WHILST THEY GO OUT AND SMOKE. WE DON'T AGREE WITH THE RESTRICTION AS IT CONTRADICTS THE LICENSING OBJECTIVES CAUSING PEOPLE TO "DOWN" THEIR DRINKS CAUSING THEM TO BECOME DRUNK A LOT QUICKER THAN THEY WOULD IF THEY WERE ABLE TO DRINK THEIR DRINK AT A LEISURELY PACE WHEN HAVING A CIGARETTE

**b) The prevention of crime and disorder**

WE HAVE A CONDITION ON OUR LICENCE STATING A CAPACITY OF 30 PEOPLE IN THE OUTSIDE AREA - THIS IS AN EASY NUMBER OF PEOPLE FOR THE DOORSTAFF TO CONTROL. WE ONLY USE PLASTIC GLASSES FOR OUTSIDE DRINKS SO THEY ARE MUCH SAFER THAN GLASS. THE AREA IS ENTIRELY COVERED BY CCTV + IS WELL LIT. THERE IS ENOUGH SEATING FOR ALL 30 PEOPLE AND FROM MIDNIGHT ENTRY INTO THE GARDEN FROM THE STREET IS ENTIRELY CONTROLLED BY THE DOORMAN.

**c) Public safety**

HAVING A CAPACITY OF 30 MEANS PEOPLE HAVE ROOM TO SIT DOWN AND ARE NOT SPILLING OUT ONTO THE PAVEMENT. OUR CONDITION TO USE PLASTIC GLASSES WOULD BE ONE WE WOULD WISH TO CONTINUE USING UNTIL 2AM AS IT MEANS NO BROKEN GLASS SO LESS RISK OF INJURY. OUR STAFF REGULARLY COLLECT EMPTIES SO GLASSES ARE NOT LEFT UNATTENDED. THE DOORMAN POSTED AT THE GATE DETERS SHOUTS/CALLS TO PASSERS BY + CONTROLS CAPACITY. THE CCTV COVERS THE WHOLE AREA. THE NEW HIGHER FENCE WE'VE BUILT MEANS THAT PASSERS BY CAN WALK BY WITHOUT BEING IMMEDIATELY NEXT TO PEOPLE DRINKING.

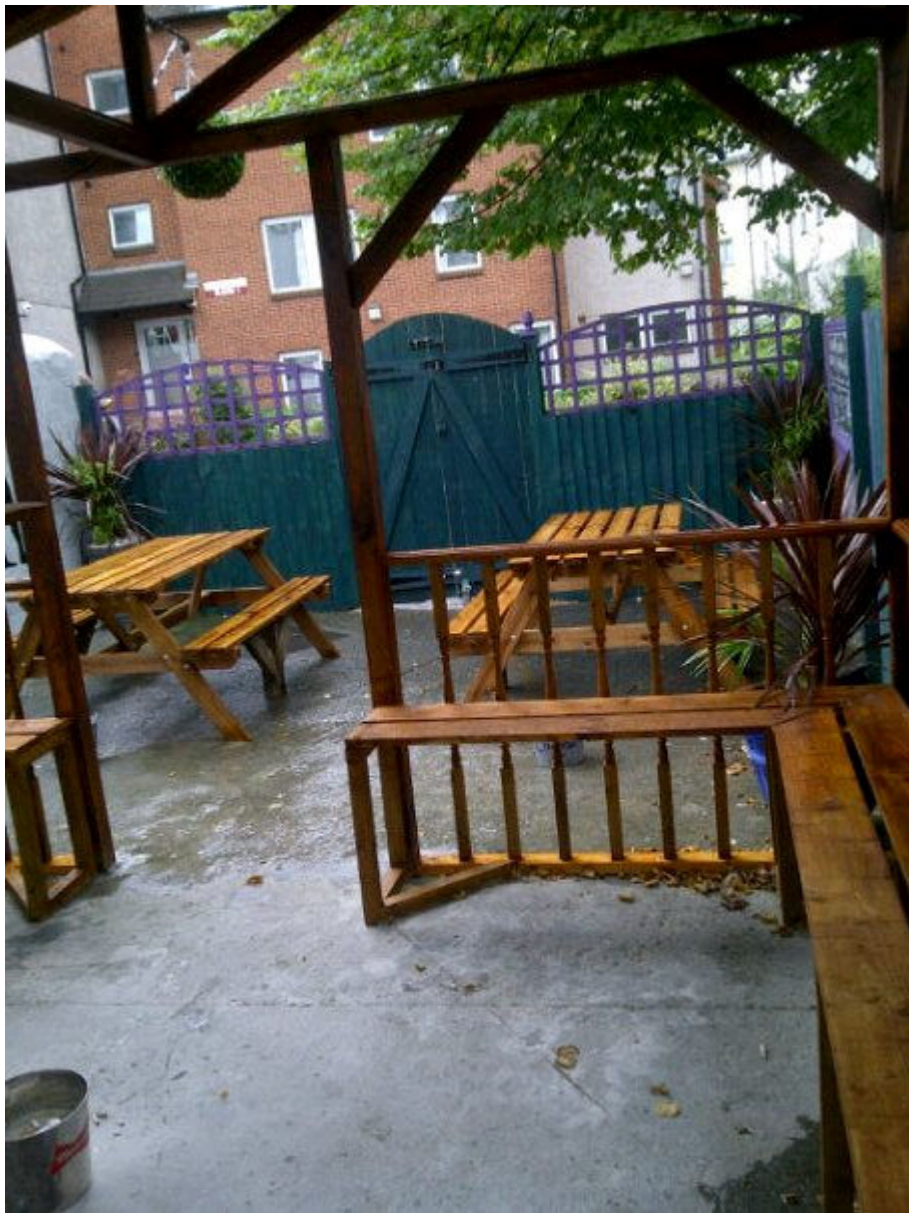
**d) The prevention of public nuisance**

THE DOORMAN CONTROLS CAPACITY + THEREFORE ABLE TO KEEP NOISE LEVELS TO A MINIMUM - HE IS ALSO MINDFUL OF OUR NEIGHBOURS AND WHAT THEY MAY BE ABLE TO HEAR. WE HAVE SIGNS INFORMING CUSTOMERS OF THE FACT THEY NEED TO BE MINDFUL OF OUR NEIGHBOURS WHEN IN THE BEER GARDEN. WE TURN THE MUSIC OFF OUTSIDE AT 11PM. WE HAVE BUILT A SHELTER OVER 1/2 THE AREA WHICH HELPS TO CONTAIN THE SOUND. OUR 30 CAPACITY MEANS WE ALREADY HAVE 30 PEOPLE OUTSIDE UNTIL 2AM ANYWAY - THE NUMBER OF PEOPLE WOULD STILL BE THE SAME IF GRANTED THE VARIATION.

**e) The protection of children from harm**

THE NEW HIGHER FENCE ENCLOSES THE AREA SO CHILDREN CANNOT SEE IN FROM OUTSIDE. THE DOORMAN ALWAYS CHECKS THE I.D. AT THE ENTRANCE TO THE GARDEN. SEE ENCLOSED PHOTOS.





Mr Peter Clemens  
Licensing Officer  
Plymouth City Council  
Civic Centre  
Plymouth  
PL1 2EW

David McIndoe  
Licensing Officer  
Charles cross Police Station  
Plymouth

Telephone: 01752 720473

18 October 2012

Our ref:  
Your ref:

Dear Mr Clemens,

**Re application to vary premises licence Odd Bar 36 Drake Circus PA0122**

On 4<sup>th</sup> October 2012 the Licensing Office at Charles Cross Police Station received a copy of the application to vary the Premises Licence as detailed above.

The Devon and Cornwall Constabulary wish to make representations to the Licensing Committee re this application for the following reasons

The premises are located within a Cumulative Impact Area as defined in Plymouth City Councils licensing policy and we would refer to the evidence produced by police that supported the introduction of this policy.

The policy was adopted in response to the level of Crime disorder and public nuisance reported in the area as a result of the number of licensed premises which remained open until the very early hours.

The police will produce evidence that the area in which the premises are situated is subject to a level of crime and anti social behaviour the majority of which occurs between the hours of 1900 and 0600hrs.

The police are unable to link all instances of crime and disorder or public nuisance to particular premises.

The application seeks the removal of the following conditions

- a maximum of 30 people at any one time will be allowed to use the garden area after 2330hrs.
- .after 2330hrs no drinks are to be taken outside to the outside area and no consumption of drinks to occur after midnight.

This would enable customers who wish to use the outside area to do so until 0200hrs. The applicant seeks to retain the number of customers using the area to 30 at any one time.

The Devon and Cornwall Police believe to remove these conditions will have a negative effect on the licensing objectives of Crime and Disorder and the Prevention of Public Nuisance.

Both the Licensing Act 2003 and the Plymouth City Council Licensing policy require any application for a material variation within a cumulative impact area to demonstrate how the applicant intends to ensure that the variation will not impact on the promotion of the four licensing objectives.

This application does not provide sufficient assurances to demonstrate how it will not have a negative effect on the Licensing Objectives

Yours sincerely

David McIndoe

**MEMO**

Public Protection Service



<b>Licensing Act 2003 Environmental Health Representation</b>	
From:	<b>Unit Manager, Public Protection Service</b>
To:	<b>Head of Licensing Section</b>
FAO:	<b>Peter Clemens</b>
Date:	23 <sup>rd</sup> October 2012
Schedule Ref:	<b>TC/RMO/833404</b>
Investigating Officer:	Rhodri Morgan
Extension Number:	4851
<b>Application Details</b>	
<b>Premises:</b>	<b>Odd Bar</b>
<b>Name of Applicant:</b>	The Directors of L&R Café Ltd ( Luke Empson and Rhiannon Maguire)
<b>Address:</b>	36 Drake Circus, Plymouth, PL4 8AB
<b>Type of Application:</b>	Variation
<b>Date of Inspection:</b>	N/A
<b>Recommendations</b>	
This department would like to make the following representation:	
<b>I recommend that this application is refused because:</b>	
<p>The applicant has applied for the variation of a condition held on their licence to allow drinks to be consumed in the outside rear area until 02.00hrs. There is a potential for the variation of the condition to allow patrons to drink in the outside area until 02.00hrs to negatively impact on the surrounding residential area.</p> <p>The embedded conditions were reached in agreement the Environmental Health department in 2011 as it was considered that to prevent potential public nuisance the condition was relevant and appropriate.</p> <p>The premises is located within a Cumulative Impact Policy Area and having considered the application on its own merits there is the potential for the application to impact negatively surrounding area.</p> <p>There are large numbers of licensed premises in North Hill and surrounding areas, largely consisting of vertical late night drinking establishments which predominantly focus on the student market, as it has done historically. This in turn, attracts high volumes of people to the area until the early hours of the morning. This saturation of persons has the effect of increasing the general noise from people that are under the</p>	



influence of alcohol, such as by shouting and swearing, and causing incidences of anti-social behaviour.

The applicant has not demonstrated how the alteration of this condition will not negatively impact on the licensing objective for the prevention of public nuisance and cumulative impact already determined in the area

The applicants state that the restriction on patrons using the area will not be affected. It is this departments' opinion that there is the potential for persons to be encouraged to stay outside the premises for longer. Currently it is unlikely that from 2300hrs until 0200hrs the capacity of the outside smoking area is constantly at its limit of 30 persons at all times. In allowing the variation proposed it is highly likely that the limit of 30 persons will be achieved for longer periods of time and the potential noise issues could increase. The applicant has not demonstrated in the application what the outside numbers are over a period of time to substantiate their statement that the noise from 30 people outside would not affect nearby local residents.

It is highly unlikely that the smoking shelter that the applicant has constructed will mitigate any noise breakout from the premises. Under the Health Act 2006 any smoking shelter must be at least 50% open. i.e. 50% or more of the structure must be open to the elements and not substantially enclosed. The applicant has not provided in the application any details, for example, a noise impact assessment or details of the design of the shelter, demonstrating the noise containment properties of the smoking shelter, therefore the soundproof qualities of the shelter cannot be determined. It is this department's opinion that any premises in which 50% or more of the structure is open will not adequately prevent the escape of noise.