

Cheltenham Borough Council

Licensing Sub Committee – 23 July 2015

Determination of an objection notice to Temporary Event Notice

Hanover Street, Cheltenham

Report of the Licensing Team Leader

1. Introduction

- 1.1 The Licensing Act 2003 (“the 2003 Act”) allows a person (“premises user”) wishing to hold an event at which licensable activities are carried on, to give notice to the Council of the event known as a temporary event notice (“TEN”).
- 1.2 The TEN, in effect, exempts the premises user from the need for a licence, in order that licensable activities can take place.
- 1.3 The premises user must, in addition to the Council, also serve copies of the notice on Gloucestershire Constabulary and the Council’s Environmental Health Department responsible for noise nuisance.
- 1.4 On this occasion, objection notices were received from Gloucestershire Constabulary and the Council’s Environmental Health Department responsible. The objections relate to the prevention of public nuisance and public safety licensing objectives.
- 1.5 The committee is asked to consider the objection notices in relation to the TEN and decide whether to serve a counter notice to the TEN.

1.5 Implications

- 1.5.1 Financial **Contact officer: Sarah Didcote**
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- 1.5.2 Legal As detailed in the report.

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2. The Temporary Event Notice (TEN)

- 2.1 The TEN was served on the Council on Monday, 13 July 2015 for a proposed outdoor event at the junction of St Pauls Road and Hanover Street. A copy of the TEN is attached at **Appendix A**.
- 2.2 The TEN was served by Miss Nicola Morrison for the following proposed events:
 - The sale by retail of alcohol; and
 - The performance of regulated entertainment.

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2.3 The proposed date for the event is Saturday, 15 August 2015 and for the hours of 14:00 to 22:00.

3. Objection Notices

3.1 Section 104 of the 2003 Act (as amended by section 112 of the Police Reform and Social Responsibility Act 2011) permits both the Chief Officer of Police and the Council's Environmental Protection team to serve an objection notice to a TEN on the basis of any of the licensing objectives.

3.2 Objection notices were submitted by Gloucestershire Constabulary and the Council's Environmental Health Department responsible for noise nuisance. Copies of the objection notices are attached at **Appendix B**.

3.3 The objection notice from Gloucestershire Constabulary has been made on the grounds of Public Safety. The objection relates to:

- the siting of the stage in the road that will leave only a 1.9m pavement between the temporary stage and the external wall of the public house;
- the obstruction of the fire exit to the public house that could impede any emergency exit; and
- the obstruction caused by the event that will impede emergency services in the event of an incident requiring a significant emergency services presence in Hanover Street.

3.4 The objection notice from the Council's Environmental Health Department has been made on the grounds of Public Safety and the Prevention of Public Nuisance. The objection relates to:

- the obstruction of the fire exit to the public house that could impede any emergency exit; and
- potentially significant noise nuisance from the event that has not properly been assessed and steps taken to mitigate the likely nuisance.

4. Statutory Guidance

4.1 Statutory guidance has been issued under Section 182 of the Licensing Act 2003. The committee must have regard to the guidance when determining this application. Below are relevant extracts for the benefit of the committee.

Licensing objectives and aims

4.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken. (1.2)

4.3 The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm. (1.3)

4.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times. (1.4)

4.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them. (1.5)

Legal status

4.6 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (1.9)

4.7 Each application on its own merits.

4.8 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case. (1.17)

Public Safety

4.9 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene. (2.6)

4.10 A number of matters should be considered in relation to public safety. These may include:

- Fire safety;

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- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
- Ensuring appropriate limits on the maximum capacity of the premises; and
- Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).

Public Nuisance

- 4.11 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter. (2.14)
- 4.12 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include, in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (2.15)

Temporary Event Notices (TENs)

- 4.13 The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead, a person wishing to hold an event at which such activities are proposed to be carried on (the “premises user”) gives notice to the licensing authority of the event (a “temporary event notice” or “TEN”). (7.2)
- 4.14 The police or “local authority exercising environmental health functions” (“EHA”) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. The police or EHA (“relevant persons” for the purposes of TENs) may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.31-7.35 below). If a relevant person sends an objection, this may result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded. (7.5)

Role of the licensing authority

- 4.15 The licensing authority must check that the limitations set down in Part 5 of the 2003 Act are being observed and intervene if they are not (see paragraph 7.7). For example, a TEN would be void unless there is a minimum of 24 hours between events notified by the same premises user, or an associate or someone who is in business with the relevant premises user in respect of the same premises. This is to prevent evasion of the seven day (or 168 hour) limit on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a TEN is treated as being from the same premises user if it is given by an associate. (7.24)
- 4.16 Where the TEN is in order, the relevant fee paid, the event falls within the prescribed limits and there has been no objection from the police or EHA on the basis of any of the four licensing objectives, the licensing authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically). (7.26)
- 4.17 If the licensing authority receives an objection notice from the police or EHA that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a “notice (statement of conditions)”) and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the licensing authority must give a counter notice. (7.27)

Police and environmental health intervention

- 4.18 The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives. (7.31)
- 4.19 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance. However, in most cases, where (for example) alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (for example, at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers. (7.32)
- 4.20 The police and EHA have the right under sections 109(5) and (6) of the 2003 Act to request the premises user to produce the TEN for examination. If the police do not intervene when a TEN is given, they will still be able to rely on their powers of closure under Part 8 of the 2003 Act should disorder or noise nuisance be expected or arise. (7.33)
- 4.21 If the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notice must be given within three working days of their receipt of the TEN. (7.34)

4.22 Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions where there is an existing premises licence or club premises certificate at the venue or issue a counter notice to prevent the event going ahead. If the police, EHA or both give an objection to a late TEN, the TEN will not be valid. (7.35)

Modification

4.23 As noted above, the police or EHA (as “relevant persons”) may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree. (7.36)

Applying conditions to a TEN

4.23 The 2003 Act provides that only the licensing authority can impose conditions from the existing conditions on the premises licence or club premises certificate to a TEN. The licensing authority can only do so:

- if the police or the EHA have objected to the TEN;
- if that objection has not been withdrawn;
- there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;
- and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions. (7.37)

4.24 This decision is one for the licensing authority alone, regardless of the premises user’s views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations. (7.38)

Hearings to impose conditions

4.25 Section 105 of the 2003 Act is clear that a licensing authority must hold a hearing to consider any objections from the police or EHA unless all the parties agree that a hearing is not necessary. If the parties agree that a hearing is not necessary and the licensing authority decides not to give a counter notice on the basis of the objection, it may impose existing conditions on the TEN. (7.39)

5. Policy Considerations

5.1 The objective of this policy is to:

- promote the four licensing objectives;
- ensure that the premises are appropriate for their proposed use;
- ensure the premises layout and condition is acceptable for the proposed use; and
- ensure that the premises are being managed responsibly. (2.3)

5.2 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. (4.2)

- 5.3 In determining a licensing application, the overriding principle adopted by the Council will be that each application is determined on its merits.
- 5.4 Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed. (4.3)
- 5.5 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity. (4.5)

Public Safety

- 5.6 The Council in its role as Licensing Authority must try to ensure the safety of people visiting and working in licensed premises. The Council will need to be satisfied that measures to promote public safety including risk assessments, setting safe capacities and adequate means of escape are put in place and maintained, if not adequately provided for by other regulatory regimes.
- 5.7 Consideration should be given to whether:
 - a) appropriate and satisfactory general and technical risk assessments, management procedures and certificates have been made available to the relevant responsible authority and to the Licensing Authority, that demonstrate that the public will be safe within and in the vicinity of the premises;
 - b) the premises already has a licence or a fire certificate that specifies the maximum number of people that can attend it or be present and, if not, whether a risk assessment has been undertaken to assess the maximum number of people in terms of capacity in various parts of the premises, so that they can be operated safely and can be evacuated safely in the event of an emergency;
 - c) there are procedures proposed to record and limit the number of people on the premises with opportunities for going outside and readmission;
 - d) patrons can arrive at and depart from the premises safely;
 - e) music, dance and performance venues will use equipment or special effects that may affect public safety (i.e. moving equipment, pyrotechnics, strobe lights, smoke machines);
 - f) there are defined responsibilities and procedures for medical and other emergencies and for calling the emergency services, and/or
 - g) the levels of compliance with conditions on existing licences relating to public safety.

Public Nuisance

- 5.8 The role of the Council is to maintain an appropriate balance between the legitimate aspirations of the entertainment industry and the needs of residents and other users of the town including businesses, workers, shoppers and visitors. (5.24)
- 5.9 Playing of music can cause nuisance both through noise breakout and by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. Other major sources of noise nuisance are vehicles collecting customers, the slamming of car doors and the sounding of horns. These noises can be particularly intrusive at night when ambient noise levels are lower. (5.25)

6. Licensing Comments

- 6.1 The committee must have regard to the statutory guidance issued by the Secretary of State and the Council's adopted policy statement when determining this application. In particular, the committee must seek to promote the four licensing objectives when determining the application.
- 6.2 The committee, having regard to the objection notice and the evidence it hears, must take such steps as it considers appropriate for the promotion of the licensing objectives which can include:
- a) Serving a counter-notice if the committee is satisfied that the promotion of the licensing objectives will adversely be affected by the TEN; or
 - b) Do nothing if the committee does not accept the objection notices submitted.
- 6.3 The committee does not have the power to modify a TEN.
- 6.4 Copies of the mentioned plan and risk assessment are attached at **Appendix C & D** respectively.

Background Papers

Service Records

Report Author

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