

Cheltenham Borough Council

Licensing Sub Committee – 21 July 2020

Licensing Act 2003: Police Objection to Temporary Events Notice

Break Films, Cheltenham Town Football Club, Whaddon Road, Cheltenham

Report of the Licensing Team Leader

1. Introduction

- 1.1 A Temporary Events Notice (TEN) was submitted to Cheltenham Borough Council on 07.07.2020 by Ms Teresa Dwyer of Break Films.
- 1.2 The TEN relates to a drive-in cinema showing 4 films per day at 5 showings at the Cheltenham Town Football Club on Whaddon Road. The TEN submitted only relates to the use of the football club's car park for the following days & times:

Date	Time from	Time to
15/08/2020	10:00	00:30
16/08/2020	10:00	00:30

- 1.3 The licensable activities subject to the TEN are:
- 1.3.1 The sale by retail of alcohol
- 1.3.2 The provision of regulated entertainment
- 1.3.3 The provision of late night refreshment
- 1.4 A copy of the TEN form is attached at Appendix 1 of this report.
- 1.5 An objection has been received from Gloucestershire Constabulary.

1.6 Implications

- 1.6.1 Legal A sub committee is required to discharge its duty and determine an application with a view to promoting the licensing objectives. These objectives, which are set out in section 4(2) of the Licensing Act 2003, are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm.

One Legal

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2. Application (Ref. 20/00940/TEN)

- 2.1 Applicant: Ms Teresa Dwyer

2.2 Agent: N/A

2.3 Premises: Break Films, Cheltenham Town Football Club, Whaddon Road, Cheltenham

3. Responsible Authorities

3.1 An objection has been received from Gloucestershire Constabulary. A copy of the objection is attached Appendix 2.

4. Local Policy Considerations

4.1 The Licensing Act 2003 introduced a unified system of regulation through two types of licence: the premises licence (club premises certificates for qualifying clubs) and the personal licence. The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities': public entertainment, theatre, cinema, or late night refreshment.

4.2 The system is underpinned by four objectives:

- i) the prevention of crime and disorder;
- ii) public safety;
- iii) the prevention of public nuisance; and,
- iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.

4.3 The Council's adopted licensing policy statement (approved December 2015) includes the following:

4.4 The objective of this policy is to: (a) promote the four licensing objectives; (b) ensure that the premises are appropriate for their proposed use; (c) ensure the premises layout and condition is acceptable for the proposed use; (d) ensure that the premises are being managed responsibly; and (e) promote the policy vision statement. (para 1.9)

4.5 This policy also seeks to promote the council's wider priorities, in particular that: Cheltenham has a clean and well-maintained environment; Cheltenham has a strong and sustainable economy; communities feel safe and are safe; people are able to lead healthy lifestyles; and our residents enjoy a strong sense of community and are involved in resolving local issues. (para 1.10)

4.6 The council's powers and duties as the licensing authority are delegated by the council to its licensing committee, sub-committees and officers. The council approaches these delegations in accordance with the table of delegation or otherwise in accordance with the council's adopted constitution. (para 1.11)

4.7 The policy will be used as a basis in coming to consistent and transparent decisions in respect of licence applications. (para 1.12)

4.8 The policy does not: (a) Undermine the right of any individual to apply for a variety of permissions and to have each application considered on its individual merits; or (b) Override the right of any person to make representations on an application, or seek a review of a licence or certificate, where the Act allows. (para 1.13)

4.9 In determining a licensing application, the overriding principle adopted by the council will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed. (para 1.16)

- 4.10 The council will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure. (para 1.17)
- 4.11 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. (para 1.18)

Measures to limit nuisance

- 4.12 The council will expect applicants to set out in their operating schedules the steps taken, or proposed to be taken, to deal with the potential for public nuisance arising from the operation of the premises. (para 3.20)
- 4.13 Applicants should identify and describe through a risk assessment how these risks will be managed. Public nuisance could include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. (para 3.21)
- 4.14 Applicants will be expected to have included measures in their operating schedules that make adequate provision to:
- a) restrict the generation of noise within the premises and from activities associated with the premises in the vicinity, or from an open air site;
 - b) limit the escape of noise from the premises or open air site;
 - c) restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping;
 - d) minimise and control noise from customers arriving at the premises, or open air site outside it and departing from it;
 - e) minimise and control noise from staff, contractors and suppliers and their activities;
 - f) minimise and control noise from vehicles associated with and providing services to the premises or open air site and their customers;
 - g) determine whether people standing or sitting outside premises are likely to cause obstruction or other nuisance;
 - h) whether the premises are under or near to residential accommodation;
 - i) the hours of the sale of alcohol in open containers or food for consumption outside the premises;
 - j) measures to make sure that customers move away from outside premises when such sales cease;
 - k) measures to collect drinking vessels and crockery, cutlery and litter;
 - l) the extent and location of areas proposed to be set aside for the consumption of food and alcoholic drink and for smoking;
 - m) whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied from the premises or not).
 - n) adequate measures to prevent the following arising from the proposed licensable activity that may cause disturbance to people in the vicinity: a. litter, smells, fumes, dust, smoke, or other emissions; b. street fouling; c. light pollution. (para 3.22)

- 4.15 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. (para 3.23)
- 4.16 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. (para 3.24)
- 4.17 Where relevant representations are received, the council may attach appropriate conditions to licences, necessary to support the prevention of undue noise disturbance from licensed premises. Where premises remain open after 23:00, the licence holder will be expected to provide facilities which are relevant to controlling noise and the patrons of those premises late at night. The council also expects that premises which produce noise generating licensable activities are acoustically controlled and engineered to a degree where the noise from the premises when compared to the ambient noise level will not cause undue disturbance. (para 3.25)
- 4.18 The provision of tables and chairs outside the premises, either on the highway or on private land, and the provision of beer gardens, can enhance the attractiveness of the venue. It can have the benefit of encouraging a continental style café culture and family friendly venues. However, late at night, tables and chairs and beer gardens can cause significant public nuisance to residents whose homes overlook these areas. (para 3.26)
- 4.19 The ‘smoke free public places’ legislation in July 2007 has led to an increase in the number of people outside licensed venues. Where outside facilities are provided the council expects applicants to provide details in their application of:
- a. the location of open air areas; and
 - b. how the outside areas will be managed to prevent noise, smell, or obstruction and nuisance to neighbours and the public. (para 3.27)
- 4.20 Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising including a suitable litter and waste management program to ensure that the area outside the premises is kept free of litter at all times. (para 3.28)
- 4.21 Where the council receives relevant representations, or where a responsible authority or an interested party seeks a review, the council may consider imposing conditions to improve the management of the outside area or prohibiting or restricting the use of these areas in order to promote the public nuisance objective. (para 3.29)
- 4.22 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies, provision of signs, publicity and dispersal policies. (para 3.30)

Public Safety

- 4.23 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.
- 4.24 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 council, 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.

5. National Guidance

5.1 Guidance has been issued under Section 182 of The Licensing Act 2003.

Temporary Event Notices (TENs)

5.14 Paragraph 7.2 of the Guidance states: “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”).”

5.15 Paragraph 7.6 of the Guidance states: “The police or EHA (“relevant persons” for the purposes of TENs) 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.”

5.16 “Police and environmental health intervention”, paragraphs 7.32 – 7.36 of the Guidance states:

7.32 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.

7.33 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 the period of three working days following the day on which they received the TEN.

7.34 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 which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.

7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.

7.36 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, (such as at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

5.17 “Modification” paragraph 7.37 of the guidance states: “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 for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.”

6. Licensing Comments

6.1 In relation to the objection, the committee can issue a counter notice if you are satisfied that any licensable activities proposed by the TEN is likely to adversely affect the promotion of the licensing objectives. The effect of the counter notice is that the event cannot go ahead under the TEN.

6.2 In coming to a determination, the committee must have regard to the statutory guidance, the authority’s statement of licensing policy and the objection of the police.

6.3 The grounds for objection specified by the police are:

- a) The prevention of public nuisance; and
- b) Public Safety

6.4 The objection is made with reference to the following matters:

- a) Noise nuisance
- b) Likely traffic management issues that raises public nuisance and safety concerns

6.5 An event management plan is attached at Appendix 3 for the committee’s information.

6.6 In relation to the ground of objections specified above, the committee’s attention is drawn to the follow extracts from the authority’s statement of licensing policy:

Measures to limit nuisance (Para 4.14 of this report)

- a) The committee can consider measures to “limit the escape of noise from the premises or open air site”

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- b) minimise and control noise from customers arriving at the premises, or open air site outside it and departing from it;
- c) minimise and control noise from vehicles associated with and providing services to the premises or open air site and their customers;
- d) determine whether nuisance; people standing or sitting outside premises are likely to cause obstruction or other
- e) whether the premises are under or near to residential accommodation.

Public Safety (Para 4.24 of this report)

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 council, that demonstrate that the public will be safe within and in the vicinity of the premises;
- b) there are procedures proposed to record and limit the number of people on the premises with opportunities for going outside and readmission;
- c) patrons can arrive at and depart from the premises safely.

6.7 Members are to note that Cheltenham Town Football Club does have a premises licence but this licence does not include the car park.

Background Papers

Service Records

Report Author

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