

Cheltenham Borough Council

Licensing Sub - Committee – 20 February 2024

Licensing Act 2003: Police Objection to Temporary Event Notice

7 Pittville Street, Cheltenham, Gloucestershire, GL52 2LN

Report of the Licensing Team Leader

Introduction

1. A Temporary Events Notice (TEN) was submitted to Cheltenham Borough Council on 08.02.2024 by Mr Naikar.
2. The TEN relates to the use of 7 Pittville Street for the sale of alcohol for 4 days during March Race Week. The alcohol is to be sold in pint tumbler glasses and bottles. The TEN submitted relates to the use of 7 Pittville Street for the following days & times:-

Date	Time from	Time to
12/03/2024	11:00	23:00
13/03/2024	11:00	23:00
14/03/2024	11:00	23:00
15/03/2024	11:00	23:00

3. The licensable activities requested in the TEN were:-
 - a) The sale by retail of alcohol
 - b) The provision of late night refreshment (this was subsequently confirmed by the applicant as not being required).
4. Therefore the TEN only refers to the sale of alcohol.
5. An objection has been received from Gloucestershire Constabulary.

Implications

6. 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

E-mail: legalservices@onelegal.org.uk

Application (Ref. 24/00205/TEN)

Premises user (Applicant): Mr Naikar

Agent: N/A

Premises: 7 Pittville Street, Cheltenham, Gloucestershire, GL52 2LN

Responsible Authorities

7. The TEN must be served on the Environmental Health Team at Cheltenham Borough Council and Gloucestershire Police, and this was done on 09.02.2024. The consultees then had until the end of 14.02.2024 to make representations if they considered this appropriate.
8. An objection was received from Gloucestershire Constabulary 13.02.2024. A copy of the objection is attached Appendix 4.

Statutory Guidance issued under section 182 of the Licensing Act 2003 and Cheltenham Borough Council Statement of Licensing Policy

9. The Licensing Act 2003 introduced a unified system of regulation through the introduction of premises licence, club premises certificates for qualifying clubs, Temporary Event Notices (TENs) 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.
10. The licensing regime 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.
11. The government issues statutory guidance under section 182 of the Licensing Act 2003 and this guides Licensing Authorities in carrying out their responsibilities. Extracts of the latest version are attached at Appendix 1.
12. The Council's adopted licensing policy statement was approved in December 2020. Relevant extracts are included at Appendix 2.

Licensing Comments

13. Records would indicate that this premises itself previously benefitted from a premises licence, notwithstanding the business that held the licence – MJM Bars Ltd – no longer uses the site. The licence is now revoked, as the company concerned has gone into liquidation.
14. The sub – committee can **only** attach conditions to the 'grant' of a TEN, where they believe they are appropriate to promote the licensing objectives, **and only** where a premises licence has effect. That is not the case in this instance.

15. The conditions for the premises licence concerned are shown below for information only:-

1. (a) Sales of alcohol for consumption on the premises will predominantly be sold to a persons seated.

(b) Sales of alcohol for consumption on the premises shall only be sold to customers by waiter/ waitress service.

(c) Sales of alcohol for consumption on the premises will be ancillary to the main part of the business which is retail and off-sales.

(d) ~~The designated premises supervisor shall ensure that tables are cleared of all bottles and glasses on a regular basis during trading hours to avoid an accumulation of glassware.~~

(e) Customers will not be permitted to drink outside the premises save for in any seated area authorised under a pavement licence.

(f) Prominent, clear notices shall be displayed at the venue requesting customers to respect the needs of the local residents and leave the premises and the area quietly.

(g) The "Challenge 25" scheme (or equivalent) shall be adopted, so that any customer attempting to purchase alcohol who appears to be under the age of 25 years shall be asked for an accredited photographic proof of age (passport, photo driving licence, pass approved card or Military ID) and that a sale shall not be made unless this evidence is produced.

2. (a) The main frontage of the building at street level will be that of a retail shop.

(b) After 20:00, the shop at street level will be closed with customer access managed via a video intercom.

(c) The ground floor will be manned at all times when there are guests in the building after 20:00.

(d) The consumption of alcohol on the premises should limited to very small numbers and principally in relation to events booked in advance.

(e) ~~The DPS will maintain active membership of Cheltenham Night safe.~~

(f) ~~The DPS must undertake risk assessments to determine the appropriate level of staff, including SIA door staff, where there is an anticipated high volume of guests and/or during racing events in Cheltenham. The DPS should retain evidence of risk assessments undertaken~~

16. However, Members must consider that the premises licence would only have been granted with the attachment of these conditions and after a comprehensive consultation process, albeit that the licence would have been permanent and not granted for a limited period. In addition, a personal licence holder would have supervised and authorised all alcohol sales by way of acting as the DPS, and the premises user does not fulfil that role in the same way.

17. In any event, Members must note that the objection relates to the temporary use of a premises for the sale of alcohol, at a location on well used routes to/ from the race course, during a very busy period, where management of such premises can be put under pressure and tested. For these reasons, it is suggested that Members should seek substantial reassurance about how the premises will be managed and operated in such circumstances. Although the Members cannot attach conditions, they can ask for written reassurances/ commitments/ plans from the premises user to demonstrate how any potential adverse impacts on the promotion of the licensing objectives will be mitigated.

18. Finally, the sub - committee can issue a counter notice to stop this licensable activity being carried out. They would do so if they are satisfied that any licensable activity proposed in 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.
19. In coming to a determination, the committee must have regard to the statutory guidance, the authority's statement of licensing policy, the objection of the police and submissions from the premises user.
20. The grounds for objection specified by the police 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.
21. The applicant will be invited to attend the hearing.

Background Papers

Service Records

Report Author

Contact officer: Jason Kirkwood
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626

Appendix 1

Relevant Extracts from the Revised Statutory Guidance issued under section 182 of the Licensing Act 2003

Licensing objectives and aims

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

1.3 The licensing objectives are: • The prevention of crime and disorder; • Public safety; • The prevention of public nuisance; and • The protection of children from harm.

1.4 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.

1.5 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.

1.6 Section 182 of the 2003 Act provides that the Secretary of State must issue and, from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act. This revised guidance takes effect as soon as it is published. Where a licence application was made prior to the publication of the revised guidance, it should be processed in accordance with the guidance in effect at the time at which the application was made; the revised guidance does not apply retrospectively. However, all applications received by the licensing authority on or after the date the revised guidance was published should be processed in accordance with the revised guidance. Purpose

1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

1.8 The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

7. Temporary Event Notices (TENs)

7.1 This Chapter covers the arrangements in Part 5 of the 2003 Act for the temporary carrying on of licensable activities which are not authorised by a premises licence or club premises certificate.

General

7.2 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”).

7.3 The TEN must be given to the licensing authority in the form prescribed in regulations made under the 2003 Act. The form requires the user to describe key aspects of the proposed event, including the general nature of the premises and the event, the licensable activities intended to be carried on at the proposed event, including whether they will include any relevant entertainment as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (i.e. displays of nudity designed to sexually stimulate any member of the audience including, but not limited to, lap dancing and pole dancing). Under the 2003 Act ‘premises’ can mean any place. Events authorised under a TEN will therefore not always be in a building with a formal address and can take place, for example, in public parks and plots within larger areas of land. In all cases, the premises user should provide a clear description of the area in which they propose to carry on licensable activities, including whether the premises are, for example, an open field or a beer tent. Local authorities and “relevant persons” (see below) may wish to make enquiries where appropriate to satisfy themselves of the exact location for where a TEN is being given.

7.4 Unless it is sent electronically, it must be sent to the relevant licensing authority, to the police and “local authority exercising environmental health functions” (“EHA”) at least ten working days before the event. A premises user may also give a limited number of “late TENs” to the licensing authority less than 10 working days before the event to which they relate, although certain restrictions apply (see paragraphs 7.12-7.14). “Working day” under the 2003 Act means any day other than a Saturday, Sunday, Christmas Day, Good Friday or Bank Holiday. For limited purposes in relation to a TEN, the 2003 Act defines a “day” as a period of 24 hours beginning at midnight.

7.5 If a TEN is sent electronically via GOV.UK or the licensing authority’s own facility, the licensing authority must notify the police and EHA as soon as possible and no later than the first working day after the TEN is given.

7.6 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. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.36). If a relevant person sends an objection, this may Revised Guidance issued under section 182 of the Licensing Act 2003 I 49 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 (see paragraphs 7.15-7.22).

7.7 A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required. Standard and late temporary event notices

7.8 There are two types of TEN: a standard TEN and a late TEN. These are subject to different processes: a standard notice is given no later than ten working days before the event to which it relates; and a late notice is given not before nine and not later than five working days before the event. Standard temporary event notices

7.9 “Ten working days” (and other periods of days which apply to other requirements in relation to TENs) exclude the day the notice is received and the first day of the event.

7.10 The police and EHA have a period of three working days from when they are given the notice to object to it on the basis of any of the four licensing objectives.

7.11 Although ten clear working days is the minimum possible notice that may be given, licensing authorities should publicise their preferences in terms of advance notice and encourage premises users to provide the earliest possible notice of events planned by them. Licensing authorities should also consider publicising a preferred maximum time in advance of an event by when TENs should ideally be given to them. Late temporary event notices

7.12 Late TENs are intended to assist premises users who are required for reasons outside their control to, for example, change the venue for an event at short notice. However, late TENs may, of course, be given in any circumstances providing the limits specified at paragraph 7.15 are not exceeded.

7.13 Late TENs can be given up to five clear working days but no earlier than nine clear working days before the event is due to take place and, unless given electronically to the licensing authority, must also be sent by the premises user to the police and EHA. A late TEN given less than five days before the event to which it relates will be returned as void and the activities to which it relates will not be authorised.

7.14 A key difference between standard and late TENs is the process following an objection notice from the police or EHA. Where an objection notice is received in relation to a standard TEN the licensing authority must hold a hearing to consider the objection, unless all parties agree that a hearing is unnecessary. If the police, EHA or both give an objection to a late TEN, the notice will not be valid and the event will not go ahead as there is no scope for a hearing or the application of any existing licence conditions. Limitations

7.15 A number of limitations are imposed on the use of TENs by the 2003 Act: • the number of times a premises user may give a TEN is 50 times in a calendar year 50 | Revised Guidance issued under section 182 of the Licensing Act 2003 for a personal licence holder and five times in a calendar year for other people; • the number of times a premises user may give a late TEN is limited to 10 times in a calendar year for a personal licence holder and twice for other people. Late TENs count towards the total number of permitted TENs (i.e. the limit of five TENs a year for non-personal licence holders and 50 TENs for personal licence holders). A notice that is given less than ten working days before the event to which it relates, when the premises user has already given the permitted number of late TENs in that calendar year, will be returned as void and the activities described in it will not be authorised. • the number of times a TEN may be given for any particular premises is 15 times in a calendar year; • the maximum duration of an event authorised by a TEN is 168 hours (seven days); • the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year; • the maximum number of people attending at any one time is 499 (including any staff and any other persons); and • the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user is 24 hours.

7.16 Any associate, relative or business partner of the premises user is considered to be the same premises user in relation to these restrictions. The 2003 Act defines an associate, in relation to the premises user, as being: • the spouse or civil partner of that person; • a child, parent, grandchild, grandparent, brother or sister of that person; • an agent or employee of that person; or • the spouse or civil partner of a person listed in either of the two preceding bullet points.

7.17 A person living with another person as their husband or wife, is treated for these purposes as their spouse. 'Civil partner' has its meaning in the Civil Partnership Act 2004.

7.18 A TEN that is given may be subsequently withdrawn by the TEN user by giving the licensing authority a notice to that effect no later than 24 hours before the beginning of the event period specified in the TEN. Otherwise, the TEN will be included within the limits of TENs allowed in a given calendar year, even if the event does not go ahead.

7.19 Once these limits have been reached, the licensing authority should issue a counter notice (permitted limits) if any more are given. Proposed activities that exceed these limits will require a premises licence or club premises certificate.

7.20 TENs may be given in respect of premises which already have a premises licence or club premises certificate to cover licensable activities not permitted by the existing authorisation.

7.21 In determining whether the maximum total duration of the periods covered by TENs at any individual premises has exceeded 21 days, an event beginning before midnight and continuing into the next day would count as two days towards the 21 day limitation.

7.22 There is nothing in the 2003 Act to prevent notification of multiple events at the same time, provided the first event is at least ten working days away (or five working days away in the case of a late TEN). For example, an individual personal licence holder wishing to exhibit and sell beer at a series of farmers' markets may wish to give several notices simultaneously. However, this would only be possible where the limits are not exceeded in the case of each notice. Where the events are due to take place in different licensing authority (and police) areas, the respective licensing authorities and relevant persons would each need to be notified accordingly. Who can give a temporary event notice? Personal licence holders

7.23 A personal licence holder can give a TEN at any premises on up to 50 occasions in a calendar year. This limit is inclusive of any late TENs (subject to a maximum of 10) given in the same year. The use of each TEN must of course observe the limits described above, including the limit of 15 TENs in respect of each premises in a calendar year. Non-personal licence holders

7.24 The 2003 Act provides that any individual aged 18 or over may give a TEN to authorise the carrying on of all licensable activities under the Licensing Act 2003, whether or not that individual holds a personal licence. Such an individual will not, therefore, have met the requirements that apply to a personal licence holder under Part 6 of the 2003 Act. Where alcohol is not intended to be sold, this should not matter. However, many events will involve a combination of licensable activities and the 2003 Act limits the number of notices that may be given by any non-personal licence holder to five occasions in a calendar year (inclusive of any late TENs – subject to a maximum of 2 - in the same year). In every other respect, the Guidance and information set out in the paragraphs above applies. Role of the licensing authority

7.25 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 7.15). 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.

7.26 Where the application is not within the statutory parameters described earlier, the licensing authority will issue a counter notice to the premises user.

7.27 Where the TEN is in order, the relevant fee paid and the event falls within the prescribed limits, the licensing authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically). The licensing authority must do so, no later than the end of the first working day following the day on which it was received (or by the end of the second working day if it was received on a non-working day), unless an objection notice is received beforehand from the police or EHA on the basis of any of the four licensing objectives (see paragraphs below).

7.28 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 or certificate 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.

7.29 Premises users are not required to be on the premises during the event authorised by the TEN, but they will remain liable to prosecution for certain offences that may be committed at the premises during the period covered by it. These include, for example, the offences of the sale of alcohol to a person who is drunk; persistently selling alcohol to children and allowing disorderly conduct on licensed premises.

7.30 In the case of an event authorised by a TEN, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.

7.31 Section 8 of the 2003 Act requires licensing authorities to keep a register containing certain matters, including a record of TENs received. Under Schedule 3 of the 2003 Act, the licensing authority must also keep a record of such matters including any notice of withdrawal of a TEN, any counter notice to a TEN given following an objection by a relevant person and any TEN received following modification. If requested to do so, a licensing authority must supply a person with a copy of the information contained in any entry in its register. Each licensing authority must also provide facilities for making the information contained in the entries in its register available for inspection by any person during office hours and without payment. Licensing authorities may wish to consider bringing TENs to the attention of local councillors and residents by making their register available online or including relevant details of a TEN when it is received, along with notice of licence applications on the authority's website. There is no requirement to record all the personal information given on a TEN. Police and environmental health intervention

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 (or appeals) 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. Modification 7.37 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. Applying conditions to a TEN

7.38 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. 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; • if 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.

7.39 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. Duty of premises users to keep and produce TENs 7.40 Where a TEN is not prominently displayed at the premises, the police and licensing officers have the right under sections 109(5) and (6) of the 2003 Act to request the premises user (or relevant nominated person who has the TEN in their custody) 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 the Anti-social Behaviour, Crime and Policing Act 20143.

Appendix 2

Relevant Extracts from the Council's Statement of Licensing Policy

1.3 The main purpose of this policy is to provide clarity to applicants, responsible authorities, elected Members and other persons on how the authority will determine applications for the sale/supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and also to provide a basis for all licensing decisions taken by the authority over the next five years. It will also inform elected Members of the parameters within which licensing decisions can be made.

1.6 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises and, therefore, beyond the direct control of the individual licensees. There are a range of mechanisms including: a) Planning controls; b) Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority, including the provision of Closed Circuit Television (CCTV); c) Police enforcement of the general law concerning disorder and anti social behaviour, including the issuing of fixed penalty notices; d) The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk; 6 e) The confiscation of alcohol from adults and children in designated areas; f) Police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance; and g) The power to seek a review of the licence or certificate in question.

1.7 It should be understood that this policy and the statutory guidance cannot anticipate every scenario or set of circumstances that may arise and as such there may be circumstances where the policy or guidance may be departed from in the interests of the promotion of the licensing objectives and where it is deemed appropriate to do so. In such cases the authority will give full reasons for departing from this policy.

Licensing Principles and Process

1.8 This policy sets out the process the authority will adopt in dealing with licence applications with particular regard to the various types of premises and permissions and the various conditions that can be attached to licences if relevant representations are made. It also highlights the authority's undertaking to avoid duplication with other statutory provisions and its commitment to work in partnership with other enforcement agencies.

1.9 The authority is the Licensing Authority under the Act and is responsible for granting premises licences, club premises certificates, personal licences and administering temporary events notices in the borough.

1.10 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.

1.11 This policy also seeks to promote the authority'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.

1.12 The authority's powers and duties as the licensing authority are delegated by Council to its licensing committee, sub-committees and officers. The authority approaches these delegations in accordance with the table of delegation set 7 out below or otherwise in accordance with the authority's adopted constitution.

1.13 The policy will be used as a basis in coming to consistent and transparent decisions in respect of licence applications.

1.14 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.

Licensing Objectives

1.16 The authority will carry out its licensing functions under the Act with a view to promoting the four licensing objectives, which 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.

1.17 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives.

1.18 In determining a licensing application, the overriding principle adopted by the authority 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.~~ **Not applicable to this TEN.**

1.19 The authority 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.

1.20 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.

This section is included for consideration, but it is clearly referenced only in relation to operating schedules, which will accompany a premises licence. However, it gives all parties a better idea of issues and areas of concern for the Licensing Authority in respect of the licensing objectives.

Guidance on Operating Schedule

3.9 The following guidance is intended to assist applicants by setting out criteria and considerations that they should bear in mind when drawing up an operating schedule. They alert applicants to any matters that responsible authorities are likely to consider when deciding whether to make representations on an application or whether to call for a review. a) Crime and Disorder

3.10 The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in promoting this objective.

3.11 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events. Considerations

3.12 When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These factors may include: a) Underage drinking; b) Drunkenness on premises; c) Public drunkenness; d) Drugs; e) Violent behaviour; and/or f) Anti-social behaviour.

3.13 In making their decision, regard should be given to the levels of crime and disorder in and around the venue, the level of compliance with conditions on existing licences and any available evidence on crime and disorder issues.

3.14 Applicants are recommended to consult the Reducing Alcohol Related Violence Codes of Practice when considering their operating schedule.

3.15 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives. Please see Appendix C for the pool of model conditions for the prevention of crime and disorder. 12 b) Public Safety

3.16 The authority in its role as licensing authority must try to ensure the safety of people visiting and working in licensed premises. The authority 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.

3.17 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 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.

3.18 The authority seeks to encourage the use of toughened glassware and polycarbonate where appropriate in licensed premises. Where a relevant representation is received the authority will consider imposing a condition prohibiting the sale of alcohol in annealed glass containers and require the use of polycarbonate or other safer alternatives in order to promote public safety in licensed venues.

3.19 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives. Please see Appendix C for the pool of model conditions for public safety. 13 c) Public Nuisance Measures to limit nuisance

3.20 The authority 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.

3.21 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.

3.22 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; 14 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.

3.23 The role of the authority 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.

3.24 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.

3.25 Where relevant representations are received, the authority 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 authority 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.

3.26 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.

3.27 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 authority 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.

3.28 Licensees and their staff are expected to have sufficient measures in place to prevent such problems arising including a suitable litter and waste 15 management program to ensure that the area outside the premises is kept free of litter at all times.

3.29 Where the authority receives relevant representations, or where a responsible authority or an interested party seeks a review, the authority 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.

3.30 Conditions may include maximum noise levels over particular time periods, the installation of acoustic lobbies, provision of signs, publicity and dispersal policies.

3.31 A pool of model conditions has been prepared and individuals preparing operating schedules are at liberty to use these conditions, or volunteer any other measures(s) to promote the licensing objectives. Please see Appendix C for the pool of model conditions for the prevention of public nuisance. d) Protection of Children from Harm

3.32 The authority needs to satisfy itself that there are appropriate measures in place to protect children from harm.

3.33 To this extend it will expect applicants, where necessary, to consider the measures necessary to promote the licensing objective of protecting children from harm when on the premises.

3.34 These measures may include staff training on how to control the entry of children and young people under 18 and the vetting of staff who will supervise them. Applicants will have to give particular regard to these measures in applications for licences involving: a) the sale of alcohol; b) children's performances; and c) attractions or performances likely to attract children.

3.35 It is an offence to sell alcohol to children. In this context, children are defined as individuals under 18. The provisions of the Act are that unaccompanied children under 16 should not be on "premises being used exclusively or primarily for the supply of alcohol" (eg "alcohol led" premises such as pubs, bars and nightclubs). In addition, it is an offence to allow unaccompanied children under 16 on premises licensed to sell alcohol for consumption on the premises after midnight but before 05:00.

3.36 Issues for consideration include: a) installing effective measures to check the age of those young people who appear under 21 to ensure that alcohol is not sold to those under 18 and those under 16 are accompanied in alcohol led premises; b) exclusive or primary purpose of the services provided at the premises; c) accompanied children under 16 on the premises of which the primary purpose is supply of alcohol for consumption on the premises are taking a table meal or are being entertained by a live performance; d) the hour to which accompanied children under 16 are proposed to be on the premises where the exclusive or primary purpose of the services provided at the premises is the supply of alcohol for consumption on the premises; e) due regard is paid to industry codes of good practice on the labelling and display of alcoholic drinks; f) are there adequate procedures for identifying unaccompanied or lost children and ensuring that they are kept safe and adequately supervised until they can be handed over to a responsible adult; g) the likelihood of children being attracted to the premises by the nature of activities or facilities provided whether or not these are licensed; h) is there evidence of heavy, binge or underage drinking on the premises; i) if the premises commonly provides entertainment or services of an adult or sexual nature; j) is there a strong element of gambling on the premises; k) age restricted films are to be shown classified in accordance with the recommendations of the British Board of Film Classification; l) the number of adults required for the supervision of children and the suitability and vetting of those adults to ensure they pose no risk to children.

5. Temporary Event Notices (TENs)

5.1 The Act enables certain organised events for less than 500 people to take place following notification to the authority, the police and environmental health.

5.2 The limit on the number of TENs which may be given by any applicant is 5 within the same year, unless the applicant holds a personal licence, in which case the limit will be 50 within the same year.

5.3 A number of limitations are imposed on the use of TENs by the Act. The limitations apply to: • the number of times a premises user may give a TEN is 50 times in a calendar year • for a personal licence holder and five times in a calendar year for other people; • the number of times a premises user may give a late TEN is limited to 10 times in a calendar year for a personal licence holder and twice for other people. Late TENs count towards the total number of permitted TENs (i.e. the limit of five TENs a year for non-personal licence holders and 50 TENs for personal licence holders). A notice that is given less than ten working days before the event to which it relates, when the premises user has already given the permitted number of late TENs in that calendar year, will be returned as void and the activities described in it will not be authorised. • the number of times a TEN may be given for any particular premises is 15 times in a calendar year; • the maximum duration of an event authorised by a TEN is 168 hours (seven days); • the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year; • the maximum number of people attending at any one time is 499; and • the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user is 24 hours

5.4 Although the statutory legal minimum time required for the notification of a TEN to the authority, police and environmental health is 10 working days, or 5 working days for a late temporary event, it is essential that proper consideration of the proposed event is given. Statutory guidance allows the authority to publicise its preferred timescale for notification.

5.5 Where an existing premises licence is in operation the authority would encourage a TEN to be submitted at least 4 weeks but not more than 12 weeks before an event. For applications where there is not a current premises licence, for example community events, 15 working days in advance of the event would be encouraged to allow for proper consideration of the event.

5.6 The authority will encourage bona fide community events. A TEN for existing licensed premises will not be encouraged where the proposal is simply to extend the existing hours of operation.

5.7 Notice givers are encouraged to consult responsible authorities prior to formal notices being submitted. 5.8 The authority expects those who have given notice of a temporary event to have identified the particular issues having regard to their type of premises and/or activities, and to have in place written policies for addressing issues such as drunkenness, crime/disorder and drugs on their premises and for ensuring staff are trained on these policies. The Reducing Alcohol Related Violence Codes of Practice contains guidance on promoting the licensing objectives including potential risks and possible solutions for the different types of licensable activities.

5.9 The processing of TENs by the authority is controlled by a strict statutory timetable, therefore, the authority will not accept a notice unless it is complete in all respects at the time of submission.