

Determination of an objection to a Temporary Event Notice – Auction Hall, Tunbridge Wells, TN2 5QL

For Licensing Sub Committee on 16 August 2022

Summary

Lead Member: Councillor Luke Everitt

Lead Director: Paul Taylor, Director of Change and Communities

Head of Service: Gary Stevenson, Head of Housing, Health, and Environment

Report Author: Trevor Horner, Licensing Officer

Classification: Public document (non-exempt)

Wards Affected: Pantiles and St Marks

Approval Timetable	Date
Licensing Sub Committee	16 August 2022

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

1. That Members determine the notice and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:
 - The merits of the notice;
 - The representations and supporting information presented by all parties;
 - The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003;
 - The Council's Statement of Licensing Policy.

1. Purpose of report and executive summary

- 1.1 This report sets out details of a Temporary Event Notice notifying the Local Authority of an event to be held at a premises.
- 1.2 Under the provisions of section 100 of the Licensing Act 2003 (hereinafter the Act), an individual, known as the premises user, may give notice of their proposal to carry on licensable activities on a temporary basis at a premises by submitting a Temporary Event Notice (TEN). There are two types of TEN; standard and late. This report concerns a standard TEN as the Act makes separate provisions for dealing with late TENs.
- 1.3 Under the provisions of section 104 of the Act relevant persons (the police or Environmental Health) have a period of three working days from when they are given a standard TEN to object to it on the basis of any of the four licensing objectives, namely:
 - Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm
- 1.4 Where an objection notice is given, there is provision under section 106 of the Act for the relevant persons to agree with the premises user to modify the TEN.
- 1.5 If the objection notice is not withdrawn, the Licensing Authority must hold a hearing to consider the objection.

2. Introduction and background

- 2.1 On 2 August 2022 a standard Temporary Event Notice, in the name of Mr Aubrey Knight, was received by the Licensing Partnership at Sevenoaks District Council Offices. The event is to be held at the Auction Hall, Linden Park Road, Tunbridge Wells. The Temporary Event Notice is attached at **APPENDIX A**.
- 2.2 The TEN describes the event as “Wedding celebrations. Serving food, drinks and DJ” and gives notice of proposals to carry out the following licensable activity:
 - Sale by retail of alcohol
- 2.3 The duration of the event:

- From 21:00 hours on Saturday 27 August 2022 to 01:00 hours on Sunday 28 August 2022.
- 2.4 An objection notice to the TEN was received on Friday 5 August 2022 from a responsible authority, namely Environmental Health. The objection notice is attached at **APPENDIX B**. The objection is based on the following licensing objective:
- Prevention of public nuisance
- 2.5 The Auction Hall already benefits from a premises licence under the name of The Old Auction House. A copy of the current premises licence is attached at **APPENDIX C**.
- 2.6 The objection from Environmental Health refers to complaints received on 21st May 2022, 22nd May 2022 and 30th July 2022. On cross checking these dates with the licensing database, Temporary Event Notices were not in place on these dates.

3. Available options

- 3.1 To take no action and permit the event in the manner described in the TEN.
- 3.2 To issue a counter notice (i.e.: refuse the event) under section 105 (2) (b) of the Act if the sub-committee considers it appropriate for the promotion of a licensing objective to do so.
- 3.3 Not issue a counter notice but impose conditions from the existing premises licence if the authority considers it appropriate for the promotion of the licensing objectives, and the conditions would not be inconsistent with the carrying out of the licensable activities under the TEN.

4. Preferred Option and Reason

- 4.1 That Members consider the objection, and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:
- The steps that are appropriate to promote the licensing objectives.
 - The objections and supporting information presented by all parties;
 - The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003.
 - The Council's Statement of Licensing Policy.
- 4.2 Paragraph 1.17 further advises that each application must be considered on its own merits and that 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

5. Consultation on Options

5.1 Other than the statutory consultation described in Part 1 of the report above, no other consultation is required by the Licensing Act 2003.

6. Implementation

6.1 The Chairman will announce the Sub-Committee's decision prior to the conclusion of the hearing.

6.2 The premises user and Environmental Health will subsequently receive written confirmation of the decision.

6.3 A copy of the Decision Notice will be placed on the Council's website.

6.4 Where the Licensing Authority gives a counter notice under section 105(3) of the Act, the premises user may appeal the decision. Appeals must be made to a Magistrates' Court within twenty-one days from the date on which the appellant receives notification of the decision from the Licensing Authority. No appeal can be brought later than five working days prior to the day of the planned event.

7. Appendices and Background Documents

Appendices:

- Appendix A: TEN Notice
- Appendix B: Objection Notice
- Appendix C: Current premises licence

Background Papers:

- Revised Guidance issued under Section 182 of the Licensing Act 2003
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- TWBC Statement of Licensing Policy
https://tunbridgewells.gov.uk/_data/assets/pdf_file/0006/394593/Ratified-Statement-of-Licensing-Policy-V1-2021-2026.pdf
- LGA Licensing Act 2003 – Councillors handbook (England and Wales)
<https://www.local.gov.uk/publications/licensing-act-2003-councillors-handbook-england-and-wales>

8. Cross Cutting Issues

A. Legal (including the Human Rights Act)

Licensing Act 2003

The Licensing Act 2003 at section 4(1) requires the Licensing Authority to carry out its functions with a view to promoting the Licensing Objectives which Section 4(2) sets out as:-

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

The Sub-Committee is permitted under Section 105 of the Licensing Act 2003, having had regard to the objection notice, to give the premises user a counter notice if it considers it appropriate for the promotion of the licensing objectives.

Section 106A of the Licensing Act 2003 allows a Licensing Authority to impose one or more conditions on a standard Temporary Event Notice if they consider it appropriate for the promotion of the licensing objectives and the conditions are also imposed on a premises licence that has effect in respect of the same premises and the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.

Section 4(3) of the Licensing Act also requires the Licensing Authority to have regard to the published statement of the Licensing Policy and any guidance issued by the Secretary of State under section 182

Each application that comes before the Sub-Committee must be treated on its own merits, and the Sub-Committee must take its decision based upon:

- a) The merits of the application
- b) The promotion of the four licensing objectives
- c) The policy of the Licensing Authority
- d) The Guidance issued under Section 182 of the Licensing Act 2003
- e) All valid representations made

Whilst the applicant, responsible authorities or persons making representations all have a right of appeal to the Magistrates Court dependant on the decision of the Sub Committee, the decision made takes immediate effect.

Human Rights Act

Article 1 of the First Protocol is concerned with the protection of property and provides that every person is entitled to peaceful enjoyment of his possessions. The term 'possessions' is given a broad definition and includes a licence.

Article 8 is concerned with the right to respect for private and family life. It states that Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The Council has had the proper regard for Article 8.

Article 6 relates to the right to a fair hearing. The applicant has seen this report prior to this hearing and is aware of the reason why the Sub-Committee is considering this application.

Helen Ward, Lawyer, Contentious, Mid Kent Legal, 09.08.2022

B. Finance and Other Resources

No implications

Trevor Horner, report author, 09.08.2022

C. Staffing

No implications

Trevor Horner, report author, 09.08.2022

D. Risk Management

No implications

Trevor Horner, report author, 09.08.2022

E. Environment and Sustainability

No implications

Trevor Horner, report author, 09.08.2022

F. Community Safety

If the application is granted, the extra services offered are not unique to Tunbridge Wells

Section 17, Crime and Disorder Act 1998

17(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Terry Hughes, Community Safety manager, 09.08.2022

G. Equalities

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users

No implications

Trevor Horner, report author, 09.08.2022

H. Data Protection

Article 5, General Data Protection Regulation 2016

1. Personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject;*
- (b) collected for specific, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;*
- (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;*
- (d) accurate and, where necessary, kept up to date;*
- (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;*

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

No implications.

Trevor Horner, report author, 09.08.2022

I. Health and Safety

No implications

Trevor Horner, report author, 09.08.2022

J. Health and Wellbeing

No implications

Trevor Horner, report author, 09.08.2022