

**Swindon Borough Council
Licensing Act 2003 – Licensing Panel**

NOTICE OF HEARING

Date of Hearing: Wednesday, 2 July 2014

Place of Hearing: Function Room, Civic Offices

Time of Hearing: 12.00 p.m.

Panel Members:

Conservative Councillors

Eric Shaw

Vera Tomlinson

Labour Councillors

Derique Montaut

Committee Officer: Shaun Banks (Telephone 01793 463606)

Email: email: sbanks@swindon.gov.uk

Address: Swindon Borough Council, Civic Offices, Euclid Street, Swindon SN1 2JH

AGENDA

- 1. Appointment of Chair**
- 2. Apologies for Absence**
- 3. Minutes** (Pages 3 - 6)
To receive the minutes of the meeting held on 10th April 2014.
- 4. Declarations of Interest**
Members are reminded that at the start of the meeting they should declare any known interests in any matter to be considered, and also during the meeting if it becomes apparent that they have an interest in the matters being discussed.
- 5. Licensing Act 2003 - Temporary Event Notice - Consideration of an Objection Notice in respect of Warren farm, Liddington, Swindon** (Pages 7 - 24)

Date of Despatch: 01 July 2014

Access Arrangements – The Venue is wheelchair accessible and an infrared receiver hearing system is provided. If you would wish to attend the meeting but have any special requirement to enable you to do so please contact the Committee Clerk above, as soon as possible prior to the date of the meeting.

If you would like to receive any of the pages contained in this agenda in a larger print size please contact the Committee Officer whose name appears on the first page of this agenda.

INFORMATION TO ACCOMPANY NOTICE OF HEARING

Action following receipt of Notice of Hearing:

A party shall give to the Licensing Panel within the period of time provided for in the following provisions of this regulation a notice (in the form attached) stating: -

- Whether he intends to attend or be represented at the hearing.
- Whether he considers a hearing to be unnecessary.
- In a case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice referred to in paragraph (1) shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.

The following notice periods apply:

No later than one working day in respect of:

- Cancellation of interim authority notice following police objection, or
- Counter notice following police objection to temporary event notice.

No later than two working days before the first day of hearing:

- Review of premises licence following closure order or review of premises licence following review notice;
- Determination of application for conversion of existing licence;
- Determination of application for conversion of existing club certificate; or
- Determination of application by holder of justices' licence for grant of personal licence.

In any other case, the party shall give the notice no later than five working days before the day or the first day on which the hearing is to be held.

Right of attendance, assistance and representation:

A party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

The hearing will take place in public. However the Licensing Panel may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public. For these purposes a party and any person assisting or representing a party may be treated as a member of the public.

The Licensing Panel may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may:

- refuse to permit that person to return, or
- permit him to return only on such conditions as the authority may specify.

Any such person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.

Representations and Supporting Information:

At the hearing a party shall be entitled to:

- Give further information as appropriate in response to a point upon which the Licensing Panel has given notice that clarification is required (Note – if clarification is required from any party this will have been indicated in the Notice of Hearing);
 - If given permission by the Licensing Panel, question any other party; and
 - Address the authority.
- Failure of Parties to attend the Hearing

If a party has informed the authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

If a party who has not so indicated fails to attend or be represented at a hearing the authority may: -

- Where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
- Hold the hearing in the party's absence.
- Where the authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- Where the authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned

Procedure:

A summary of the procedure that will normally be followed at the hearing is attached.

It should be noted that this is a general procedure intended to cover matters that will normally be applicable at all Hearings. However depending on the circumstances of each individual case, it is recognised that other issues may need to be considered as preliminary points at the hearing. These may include (but are not limited to): -

- Whether to proceed in the absence of a party;
- Whether to admit new documents or information submitted at the hearing;
- Whether it is in the public interest to exclude members of the public from the hearing or any part of it;

- Whether any party wished to withdraw representations previously submitted
- Whether to disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to:
 - Their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and
 - The promotion of the licensing objectives

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**Procedure for licensing committee or licensing panel hearings,
where an objection notice has been submitted by the
Police to a temporary event notice**

- 1) The general facts will be put to the hearing by an officer of the Licensing Authority.
- 2) The Police will present their objection to the temporary event notice(s). They may clarify and support (but not add to) their written objection.
- 3) Members of the Licensing Committee (or Panel) may ask questions arising from the Police presentation. The person who has served the temporary event notice(s) may at this stage ask the Police to give a brief clarification of any point that they have made.
- 4) The applicant and / or their solicitor or representative will be invited to make representations to counter the objection notice submitted by the Police and to respond to points made by the Police in their submission. No unreasonable limits will be placed on the right of the applicant to make their case.
- 5) Members of the Licensing Committee (or Panel) may ask questions arising from the submission made by the person who has applied for the temporary event notice(s).
- 6) The Police will be allowed to ask the person who applied for the temporary event notice to give a brief clarification of any point they have made and they will be permitted to ask questions of person who has submitted the temporary event notice(s). They shall not be permitted to restate or develop their original representations and must limit their comments to issues that arise directly from comments made by the person who has submitted the temporary event notice(s) or their representative.
- 7) Members of the Committee or Panel hearing the application will then discuss the objection notice in private, accompanied only by non-partisan officers who are there in a support role.
- 8) Should any person present act in a disruptive manner the Chair will first warn him or her about their conduct and then, if the Chair considers it appropriate, may require the person concerned to leave the meeting forthwith. Where a party to the hearing insists on wasting the time of the hearing by needlessly repeating points that have been well aired, their actions may be judged to be disruptive and they may be asked to leave.

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LICENSING PANEL

THURSDAY, 10 APRIL 2014

PRESENT:- Councillors Roderick Bluh, Michael Bray and Steve Wakefield

25. Appointment of Chair

Resolved – That Councillor Mick Bray Chair this meeting of the Panel.
(Councillor Bray took the Chair.)

26. Minutes

Resolved – That the minutes of the meetings held on 11th and 26th November 2013, be confirmed and signed as a correct record.

27. Declarations of Interest

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

28. Application to vary the Premises Licence in respect of the Punjab Grilled Chicken, 61 Bridge Street, Swindon

The Panel considered (a) a report of the Council's Licensing Officer setting out details of an application to vary the Premises Licence held by the Punjab Chicken, 61 Bridge Street, Swindon, (b) a written submission supporting the application for variation received from Planning Concepts and Solutions Ltd on behalf of the Applicant, (c) an objection to the variation application received from Wiltshire Police, (d) additional written submission received from Wiltshire Police supporting their objection to the variation of the premises Licence held by Punjab Chicken, 61 Bridge Street, Swindon, (e) oral representations from Mr Chhabbi Singh (Applicant) in support of the application submitted, (f) oral representations received from Wiltshire Police in support of their objection, (g) questions from Members to the Premises Licence Holder and Wiltshire Police, and (h) the Council's procedure for licensing hearings, Government Guidance and the Council's Licensing Policy.

Resolved – The Panel expresses its concern and disappointment that the Premises Licence Holder failed to ensure the maintenance of the conditions appended to the Premises Licence, namely the failure to maintain their licensed hours and failure to ensure that a member of staff could operate the CCTV equipment and download CCTV footage at the request of an authorised officer or the police. The Panel notes that had these breaches been put before it in a review situation rather than a variation application hearing it would have considered them in the light of the options available to it.

However, after considering: -

1. The application for variation to the licence made by the Licensee; and
2. Representations and material put forward on behalf of the Police;

And taking into account: -

1. The Secretary of State's Guidance; and

2. The Licensing Authority Licensing Statement:

And having in mind the promotion of the Licensing Objectives in particular: -

- i. The prevention of crime and disorder;

The Panel has determined the following: -

1. The permitted hours for the provision of Late Night Refreshments be extended:
Thursday to Saturday inclusive from 03:00 until 04:00.

Reasons

1. The Panel heard evidence from Wiltshire Police that premises were situated in the centre of an alcohol related "Hot Spot" of Anti-Social Behaviour and Crime and Disorder, in close proximity to a number of licensed premises and on a pedestrian red route. Whilst being sympathetic to the police position the Panel noted that (a) no incidents had been attributed directly to the premises or to its customers, (b) that there were other premises within the immediate vicinity with similar or later hours, (c) the premises had been granted a series of Temporary Event Notices beyond the existing licensed hours and that there had been no incidents reported during the operation of these later hours, and (d) there was no direct evidence that the additional hour of operation would undermine the licensing objectives.

2. The Panel heard evidence that the premises had been open later than its permitted hours on two occasions on 8th September 2013 and 15th March 2014, the second of which had led to a formal caution of the licensee. The Panel took these incidents seriously but accepted the Licensees explanation that the later incident was a misunderstanding on the part of a newly appointed manager. The Panel further took into account that any future breaches could result in a review application.

3. The Panel noted the concerns of the Police regarding a fifth late night refreshment premises open after 3:00am in the vicinity but found no evidence that granting an extension to the operating hours would undermine the licensing objectives.

2. That in addition to the conditions on the existing Premises Licence the following additional/modified conditions should be applied to the licence: -

(11) That, in addition to the requirements of Condition 5 of the Premises Licence, the Premises Licence holder shall arrange within 14 days of this hearing refresher training for all persons managing the premises ensuring that they can properly operate the CCTV equipment covering the entrance to the premises and all trading areas. Such training shall incorporate the downloading of CCTV footage as well as its general operation. Such training will be either (a) undertaken by an independent trainer or (b) all trained staff shall demonstrate their competence to the Council's Licensing Officer. A written record of all staff undertaking this training shall be maintained and a written copy shall be forwarded to the Council's Licensing Officer.

Reasons

1. The Panel heard evidence that on 15th March 2014 staff working at the premises were unable to properly operate the CCTV equipment, nor could they download a copy of the CCTV footage upon request of the Police. This was in contravention of existing licence conditions.

2. That given evidence from Mr Singh as to the training offered to staff to date the Panel required assurance that any future training would be effective and robust.

3. The Panel determined that robust training was required to meet the existing licensing conditions.

(12) That in addition to the requirements of Condition 5 of the Premises Licence, the Premises Licence holder shall ensure that during the hours of operation there is at least one person on the premises that can both operate the CCTV equipment and download CCTV footage on request of a police officer or an authorised officer.

Reasons

1. To ensure that existing conditions on the premises licence are adhered to.

2. Previously management lapses had resulted in staff being unable to provide a copy of CCTV footage when requested to do so by the police.

3. To ensure the premises met its obligations in respect of the maintenance of the Prevention of Crime and Disorder Licensing Objective.

(13) That, should either the CCTV equipment be not operational, or should there be an exceptional circumstance when where is no person on the premises properly trained in accordance with conditions 11 and 12, the Premises Licence holder or his nominated representative shall immediately advise the Police Licensing Officer or Police Town Centre Beat Manager, of such circumstances. The Premises Licence holder shall also advise the Police if this situation will occur for more than 48 hours, together with the likely timescale during which the system will remain unavailable and the reasons why it is likely to be out of operation for longer than the stated period, together with the actions taken to remedy the situation. The Premises Licence holder shall also confirm with the Police Licensing Officer when the CCTV equipment is again operational.

Reasons

1. To ensure that management of the premises are active in meeting their obligations in relation to the provision of operational CCTV equipment and to ensure that when in exceptional circumstances the management might not be should they be able to meet these obligations the relevant authorities are made aware of the situation.

(14) A written record of the operating procedures for the CCTV equipment and process for downloading footage shall be put in writing and shall be kept in a prominent and visible location near the CCTV equipment.

Reasons

1. To ensure that existing conditions on the premises licence were adhered to.

2. There was evidence that as a consequence of management's failure to train appropriate staff, they were unable to provide a copy of CCTV footage when requested to do so by the police.

3. To ensure the premises met its obligations in respect of the maintenance of the Prevention of Crime and Disorder Licensing Objective.

(15) That an additional SIA qualified doorman shall be deployed at the premises from 3:00am to 04:00am (Thursday to Saturday inclusive).

Reasons

1. The Panel felt that this condition, offered by the applicant, would assist management in ensuring the Prevention of Crime and Disorder Licensing Objective was not undermined.

(16) That the door supervisors shall be proactive in dispersing patrons from the premises and that the premises shall be closed to the public from 10 minutes after the last permitted provision of hot food and that no public shall be permitted to enter the premises from the time of the last permitted provision of hot food.

Reasons

1. To ensure that existing conditions on the premises licence were adhered to.

2. To prevent the congregation of people in a "hot spot" and red route vicinity.

3. To ensure the premises met its obligations in respect of the maintenance of the Prevention of Crime and Disorder Licensing Objective.

(17) That signage shall be prominently displayed setting out the hours when hot food may be provided and stating that no sales of hot food shall be permitted after this time.

Reasons

1. To ensure that existing conditions on the premises licence were adhered to.

2. To prevent the congregation of people in a "hot spot" and red route vicinity at times when the premises would be unable to offer hot food.

3. To ensure the premises met its obligations in respect of the maintenance of the Prevention of Crime and Disorder Licensing Objective.

The Chair reminded both parties that they had the right of appeal to the Magistrates Court against the determination of the Panel and that any such appeal must be commenced within 21 days of the determination being sent to both parties.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

Licensing Panel

Date: 2 July 2014

Author:	Licensing Manager
Wards:	Ridgeway
Locality Affected:	Locality Area
Parishes Affected:	Liddington

1. Purpose and Reasons

- 1.1 To consider objection notices given by Wiltshire Police and Environmental Health, in respect of a Temporary Event Notice, (hereinafter generally referred to as 'TEN'), received by the Licensing Authority and submitted by 'premises user' Andrew Loddington in respect of Warren farm, Liddington, Swindon.

2. Recommendations

The Committee is recommended to:

- 2.1 In the light of the objection, to determine whether to allow the temporary event notices or to issue counter notices.

3. Detail

- 3.1 The Licensing Authority may take the following steps:

After having regard to the representations, if Members consider it appropriate for the promotion of the four licensing objectives – namely the Prevention of Crime & Disorder, the Prevention of Public Nuisance, Ensuring Public Safety, and the Protection of Children from Harm – they may:

- a. Give the premises user a counter notice to prevent the temporary event from taking place; or,
 - b. Give the premises user a notice viz. 'Conditions on a Temporary Event Notice and a Statement of Conditions', imposing one or more conditions from a premises licence that exists in respect of the same premises for which the temporary event notice is given; or,
 - c. In such cases where it decides not to give a counter notice, it must give the premises user, the Chief Officer of Police and Environmental Health, (EH), notice of the decision; and,
- 3.2 In any case where a counter notice or a notice viz. 'Conditions on a Temporary Event Notice Statement of Conditions', is issued, the Licensing Authority must:

Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

Licensing Panel

Date: 2 July 2014

- a. Give the premises user the counter notice and a notice stating the reasons for its decision; and,
- b. Give the party making the objection a copy of both these notices.

4. **Summary of the Temporary Event Notice and Objections**

- 4.1 The TEN was received by the Licensing Authority on 19 June 2014. The TEN was submitted by Mr Andrew Loddington of 131 Oxford Road Swindon, SN3 4JA to hold a family based music festival, known as 'Summer Breeze' to take place on 18/19 and 20th July 2014 between the hours of 10.00 and 02.00 hours. The TEN seeks to authorise regulated entertainment, sale of alcohol and late night refreshment.
- 4.2 A copy of the TEN is attached as **Appendix A**.
- 4.3 The Environmental Health Officer has submitted a representation which was received by email within 3 working days of receipt of the temporary event notice, namely the statutory period for representations. It is the opinion of Fiona MacAdam, Environmental Health Officer that should the event proceed in its current form then it would undermine the Licensing Objective in respect of Ensuring Public Safety.
- 4.4 A copy of the EH objection is attached as **Appendix B**.
- 4.5 A representation has also been received from Wiltshire Police which was received on Monday 23 June within the 3 day consultation period. It is the opinion of Wiltshire Police that the Licensing Objectives in respect of Prevention of Crime & Disorder and Ensuring Public Safety will be undermined should the event proceed in its current form. This is attached as **Appendix C**

5. **Operating History**

- 5.1 The site holds a current Premises Licence which is attached as **Appendix D**. The applicant has advised the Licensing Authority that he does not wish to utilise the Licence for this event as he does not want to be restricted to the conditions attached to the Licence, hence applying for a TEN.

Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

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- 5.2 Information has also been requested by the Event Safety Advisory Group for Swindon Borough Council but there has been no information submitted at the time of writing this report.

6. Relevant Considerations

- 6.1 A Temporary Event Notice can be given by an individual known as a 'premises user' and authorises the user to conduct one or more licensable activities at the premises for no more than 168 hours (seven days). TENs are designed to authorise relatively small-scale *ad hoc* events for up to 499 persons.
- 6.2 Temporary Event Notices permit licensable activities to take place subject to the following rules, having recently been changed by the Police Reform and Social Responsibility Act 2011:
- a. The number of times a person (the 'premises user') may give a TEN is 50 times per calendar year for a personal licence holder and five times per year non-personal licence holders;
 - b. The number of times a person (the 'premises user') may give a 'late' TEN notice is 5 times per calendar year for a personal licence holder and twice per year for non-personal licence holders;
 - c. The number of times a TEN may be given in respect of any particular premises is 12 times in a calendar year;
 - d. The length of time a temporary event may last for these purposes is 168 hours;
 - e. The maximum aggregate duration of the periods covered by TENs at any individual premises is 21 days per calendar year;
 - f. The scale of the event in terms of the maximum number of people attending at any one time is 499, including all event support staff; and
 - g. If a TEN has been given for the same premises, by the same premises user, and would have effect *within* 24 hours before the start of the event period under the current proposal, or *within* 24 hours after the end of that period, the TEN given would be void and any licensable activities carried on under it would therefore be unlicensed.
- 6.3 TENs can be used to extend the hours licensable activities take place, to add licensable activities not currently catered for, or to hold licensable activities at premises not currently licensed.

Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

Licensing Panel

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- 6.4 The 'premises user' must give the TEN to the relevant Licensing Authority and also send a copy to (1) the Chief Officer of Police and (2) to the local authority exercising Environmental Health functions. Upon receipt of a TEN, the Licensing Authority is required to issue an acknowledgement of the TEN.
- 6.5 The purpose of the notification requirement is to enable the Licensing Authority to check that the limitations set down in the Act, as set out in 6.2 of the report, are being observed and to intervene if they are not.
- 6.6 If the Police, or a Local Authority exercising Environmental Health functions, are satisfied that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they may object to a TEN to the Licensing Authority, explaining the reason(s) why.
- 6.7 However, at any time before a hearing is held, the Chief Officer of Police or the local authority exercising Environmental Health functions may, with the agreement of the premises user, modify the TEN to address the concerns. Once the TEN has been modified, the Licensing Authority must be sent a copy of the modified notice by the Police or the local authority exercising Environmental Health functions.
- 6.8 In the alternative, where an objection is made requesting that conditions from an existing premises licence or club premises certificate in respect of the same premises for which the TEN has been made; and the premises user agrees to impose those conditions; and if all parties agree that a hearing is unnecessary; the Licensing Authority may issue a notice (Conditions on a Temporary Event Notice) and a statement of conditions without a formal hearing before the Licensing Authority's Sub-Committee.
- 6.9 If there are no objections by the Police or the local authority exercising Environmental Health functions, or a TEN has been modified, or a notice, viz. 'Conditions on a Temporary Event Notice and a Statement of Conditions', has been served, the Licensing Authority has no power under the Act to stop permitted temporary events taking place once they have started. However, a Local Authority may have powers under other legislation, for example, to deal with statutory noise nuisance.
- 6.10 The Chief Officer of Police has the power to seek court orders to close premises for up to 24 hours in a geographical area that is experiencing, or likely to
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Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

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experience, disorder. Police also have the power to close down instantly, for up to 24 hours, premises in respect of which a TEN has effect, that are:

- Disorderly;
- Likely to become disorderly; or,
- Are causing disturbance by excessive noise from the premises.

Such orders may only be made where it is necessary in the interests of public safety in cases of disorder or to prevent nuisance in the case of noise coming from the premises.

7. Policy and Statutory Considerations

7.1 In making their decision, the Licensing Panel must have regard to the following:

- The promotion of the Licensing Objectives;
- The Licensing Act 2003;
- The Statutory Guidance issued by the Secretary of State in accordance with Section 182 of the Act;
- The representations, including supporting information, presented by all the parties; and
- Swindon Borough Council's Statement of Licensing Policy.

7.2 Any TEN will be considered on its individual merits. Equally, any person permitted by the Act to make relevant representations to the committee will have those representations considered on their individual merit.

7.3 The Act does not permit the Licensing Authority to attach any additional terms, limitation or restriction on the carrying on of licensable activities at such events under the authority of a TEN other than those that may already exist on an existing premises licence or club premises certificate in respect of the same premises for which the temporary event notice has been submitted. Premises users are not required to be on the premises for the entire duration of the event, but they will remain liable to prosecution for certain offences that may be committed at the premises during the temporary event if the event is not adequately managed or supervised including the laws governing sales of alcohol to persons under 18 years.

Swindon Borough Council's Statement of Licensing Policy.

Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

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- 7.4 The Sub-Committee is reminded to have regard to the Policy in general when making their decision.

Guidance Published by the Government under Section 182 of the Act

- 7.5 Section 7.20 of the Guidance states: “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.”
- 7.6 Section 7.5 of the Guidance states: “The Police or local authority exercising Environmental Health functions may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their intervention may in some cases result in the Licensing Authority imposing conditions on a temporary event notice. When giving a temporary event notice, consideration should be given to the four licensing objectives. The Licensing Authority only otherwise intervenes if the statutory permitted limits on temporary event notices would be exceeded.”
- 7.7 Section 7.32 of the Guidance states: “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 or small social or sporting events), this should not give rise to the use of these powers.”
- 7.8 Section 7.27 of the Guidance states: “If the Licensing Authority receives an objection notice from the Police or local authority exercising Environmental Health functions 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
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Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

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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.”

- 7.9 Section 7.35 of the Guidance states: “The Police or local authority exercising Environmental Health functions 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. If there is no agreement, the Licensing Authority must hold a hearing to consider the notice.”

The Licensing Act 2003 Regulations

- 7.10 The Sub-Committee should have regard to the Hearings Regulations published by the Government under the Licensing Act 2003.

Human Rights Act 1998

- 7.11 Human Rights Act provides that: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The term “possession” includes a Licence as well as a home and the things it contains.

- 7.12 The Act further provides:

“(1) it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if:

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible

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with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.”

- 7.13 However, it is recognised that the Council’s Statement of Licensing Policy and Statutory Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Therefore, subject to both the Policy and Guidance having been properly and carefully considered, Licensing Authorities may depart from them if they have a justifiable reason to do so. If doing so, Licensing Authorities will need to give full reasons for their actions.

8. Legal Considerations

- 8.1 In order to comply with the statutory provisions contained within Section 104(2) of the Act, the Chief Officer of Police or a local authority exercising Environmental Health functions must be satisfied that allowing the premises to be used in accordance with the TEN would undermine one or more of the licensing objectives and the objection notice must state the reasons why he is so satisfied. This notice must be given to the relevant Licensing Authority and the premises user no later than three working days after the Chief Officer of Police or the local authority exercising Environmental Health functions is given a copy of the TEN.
- 8.2 Whilst the Police or the local authority exercising Environmental Health functions may suggest additional measures that the ‘premises user’ may implement to uphold the licensing objectives, these requirements cannot be attached as terms or conditions of the TEN and are, therefore, merely aspirational and unenforceable at law. The Act only allows modification of the TEN so far as it relates to matters contained within the prescribed notice (i.e. licensable activities, proposed dates and timings) or for the inclusion of one or more conditions that already exist on an existing premises licence or club premises certificate in respect of the same premises for which the TEN is submitted.

9. Appeal Rights

- 9.1 Rights of appeal are available both to the premises user who gave the TEN and to the Police or local authority exercising Environmental Health functions. The ‘premises user’ can appeal where the Licensing Authority has given a counter notice and the Police can appeal where their objection has not been upheld and no counter notice has been given.

Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

Licensing Panel

Date: 2 July 2014

-
- 9.2 The Guidance states at 12.10: “It is important that a Licensing Authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the Licensing Authority’s statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.”

10. Alternative Options

- 10.1 When considering an Objection Notice there is no option to defer a decision or to defer the hearing itself to a later date.

11. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 13.1 There are no direct financial implications arising from the report. Failure to reach a reasonable conclusion, based on the facts, could lead to breach of the licensing objectives or to unwarranted damage to the business in question. Either scenario could raise issues of compensation. In the case of an appeal, the Council could become liable for costs. The Council provides training for Members who sit on the Licensing Committee, as one of the measures to mitigate financial risk.

Legal and Human Rights Implications

- 13.2 A declaration has been made by the Secretary of State, that the Licensing Act is compliant with the Human Rights Act.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 13.3 This report and decisions are made within the context of the Licensing Act 2003.

Links to One Swindon, Strategic Objectives, Plans and Policies

- 11.4 This report and decisions are made within the context of the Licensing Act 2003.

Diversity Impact Assessment

- 11.5 This report and decisions are made within the context of the Licensing Act 2003.

Further information on the subject of this report can be obtained from Kathryn Ashton, Direct Dial Telephone Number 01793 466113, kashton@swindon.gov.uk.

Licensing Act 2003 – Temporary Event Notice – Consideration of an Objection Notice

Licensing Panel

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Risk Management

- 11.6 The Council provides training for Members who sit on the Licensing Committee, as one of the measures to mitigate financial and legal risk.

12. Consultees

- 12.1 The Board Director Finance, Revenues, Benefits and Property (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

13. Background Papers

- 13.1 Swindon Borough Council's Licensing Statement
13.2 Licensing Act 2003 and Subsequent Regulations

14. Appendices

- 14.1 Appendix A – Copy of Temporary Event Notice
Appendix B – Copy of Environmental Health representation
Appendix C – Copy of Wiltshire Police representation
Appendix D – Copy of the current Premises Licence

Swindon Borough Council

Temporary Event Notice

Reference No.:
0046-120

Time and date this form was completed: 19/06/2014 - 21:50

Your notice has been received. If no counter notice is issued by the Police within 48 hours of their receipt of your Notice, you are automatically entitled to carry out the activities you described, on the days and times stated.

Your Responses

The Personal Details of Premises User

Title Mr
First Name Andrew
Last Name Loddington
Address Line 1 XXX oxford road
Town Swindon
Postcode SN3 XXX
Date of Birth 27/11/1968
Place of Birth Swindon
National Insurance Number XXXXX
Mobile Telephone Number XXXXXXXXXXXX
Email address XXXXXXXXXXXXXXXX
Have you been known by any previous name (e.g. by a maiden name)? No

Correspondence Contact Details

Address Line 1 Xxx Oxford road
Town Swindon
Postcode SN3 xxxx

Please give the address of the premises where you intend to carry on the licensable activities or if it

has no address give a detailed description (including the Ordnance Survey references).

Address Line 1 Warren farm

Address Line 2 Liddington

Town Nr swindon

Postcode SN4 0EB

Please describe the nature of the premises Farm

Please describe the nature of the event Family based music festival

Please state the licensable activities that you intend to carry on at the premises.

The sale by retail of alcohol

The provision of regulated entertainment

The provision of late night refreshment

Please state the dates on which you intend to use these premises for licensable activities. 18th 19th 20th July 2014

Please state the times during the event period that you propose to carry on licensable activities (please give the times in 24 hour clock). 10.00hrs till 02.00hrs

Please state the maximum number of people at any one time that you intend to allow to be present at the premises during the times when you intend to carry on licensable activities, including any staff, organisers or performers. 499

If the licensable activities will include the supply of alcohol, please state On the premises only

whether the supplies will be for consumption on or off the premises, or both.

Do you currently hold a valid personal licence? No

Please provide the details of your personal licence below

Have you previously given a temporary event notice in respect of any premises for events falling in the same calendar year as the event for which you are now giving this temporary event notice? No

Have you already given a temporary event notice for the same premises in which the event period :
a) Ends 24 hours or less before; or b) Begins 24 hours or less after the event period proposed in this notice? No

Has any associate of yours given a temporary event notice for an event in the same calendar year as the event for which you are now giving a temporary event notice? No

Has any associate of yours already given a temporary event notice for the same premises in which the event period:
a) Ends 24 or less before; or b) Begins 24 hours or less after the event proposed in this notice? No

Has any person with whom you are in business carrying on licensable activities given a temporary event notice No

for an event in the same calendar year as the event for which you are now giving a temporary event notice?

Has any business colleague of yours already given a temporary event notice for the same premises in which the event period: a) Ends 24 or less before; or b) Begins 24 hours or less after the event proposed in this notice?

No

(This is the end of the form)

Data Protection

Personal and business information, which you supply through this form, will be used by Swindon Borough Council for the purposes of processing your application. Data will be kept as necessary to facilitate renewals and for enforcement purposes related to the licence or other authorisation. In some cases, information, which you supply also, becomes part of a public register. Please contact us for more information about this.

This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes

In addition, various statutory bodies such as the Inland Revenue have a right to access your data, by serving notice on the Council. Disclosure may be made in the furtherance of legal proceedings.

Under the Data Protection Act you can see your own personal information. If you would like to know more about this, please ask for our leaflet 'Access to your personal information' or contact the Data Protection Officer at Swindon Borough Council, Civic Offices, Euclid Street, Swindon SN1 2JH.

I would like to make representations given that this is a festival type event with camping and no supporting information has been provided to show how the licensing objectives - public safety, the prevention of public nuisance; and the protection of children from harm are to be upheld including how the figure of 499 is to be monitored. An event safety form is to be sent following initial contact yesterday with the organiser.

Fiona
Fiona MacAdam (FMacAdam@swindon.gov.uk)

Environmental Health Officer
Licensing & Events
Licensing
Swindon Borough Council

From: E & P Licensing
Sent: 20 June 2014 09:50
To: licensing@wiltshire.pnn.police.uk; Sian Kalyinka; Louise Doughty; Damon Green
Cc: Kathryn Ashton; Robin Grey; Fiona MacAdam
Subject: FW: Temporary Event Notice Ref: 0046-120

Good Morning,

Please find attached a copy of the Temporary Event Notice submitted in respect of Warren Farm

Please let me have any comments in respect of this application by e-mail to licensing@swindon.gov.uk

The last date for comments in respect of this application is Wednesday 25th June 2014

Kind Regards

Ashley Wheeler (awheeler@swindon.gov.uk)
Business Support Administrator
Business Support Unit
Swindon Borough Council
Wat Tyler House West 5th floor
Beckhampton Street
Swindon
SN1 2JH
Tel: 01793 46 6331
Web: www.swindon.gov.uk

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Swindon Police Station
Gablecross
Shrivenham Road
South Marston
Swindon
Wiltshire SN3 4RB
Telephone: 0845 408 7000
Ext: 760
Direct Dial:
Facsimile: 01793 507892
DX: 132780

Date 23/06/14

Your ref

Our ref Warren Farm TEN

Reply contact name is: Sian Kalyinka - Police Licensing Officer

Dear Kathryn,

A Temporary Event Notice (TEN) has been received for Warren Farm, Liddington for the Summer Breeze Festival to take place on the weekend of the 18/19th July 2014.

In previous years a premises licence has been in place at the site to ensure that the event has run in line with the Event Safety Guide due to the nature of the festival and the audience that it attracts.

The TEN has very little information about how the organisers are going to prevent crime and disorder and ensure public safety is to be met at the event. Before the premises licence was endorsed with conditions following a review there were problems at this event.

Due to the lack of information Wiltshire Police object to this application for a TEN on the grounds that it will undermine the licensing objectives, prevention of crime and disorder and public safety.

Wiltshire Police will reconsider this objection to the TEN should conditions that were present on the premises licence be included.

These conditions should include security arrangements, staff training, traffic management and a drugs policy to ensure the event is safe for everyone involved.

Yours sincerely

Sian Kalyinka
Police Licensing Officer

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