

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:

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- 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.

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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.

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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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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.

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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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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.

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- 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.

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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