

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

**Licensing Panel**

**Date:**

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Wards: Central  
Parishes Affected: None

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## **1. Purpose and Reasons**

To consider an objection notice given by Wiltshire Police, in respect of a Temporary Event Notice, (hereinafter generally referred to as 'TEN'), received by the Licensing Authority and submitted by 'premises user' Mr Liam O Neill for an event to be held at the premises formerly known as Fantasy Lounge, 37-38 Fleet Street, Swindon, SN1 1RE

## **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 a counter notice.
- 2.2.1 The Licensing Authority may take the following steps:

After having regard to the representations, if Members consider it appropriate for the promotion Licensing Objectives in respect of the Prevention of Crime & Disorder 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;
- 2.3 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:
  - 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.

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## **3.0 Detail- Summary of the Temporary Event Notice and Police Objections**

- 3.1 The TEN was received by the Licensing Authority on 11 January 2017. The TEN was submitted by Mr Liam O Neill for an event to be held at the premises formerly known as Fantasy Lounge, 37-38 Fleet Street, Swindon, SN1 1RE, and relates to the supply of alcohol, and the provision of regulated entertainment, namely live and amplified recorded music to take place on Friday 27th – Saturday 28th January 2017 from 20:00hrs – 03:00hrs.
- 3.2 A copy of the TEN is attached as **Appendix A**.
- 3.3 Ms Sian Kalynka, Acting Licensing Manager of Wiltshire Police submitted a representation in respect of the temporary event notice within the required three working days of receipt and this was received by an e-mail sent to the Licensing Authority on Thursday 12th January 2017. The representation was made by Ms Sian Kalynka as, in the opinion of Ms Kalynka, the Licensing Objective in respect of the Prevention of Crime & Disorder would be undermined should the temporary event take place.
- 3.4 A copy of the Police objection is attached as **Appendix B**.

## **4. Operating History**

- 4.1 Mr Liam O Neill has submitted a number of TENs in the past for one off events at this and other venues within the town. The premises is currently not in use. The Premises operated as a small night club/ lap dancing venue in the town centre of Swindon. The Premises licence is current although the premises is not operating. A copy of the licence is attached at **Appendix C**.

## **5. Relevant Considerations**

- 5.1 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.
- 5.2 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 premises user may give a TEN (50 times in a calendar year for a personal licence holder and five times in a calendar year for other people);

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- b. the number of times a TEN may be given for any particular premises (15 times in a calendar year);
  - c. the maximum duration of an event authorised by a TEN is 168 hours (seven days);
  - d. the maximum total duration of the events authorised by TENs in relation to individual premises (21 days in a calendar year);
  - e. the maximum number of people attending at any one time (499 or less); and
  - f. the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user (24 hours).
- 5.3 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.
- 5.4 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.
- 5.5 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 5.2 of the report, are being observed and to intervene if they are not.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.

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‘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.

5.10 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 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.

## **6. Policy and Statutory Considerations**

6.1 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.

6.2 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.

6.3 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

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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.*

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

*Section 182 Guidance Published by the Secretary of State*

- 6.5 Section 7.10 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."
- 6.6 Section 7.6 of the Guidance states: "The police or "local authority exercising environmental health functions" ("EHA") 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. The police or EHA ("relevant persons" for the purposes of TENs) may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user. If a relevant person sends an objection, this may 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."
- 6.7 Section 7.35 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 with a cash bar or small social or sporting events), this should not usually give rise to the use of these powers."
- 6.8 Section 7.28 of the Guidance states: "If the Licensing Authority receives an objection notice from the Police 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

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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 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."

- 6.9 Section 7.36 of the Guidance states: "The Police 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. The other relevant person has to agree"

## *The Licensing Act 2003 Regulations*

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

## *Human Rights Act 1998*

- 6.11 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.

- 6.12 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 with the



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

- 6.13 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

## **7. Legal Considerations**

- 7.1 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.
- 7.2 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.

## **8. Appeal Rights**

- 8.1 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.
- 8.2 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

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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.”

## **9. Alternative Options**

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

## **10. Implications, Diversity Impact Assessment and Risk Management**

- 10.1 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*

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

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

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

### *Links to One Swindon, Strategic Objectives, Plans and Policies*

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

### *Diversity Impact Assessment*

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

### *Risk Management*

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

## **11. Consultees**

- 11.1 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.



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## **12. Background Papers**

- 12.1 Swindon Borough Council's Licensing Statement
- 12.2 Licensing Act 2003 and Subsequent Regulations

## **13. Appendices**

- 13.1 Appendix A – Copy of Temporary Event Notice
  - Appendix B – Police Representation
  - Appendix C – Copy of Existing Premises Licence for 37-38 Fleet Street, Swindon, SN1 1RE

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