

PREMISES/PERSONAL LICENSING SUB-COMMITTEE

8 AUGUST 2023

REPORT OF ASSISTANT DIRECTOR (GOVERNANCE & LEGAL)

A.1 TEMPORARY EVENT NOTICE – THE ESPLANADE HOTEL, 27 – 29 MARINE PARADE EAST, CLACTON-ON-SEA: REFERENCE: TENOP/4852/23

PURPOSE OF THE REPORT

To provide information in order that the Premises/Personal Licensing Sub-Committee can determine an objection to a Temporary Event Notification (TEN). The objection has been lodged by Essex Police.

SUMMARY

A Temporary Event Notification (TEN) has been sent to the Licensing Authority of Tendring District Council in accordance with Section 100 of the Licensing Act 2003 by Mr Paul Cowley.

Essex Police, the Responsible Authority within the Tendring District area have submitted an objection notice with reference to the prevention of crime and disorder, public safety and the prevention of public nuisance.

The Sub-Committee is asked to determine the matter in accordance with the Licensing Act 2003, Tendring District Council Licensing Police and the Home Office Guidance issued under Section 182 Licensing Act 2003, having due regard to the applicant's submissions and objections by the statutory body.

SUPPORTING INFORMATION

When carrying out its functions the licensing authority must have regard to the four licensing objectives. The objectives are:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

Temporary Event Notices are intended to allow an individual to use premises for one or more licensable activities on an infrequent basis. There is no application process but the premises user must give at least 10 working days notice to the relevant Licensing Authority, the relevant Chief Officer of Police, and Environmental not including the day of the event or the day of receipt of the Notice. There is no provision to attach any terms, conditions, limitations or restrictions to such a Notice.

Mr Cowley (referred to in the Licensing Act as the 'Premises User') has submitted a Temporary Event Notification to cover the sale by retail of alcohol on and off the premises, the provision of regulated entertainment, and the provision of late night refreshment to take place on the 18 August 2023 between the hours of 2100 and 0300 on 19 August 2023.

The address of the event is The Esplanade Hotel, 27 - 29 Marine Parade East, Clacton-on-Sea, Essex CO15 1UU. Within the notification it is requested that the licensable activities for this event will be restricted to the Ground floor Bar & Function Room area of the premises.

The premises currently holds a valid premises licence under the Licensing Act 2003 for the sale of alcohol on and off the premises and performance of recorded music, which would cover Friday 18 August 2023 between the hours of 1000 and 2300 only. The conditions on the premises licence are the standard conditions which have been converted from the old justices licence, none of which can be carried forward onto this Temporary Event Notice.

The notification states the nature of the event as 'Private function involving the consumption of alcohol and playing of recorded music. (House Music Night)' with a maximum number of people at the event of 170.

The premises has held previous Temporary Event Notices.

The notification was submitted electronically to the Licensing Authority on 26 July 2023. Essex Police and Environmental Health were informed on the same day. During the 3 full working day objection period, which expired on 31 July 2023, the Licensing Authority received an objection notice from Essex Police objection.

This hearing must therefore consider the points raised in the Objection Notice and make a determination on the Temporary Event Notice. The Premises User and Essex Police have been invited to attend the hearing and will be given the opportunity to address members.

FINANCE, OTHER RESOURCES AND RISK

A decision made by the Sub-Committee is subject to appeal at the Magistrates Court by the premises user or a relevant person.

COUNCIL'S ADOPTED GUIDELINES AND LEGISLATION

The Sub-Committee should be aware that a Temporary Event Notice is not an application for the purposes of the Licensing Act 2003. It is a notification that licensable activities are going to take place at a certain venue and at notified times. The limit on numbers at such an event, including audience, staff and performers is 499. The Police and Environmental Health have the right to object if, they are of the opinion that allowing the event to take place would undermine any of the licensing objectives.

The Sub-Committee's decision is whether to issue a counter notice. If a counter notice is issued this means the event cannot take place. A notice with reasons for the decision must also be given.

If the Sub-Committee decide not to issue a counter notice and allow the event to go ahead the premises user and the relevant persons must be given a notice of that decision.

The TEN can be modified (times, layout of venue, licensable activities) but only with the agreement of the premises user and all relevant persons.

The Sub-Committee must determine the matter in accordance with Section 105 Licensing Act

2003.

Section 105 Licensing Act 2003 Section (2) states: The Licensing Authority must –

a) Hold a hearing to consider the objection notice, unless the premises user (Mr Cowley), the relevant person (Essex Police) who gave the objection notice and the authority agree that a hearing is unnecessary.

b) Having regard to the objection notice, give the premises user a counter notice under this section if it considers it appropriate for the promotion of the licensing objectives to do so.

Section 105 Licensing Act 2003 Section (3) states:

The Licensing Authority must –

a) In a case where it decides not to issue a counter notice under this section, give the premises user and each relevant person a notice of the decision.

b) In any other case –

i. Give the premises user the counter notice and a notice stating the reasons for its decision and

ii. Give each relevant person a copy of both of those notices

The Licensing Sub-Committee's decision is whether to issue a counter notice. If a counter notice is issued this means the event cannot take place. A notice with reasons for the decision must also be given.

Section 182 Guidance - Police and environmental health intervention

7.32 The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives.

7.33 If the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notice must be given within the period of three working days following the day on which they received the TEN.

7.34 Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings (or appeals) in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.

7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the

permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.

7.36 However, in most cases, where for example, alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (such as at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

Section 182 Guidance - Applying conditions to a TEN

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

- if the police or the EHA have objected to the TEN;
- if that objection has not been withdrawn;
- if there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;
- and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.

7.39 This decision is one for the licensing authority alone, regardless of the premises user's views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

RECOMMENDATION(S)

The Licensing Sub-Committee must consider in its own right and on its own merits only as to how it might impact on the four licensing objectives which are the Prevention of Crime and Disorder, the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.

The Licensing Sub-Committee is therefore asked to determine this notification taking into consideration all of the relevant information that has been submitted as part of this report and at the hearing itself.

The Sub-Committee must consider this report together with any other submissions at the hearing and determine if it:

- a. Accepts the objection and issues a Counter Notice, or,
- b. Rejects the objection, allowing the event to take place.
- c. Rejects the objection, allowing the event to take place, attaching conditions to the grant of a Temporary Event Notice if it is considered appropriate and proportionate to promote the licensing objectives, but only where those conditions already exist on a premises licence or club premises certificate.

APPENDICES

Appendix A - Temporary Event Notification
Appendix B - Essex Police Objection
Appendix C - Current Premises Licence and plan

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