

LICENSING SUB COMMITTEE

17 December 2014

REPORT OF THE DIRECTOR ASSETS & ENVIRONMENT

Consideration of two Objection Notices in respect of two Standard Temporary Event Notices made by David Oliver, Oliver's 19 Lower Gungate Tamworth Staffordshire B79 7AT for events on Sunday 21 December 2014 and 25 to 28 December 2014

EXEMPT INFORMATION

Not applicable

PURPOSE

For the Licensing Sub-Committee to consider two Objection Notices given by the Chief Officer of Police under Section 104 of the Licensing Act 2003, in respect of two Temporary Event Notices (TEN).

RECOMMENDATIONS

The Licensing Sub Committee must, having regard to the section 104 Objection Notices (attached as Appendix 2A and 2B), take one of the following steps as it considers appropriate for the promotion of the licensing objectives for each one of the two TENs under consideration:

- (a) Allow the licensable activities to go ahead as stated in the temporary event notices. (A copy of each TEN is given separately in Appendices 1A and 1B);**
- (b) Impose one or more of the existing licence conditions from the Premises Licence on the TENs (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate. A copy of the Premises Licence is given at Appendix 7;**

or

- (c) Uphold the objection notices and issue counter notices under Section 105 of the Licensing Act 2003 which will mean that the events cannot take place.**

There is no prescribed form for a section 105 counter notice. An example counter notice is given at Appendix 5.

There is a prescribed form under section 106A for imposing conditions from the Premises Licence onto the TEN. This prescribed form is given at Appendix 6.

EXECUTIVE SUMMARY

The Chief Officer of Police has powers to object to a TEN where he is satisfied that allowing the premises to be used in accordance with the TEN would undermine the licensing objectives. Only the Police or local authority exercising environmental health functions can object to a TEN - no other responsible authority or other person may object to this type of notification. On this occasion two Objection Notices were received on 9 December 2014 from the Police stipulating that they object to both of the temporary events.

The two TENs under consideration have been made in respect of Oliver's 19 Lower Gungate Tamworth, Staffordshire, B79 7AT for the following times and dates :

Appendix Reference	Date(s) of Event	Times
1A	Sunday 21 December 2014	02:00 to 03:30 hours To carry out normal licensable activities and to comply with all conditions on the premises licence
1B	Thursday 25 December to Sunday 28 December 2014 25 December 2014 27 December 2014 28 December 2014	01:00 to 03:30 hours 01:00 to 03:30 hours 02:00 to 03:30 To carry out normal licensable activities and to comply with all conditions on the premises licence

The decision whether or not to allow the temporary events to take place has not been made under Officer's delegated powers because the Licensing Act requires that the decision be made at a licensing hearing.

The Licensing Sub-Committee must determine the two TENs with a view to promoting the licensing objectives referred to in the Objection Notices:

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

In making its decision, the Licensing Sub-Committee must follow the Licensing Authority's own licensing policy and have regard to the national guidance. In particular, the Sub-committee should have due regard to paragraph 1.17 of the Home Office Guidance which states that each application must be considered on its own merits and Chapter 7 which specifically relates to TENs.

RESOURCE IMPLICATIONS

None

LEGAL/RISK IMPLICATIONS BACKGROUND

There is no provision for appeal against addition of conditions (under Section 106A) to a temporary event notice.

There is a right of appeal against the decision made by the Licensing Sub-Committee to give a counter notice under Section 105 (the premises user may appeal against that decision). Where the licensing authority decides not to give a counter notice, the Police may appeal against this decision. Any such appeal must be made to the Magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

There is an exception to these rights of appeal. No appeal may be brought later than five working days before the day on which the event period specified in the temporary event notice begins. Due to this time constraint there is insufficient time for an appeal to be lodged in respect of the event on 21 December 2014. In respect of the second TENs an appeal could be made to the Magistrate's Court on the 18 December. However this would not leave the Court much time to arrange an appeal hearing to consider the matter before the intended event dates of 25, 26 and 28th of December 2014. If the decision of the Licensing Sub Committee is appealed there will be a financial resource implication.

SUSTAINABILITY IMPLICATIONS

The effective regulation of licensing activities contributes to the strategic priority of being healthier and safer in Tamworth.

BACKGROUND INFORMATION

Temporary Event Notifications are used by premises users for the temporary carrying on of licensed activities at premises which are not authorised by premises licences or club premises certificates. These events do not have to be authorised as such by the licensing authority. Instead the premises user notifies the event to the licensing authority, the Police and local authority exercising the Environmental Health functions. If the notification is duly made the licensing authority is required to issue an acknowledgement of the notification.

The premises for which the two TENs have been given, Oliver's, 19 Lower Gungate, Tamworth, Staffordshire, B79 7AT, is shown on the location plan at **Appendix 8**.

Redacted copies of the Temporary Event Notices made by the premises user, David Oliver, for the events in question are given in **Appendix 1A and 1B**. The premises user requested the temporary event notices for the following activities:

- The sale by retail of alcohol for consumption both on and off the premises.
- The provision of regulated entertainment.
- The provision of late night refreshment

The following times and dates have been given in the TENs:

Appendix Reference	Date(s) of Event	Times
1A	Sunday 21 December 2014	02:00 to 03:30 hours To carry out normal licensable activities and to comply with all conditions on the premises licence
1B	Thursday 25 December to Sunday 28 December 2014 Thursday 25 December 2014 Saturday 27 December 2014 Sunday 28 December 2014	01:00 to 03:30 hours 01:00 to 03:30 hours 02:00 to 03:30 To carry out normal licensable activities and to comply with all conditions on the premises licence

Oliver's benefits from a permanent Premises Licence and Mr David Oliver is the premises licence holder. Mr Oliver is also the designated premises supervisor named on the premises licence. A redacted copy of the premises licence issued on 18 December 2013 is given in **Appendix 7**.

The premises licence allows the premises to be open on Thursdays until 01:30 hours, Fridays and Saturdays until 02:30 hours and on Sundays until 01:30 hours. The TEN would essentially provide an extension to these hours for licensable activities. However, it is important to note that the conditions listed in Annex 2 and 3 of the premises licence (**Appendix 7**) are not automatically applied when a TEN is in effect for a premises which already holds a premises licence.

The two TENs specify a maximum occupancy level of 250 persons. This figure includes not only customers, but also staff, organisers, and performers who will be present on the premises.

There are a number of licensed premises situated close to Oliver's including Corey's (previously Casa Bar) in Lower Gungate marked as Cinema on location plan and Kuda (formerly Trinity) marked as Club on location plan in Spinning School Lane. The premises licence for Corey's permits the premises to be open until 04:30 hours

Monday to Sunday. The premises licence for Kuda permits the premises to be open until 04:30 hours Monday to Saturday, until 02:00 hours on a normal Sunday and until 04:00 hours on Christmas Eve, Boxing Day, 27 December and the 28 December.

In general, only the Police or local authority exercising the Environmental Health functions may intervene to prevent such an event from taking place or to agree to a modification of the arrangements. On this occasion two Objection Notices were received on 9 December 2014 from the Police stipulating that they object to both of the temporary events. Copies of the two Objection Notices are enclosed at **Appendices 2A and 2 B**.

The Police may withdraw their objection notices at any stage before the hearing is held or dispensed with if the premises user agrees to modify the proposal to address their concerns. The licensing authority will then be sent a copy of the modified notice by the Police as proof of the agreement, but they can subsequently withdraw it. A hearing will not be necessary if the Objection Notice is withdrawn.

On this occasion the Objection Notices have not been withdrawn.

The Sub-committee must consider the Objection Notices (**Appendix 2A and 2B**), confining its deliberations to all four of the licensing objectives. The Sub Committee must determine whether to:

- (a) Allow the licensable activities to go ahead as stated in the temporary event notices. If this option is selected the premises user and relevant person submitting the Objection Notices will need to be notified of the reasons for the decision;
- (b) Impose one or more of the existing licence conditions from the Premises Licence on the TENs (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate. A copy of the Premises Licence providing a pool of potential conditions for the TENs is given at **Appendix 7**. If this option is chosen a notice under section 106A will need to be served on the premises user together with a Statement of Conditions. A copy of this prescribed notice and statement of conditions template is given in **Appendix 6**; or
- (c) Uphold the objection notices and issue a counter notice under Section 105 of the Licensing Act 2003 in respect of each of the TENs which will mean that the events cannot take place. There is no prescribed form for a section 105 counter notice. An example counter notice is given at **Appendix 5**.

Local policy considerations

A copy of Tamworth Borough Council's Statement of Licensing Policy can be found in **Appendix 3**. It should be noted that this policy was written and adopted before changes were made to the temporary event notice legislation on 25 April 2012.

National Guidance

A copy of the Home Office Amended Guidance Issued under Section 182 of the Licensing Act 2003 (October 2014) can be found in **Appendix 4**. This guidance does reflect the changes to temporary event notice legislation.

Home Office Guidance now gives greater weight to Police representations. Paragraph 9.12 states:

“In their role as a responsible authority, the Police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.”

The Licensing Sub Committee must deviate from the national guidance and Tamworth Borough Council’s own licensing policy if the facts of the case demand it in the interests of the promotion of the licensing objectives. If the Licensing Sub Committee does depart from the guidance and Tamworth Borough Council’s policy it must be able to provide full reasons.

The Licensing Sub-Committee is required to determine the two TENs and is expected to record in full the reasons for any decision that they make.

REPORT AUTHOR

If Members would like further information or clarification prior to the meeting please contact Colin John.

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LIST OF BACKGROUND PAPERS

Tamworth Borough Council Licensing Policy, 2011-2014 (**Appendix 3**)

Home Office Guidance (October 2014) Issued under Section 182 of the Licensing Act 2003 (**Appendix 4**).

APPENDICES

Appendix 1A & 1B	Temporary Event Notifications (redacted)
Appendix 2A & 2B	Objection Notices
Appendix 3	Local Licensing Policy
Appendix 4	National Guidance
Appendix 5	Example Counter notice under Section 105
Appendix 6	Prescribed form under section 106A for imposing conditions from the Premises Licence / Club Premises Certificate onto the TEN

Appendix 7

Premises Licence (redacted) Issue date 18 December
2013

Appendix 8

Location plan

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