

19 SEPTEMBER 2013

**REPORT OF THE DIRECTOR
ASSETS & ENVIRONMENT**

**CONSIDERATION OF AN OBJECTION NOTICE TO A STANDARD TEMPORARY
EVENT NOTICE MADE BY DAVID OLIVER, OLIVER'S, 19 LOWER GUNGATE,
TAMWORTH B79 7AT FOR AN EVENT ON SUNDAY 29 SEPTEMBER 2013 -
LICENSING ACT 2003**

EXEMPT INFORMATION

Not applicable

PURPOSE

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

RECOMMENDATIONS

The Licensing Sub Committee must, having regard to the section 104 Objection Notice (attached as Appendix 2), take one of the following steps as it considers appropriate for the promotion of the licensing objectives:

- (a) Allow the licensable activities to go ahead as stated in the temporary event notice (Appendix 1);
- (b) Impose one or more of the existing licence conditions from the Premises Licence on the TEN (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 notice and issue a counter notice under Section 105 of the Licensing Act 2003 which will mean that the event 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.

The TEN under consideration has been made in respect of Oliver's, 19 Lower Gungate Tamworth, Staffordshire, B79 7AT from 02:00 hours on Sunday 29 September 2013 to 03:30 hours on Sunday 29 September 2013. The nature of the event for which the notification has been received is "to carry out normal licensable activity and to comply with all of the conditions on the premises licence."

The decision whether or not to allow the temporary event 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 TEN with a view to promoting the licensing objectives referred to in the Objection Notice:

- The prevention of crime and disorder; and
- The prevention of public nuisance;

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.

SUSTAINABILITY IMPLICATIONS

None

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 TEN has been given, Oliver's, 19 Lower Gungate, Tamworth, Staffordshire, B79 7AT, is shown on the location plan at **Appendix 8**.

There are a number of licensed premises nearby including Casa Bar in Lower Gungate (marked as Cinema on location plan) and Trinity (marked as Club on location plan) in Spinning School Lane. The premises licences for both the Casa Bar and Trinity permit these premises to be open on Sunday mornings until 04:30 hours.

A redacted copy of the Temporary Event Notice made by the premises user, David Oliver, for the event in question is given in **Appendix 1**. The premises user requested the temporary event notice 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 date and time of the proposed event is from 02:00 hours to 03:30 hours on Sunday 29 September 2013.

The premises licence already allows the supply of alcohol until 02:00 hours, late night refreshment until 02:30 hours and some regulated entertainment until 02:00 hours on Sunday mornings. It also allows the premises to be open to the public until 02:30 hours on Sunday mornings. 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 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 TEN specifies a maximum occupancy level of less than 250 persons. This figure includes not only customers, but also staff, organisers, and performers who will be present on the premises.

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 an Objection Notice was received on 9 September 2013 from the Police stipulating that they object to the temporary event. A copy of this Objection Notice is enclosed at **Appendix 2**.

The premises already 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 24 January 2013 is given in **Appendix 7**.

The Police may withdraw their objection notice 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 Notice has not been withdrawn.

The Sub-committee must consider the Objection Notice (**Appendix 2**), confining its deliberations to the crime prevention and public nuisance objectives. The Sub Committee must determine whether to:

- (a) Allow the licensable activities to go ahead as stated in the temporary event notice. If this option is selected the premises user and relevant person submitting the Objection Notice 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 TEN (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 this TEN 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 notice and issue a counter notice under Section 105 of the Licensing Act 2003 which will mean that the event 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 (June 2013) can be found in **Appendix 4**. This guidance does reflect the changes to temporary event notice legislation which took place on 25 April 2012.

When the Home Office Guidance was amended in April 2012 greater weight was given 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 this TEN 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 (June 2013) Issued under Section 182 of the Licensing Act 2003 (**Appendix 4**).

APPENDICES

Appendix 1	Temporary Event Notification (redacted copy)
Appendix 2	Objection Notice
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 copy) Issue date 24 January 2013
Appendix 8	Location plan

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