

<b>26 October 2021</b>	<b>ITEM:</b>
<b>Licensing Sub-Committee</b>	
<b>DETERMINATION OF OBJECTION TO TEMPORARY EVENT NOTICES.</b>	
<b>Report of:</b> Dave Leonard, Licensing Officer	
<b>Wards and communities affected:</b> Warley	<b>Key Decision:</b> Non-key
<b>This report is public</b>	
<i>If the report, or a part of this, has been classified as being either confidential or exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication. The press and public are likely to be excluded from the meeting during consideration of any confidential or exempt items of business to which the report relates.</i>	
<b>Date of notice given of exempt or confidential report:</b> not applicable	
<b>Purpose of Report:</b> To determine an objection from Environmental Health for a Temporary Event Notice.	

## **EXECUTIVE SUMMARY**

The Licensing Office has received an objection from the Environmental Health Manager, Mr David Carter, with regards to a Temporary Event Notice (TEN) submitted in relation to a firework display and subsequent outside hospitality to be held at the Brave Nelson, 138 Woodman Road, Warley CM14 5AL on Saturday 6 November 2021. The objection relates to the prevention of public nuisance and public safety licensing objectives.

### **1. RECOMMENDATIONS:**

#### **1.1 That the Sub-Committee**

**a) Considers this report and appendices together with any oral submissions at the hearing and determines the application for the objection of a Temporary Event Notice.**

## 2. INTRODUCTION AND BACKGROUND:

2.1 Section 104 (2) Licensing Act 2003, allows the Police or Environmental Health to object to a Temporary Event Notice if they believe that allowing the premises to be used in accordance with a Temporary Event Notice will undermine one or more of the licensing objectives.

2.2 The licensing objectives are:

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

2.3 The Licensing Department received a Temporary Event Notice on 13 October 2021 from Mr Paul Duley, the premises licence holder and the designated premises supervisor, for a firework display and subsequent outside hospitality to be held at the Brave Nelson, 138 Woodman Road, Warley CM14 5AL on Saturday 6 November 2021. A copy of the TEN is attached at **Appendix A**.

2.4 A letter of acknowledgement of the TEN was sent on 13 October 2021 and a copy is attached at **Appendix B**.

2.5 The TEN relates to a firework display and subsequent hospitality to be held in the outside car park and beer garden on Saturday 6 November 2021 and to the use of the outside bar from 1800hrs to 2200hrs\* & to extend the opening of the pub garden until 2300hrs\*\* for the purposes of the sale of alcohol, the provision of regulated entertainment & the provision of late-night refreshment.

2.6 The TEN, in its current submission without any written undertakings attached, effectively removes the conditions attached to the premises licence. A copy of the current premises licence, issued on 12 October 2021 following a recent Licensing Sub-Committee review hearing, together with a set of OS Street Maps and images to better identify the location, is attached at **Appendix C**.

*\*Annex 3 Condition 7 of the current premises licence states “the outside bar is to be open from the period of March to September each year only.”*

*\*\*Annex 2 Condition 6 states “customers will not be permitted use of the garden after 22:00hrs except for the purpose of smoking. The number of smokers permitted to be outside smoking after 22:00hrs will be limited to 15.” Condition 7 states: “no drinks are to be consumed outside after 22:00hrs.”*

2.7 On Friday 15 October 2021 the Licensing Department received an objection notice from the Environmental Health manager, Mr David Carter, in regard to the licensing objectives of the prevention of public nuisance and public safety. Mr Carter contends that an extension to the use of the pub garden until 11pm is likely to result in noise disturbance to other residents in the vicinity of the premises later at night. Whilst unclear whether there will be music played in

the outside area, the licensing conditions restricting this use would potentially be suspended allowing external music performance. Mr Carter has also expressed a concern that the pub garden would be in the likely area for fallout from the firework display which is also of concern from a safety aspect. Mr Carter's representation is attached at **Appendix D**.

- 2.8 Mr Duley has hosted similar firework displays at the Brave Nelson for the past five years without significant incident and has since provided this office with an event management plan and risk assessment package which was received on 18 October 2021 and is attached at **Appendix E**.
- 2.9 The Brave Nelson has been subject of two Licensing Sub-Committee hearings in 2021. In May, an application to vary the premises licence to include an outside bar in the beer garden was heard and, this month, the review of the licence followed a breach of conditions in relation to the use of the garden when an invalid TEN had been rejected and counter notice served. In both instances all representations received related to the use of the pub garden and, to assist the Committee, copies of both decision notices are attached at **Appendix F**.

### **3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:**

- 3.1 The committee, after considering the objection application, will need to consider what action, if any, to take in order to ensure that the licensing objectives are complied with.
- 3.2 The power to impose conditions on a TEN is conferred by s106 Licensing Act 2003. This is not a general power to impose conditions and can be exercised only where temporary events are held on premises, or parts of premises, for which a premises licence or Club Premises Certificate is in force and an objection notice is given.
- 3.3 The following options are available to the Licensing Sub-Committee:
- Allow each Temporary Event Notice being determined as applied for;
  - To impose conditions on the TEN being determined as conferred by s106 Licensing Act 2003.
  - To reject the Temporary Event Notice being determined as applied for and issue a Counter Notice, which will prevent the event from going ahead.
- 3.4 The decision made by the Committee will take immediate effect. There is a right of appeal for both the person who has given the TEN and for the relevant person that had submitted the objection notice. However, no appeal may be brought later than 5 working days before the day on which the event period specified in the TEN.

- 3.5 In determining this application for an objection of the Temporary Event Notice by Environmental Health, the Sub-Committee should have regard to the Council's Statement of Licensing Policy and to the guidance issued by the Secretary of State under s182 of the Licensing Act 2003.
- 3.6 The Sub-Committee are advised that the hearing is of a quasi-judicial nature and representations from all parties both written and verbal will form part of matters that are to be considered. Findings on issues of fact should be on the balance of probability.
- 3.7 The Sub-Committee are advised that the final decision should be based on the individual merits of the application and findings of fact made at the hearing

#### **4. REASONS FOR RECOMMENDATION:**

- 4.1 These are the options available to the Sub-Committee

#### **5. CONSULTATION (including Overview and Scrutiny, if applicable)**

- 5.1 Copies of both objections have been served on the premises user.

#### **6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

- 6.1 The Council has a duty under Section 17 of the Crime & Disorder Act 1998 to do all that it reasonably can to prevent:
- (a) crime and disorder in its area (including anti-social behaviour and other behaviour adversely affecting the local environment), and;
  - (b) the misuse of drugs, alcohol and other substances in its areas.

In considering this duty the Sub-Committee should have due regard to the Licensing Act 2003, the Guidance issued by the Secretary of State under Section 182 of the Act and the Council's own Statement of Licensing Policy.

The Licensing Sub-Committee is of a quasi-judicial nature and whilst the Licensing Committee should ensure equality of treatment for all groups in the granting of licences, due regard should be given to its responsibility to promote the licensing objectives and its duties under Section 17 of the Crime and Disorder Act 1998. This includes full consideration of the need to prevent crime and disorder, ensure public safety, the prevention of public nuisance and the protection of children from harm. Where it finds that the need to comply with those duties is reasonably inferred, it must determine the application appropriately.

**BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):**

- The Licensing Act 2003
- The Secretary of State's Guidance issued under section 182 Licensing Act 2003
- Brentwood Borough Council's Statement of Licensing Policy

**APPENDICES TO THIS REPORT:**

**Appendix A** - Temporary Event Notice Application (13 October 2021)

**Appendix B** - Letter of Acknowledgement

**Appendix C** - Premises Licence, OS Maps and Images

**Appendix D** - Notice of Objection from David Carter (Environmental Health)

**Appendix E** - Event Management Plan & Risk Assessment Policy (Mr Duley)

**Appendix F** - Committee Decision Notices 11 May 2021 & 11 October 2021

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