

25 February 2022		ITEM:
Licensing Sub-Committee		
DETERMINATION OF OBJECTION TO TEMPORARY EVENT NOTICES.		
Report of: Dave Leonard, Licensing Officer		
Wards and communities affected: Warley	Key Decision: Non-key	
This report is public		
<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exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication.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>		
Date of notice given of exempt or confidential report: not applicable		
Purpose of Report: 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 Officer, Mr Chris Breen, with regards to a Temporary Event Notice (TEN) submitted in relation to a private hire 40th Birthday Party and subsequent outside hospitality to be held at the Brave Nelson, 138 Woodman Road, Warley CM14 5AL on Saturday 25 June 2022. The objection relates to the prevention of public nuisance licensing objective.

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 16 February 2022 from Mr Paul Duley, the premises licence holder and the designated premises supervisor, for a private hire 40th Birthday Party and subsequent outside hospitality to be held at the Brave Nelson, 138 Woodman Road, Warley CM14 5AL on Saturday 25 June 2022. A copy of the TEN is attached at **Appendix A.**
- 2.4 A letter of acknowledgement of the TEN was sent on 17 February 2022 and a copy is attached at **Appendix B.**
- 2.5 The TEN relates to a private hire 40th Birthday Party for a maximum number of 90 persons (including staff, organisers and performers) on Saturday 25 June 2022 with hospitality to be held outside in the beer garden with a singer until 2100hrs, the use of the outside bar from 1700hrs to 2300hrs* and to extend the opening of the pub garden until 2330hrs** for the purposes of the sale of alcohol, the provision of regulated entertainment & the provision of late-night refreshment. The party will then continue inside the pub until 0100hrs.
- 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 Licensing Sub-Committee review hearing on 4 October 2021, together with a set of OS Street Maps and images to better identify the location, is attached at **Appendix C.**

** The outside bar is only licensed to sell alcohol between March & September until 2130hrs*

***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."*

Annex 3 Condition 9 states

“The premises licence holder shall commission a Noise Management Plan, to be produced by a suitably qualified and experienced noise control consultant (e.g. a member of the Institute of Acoustics, or other such person agreed with the Licensing Authority), which Report shall address the necessary measures for noise control and preventing public nuisance from noise arising from the external areas of the premises (to include the beer garden shown on the plan attached to the licence), including (where appropriate) arrangements as to noise attenuation and mitigation measures. The Noise Management Plan shall be submitted to the Licensing Authority for approval on or before 4 January 2022, and once approved the premises shall operate in accordance with the provisions of the Noise Management Plan at all times.”

Whilst Mr Duley has informed this office that he has been consulting with the Environmental Health Manager, Mr David Carter, in relation to this condition - imposed by the Licensing Sub-Committee at a Review hearing on 4 October 2021 – he has yet to submit a Noise Management Plan to the Licensing Authority for approval on or before 4 January 2022 as required.

- 2.7 On 17 February 2022 the Licensing Department received an objection notice from the Environmental Health Officer, Mr Chris Breen, being satisfied that the allowing of the premises to be used in accordance with the notice would undermine the licensing objective of the prevention of public nuisance. Mr Breen contends that an extension to the use of the pub garden until 11.30pm is likely to result in noise disturbance to other residents in the vicinity of the premises later at night. He states that it is unclear from the application whether the singer within the outside garden area until 21:00 will be accompanied by live or recorded music, but this will likely cause disturbance to local residents. And, further to a committee hearing on 4 October 2021, the premises licence holder was requested to commission a Noise Management Plan for submission to the Local Authority by 4 January 2021. This has not been completed, so noise management measures at the premises are unknown. Mr Breen’s representation is attached at **Appendix D**.

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 (16 February 2022)

Appendix B - Letter of Acknowledgement (17 February 2022)

Appendix C - Premises Licence, OS Maps and Images

Appendix D - Notice of Objection from Chris Breen (Environmental Health)

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DETERMINATION OF OBJECTION TO TEMPORARY EVENT NOTICE

BRAVE NELSON, 138 WOODMAN ROAD, BRENTWOOD CM14 5AL

Saturday 25 June 2022

APPENDICES

Appendix A - Temporary Event Notification (received 16 February 2022)

Appendix B - Letter of Acknowledgement (acknowledged 17 February 2022)

Appendix C – Premises Licence, OS Maps and Images

Appendix D - Notice of Objection from Chris Breen (Environmental Health)