

REPORT TO: LICENSING SUB-COMMITTEE 11th SEPTEMBER 2020

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

Licensing Act 2003 - Temporary Event Notice - Consideration of Objection Notice - Clarence Pier Oktoberfest 2020 (3 weekend events)

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider an objection notice given by a relevant person¹ namely the Chief Officer of Police and in respect of three Temporary Event Notices ("TENs") received by the licensing authority under our reference (20/02607/LATENS, 20/02608/LATENS and 20/02610/LATENS).

2. THE PROPOSED PREMISES USER

The TENs have been given by:

Name: Jill Norman Billy Manning Limited

3. THE PREMISES AND PROPOSED PERMITTED TEMPORARY ACTIVITIES

The premises user proposes to carry on temporary licensable activities at the following premises:

Name (if any) and address of premises (or part): Clarence Pier

Proposed licensable activities:
Oktoberfest 2020

Proposed dates and timings: -
Staged over three weekends
09/10/20, 16/10/20 and 27/10/20

A copy of the temporary event notices is attached as **appendix A**.

4. BACKGROUND INFORMATION

Three Temporary Event notices have been submitted by the applicant seeking to hold a German beer style event at Clarence Pier, Southsea.

¹ A "relevant person" is now defined as either the Chief Officer of Police for the police area OR the local authority exercising the statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health. Section 99A Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011 refers.

The applicant's intention is to operate a pre-booked, small 'Oktoberfest' event, encouraging increased trade during selected weekends in October and the October Holiday. Guests will be encouraged to pre-book to ensure no overcrowding, a simple selection of German Beers & associated authentic German Foods (Wurst, Pretzels etc). will be offered, alongside pre-recorded and live music on selected days.

The provisions relating to permitted temporary activities are contained within Part 5 of the Licensing Act 2003 ("the Act").

The Act has introduced a "light touch" system for ad hoc permitted temporary activities. This replaced the previous licensing arrangements under the Licensing Act 1964 for occasional licences and permissions.

A TEN is given by an individual aged 18 or over ("a premises user") and authorises the premises user to conduct one or more licensable activities at premises² for an event lasting no more than 168 hours (7 days). TENs can be used to authorise relatively small-scale ad hoc events, subject to certain mandatory restrictions which are:

- The number of times the "premises user" may give a TEN (**50 times a year for a personal licence holder and 5 times a year for a non personal licence holder**);
- The number of times a TEN may be given in respect of any particular premises (**15³ times in a calendar year**) **but subject to a maximum aggregate duration of the periods covered by TENs at any individual premises (21 days)**;
- Minimum period of 24 hours between each TEN given by the same premises user (or an associate) for the same premises;
- The length of time a temporary event may last (**168 hours**); and
- The scale of the event in terms of the maximum number of people (including those organising or staff) present on the premises at any one time (**499 or less**).

The premises user must give the TEN to the licensing authority and also send a copy to the relevant persons no later than 10 working days before the day that the temporary event is intended to start (for a "standard" TEN, "late" TENs can be submitted but follow a different process that is not relevant to this hearing and therefore shall not be discussed). Upon receipt of a TEN, the licensing authority is required to issue an acknowledgement of the TEN. A prescribed fee is payable.

A purpose of the TEN notification process is to also to enable the licensing authority to check that the mandatory restrictions shown above are being observed and to intervene, by issue of a statutory counter notice, if they are not.

The Chief officer of Police or officers of the council exercising Environmental Health functions (the relevant persons) may intervene to prevent a proposed TEN event from taking place on any (or all) of the four licensing objectives. They have 3 working days following receipt of the TEN to give an objection notice if satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective and must give reasons to support any concerns.

² Premises can include any place or a vehicle, vessel, moveable structure or area of open land

However, at any time before a hearing is held, the relevant person may, with the agreement of the premises user, modify the TEN to address any concerns. Once the TEN has been modified, the objection notice is treated as being withdrawn.

It is worth noting that a local authority has alternative powers under other legislation, for example, to deal with a statutory noise nuisance and may also require any premises user to comply with appropriate planning and/or other necessary building consents.

Further, section 161 of the act provides that a senior police officer may make an order closing individual premises covered by a premises licence or a TEN for up to 24 hours where he reasonably believes that:

- disorder is taking place; or
- is likely to take place imminently; or
- a nuisance is being caused by noise emanating from the premises.

Such orders may only be made where it is necessary in the interests of public safety or to prevent the nuisance caused by noise coming from the premises.

5. OBJECTION NOTICE

The Chief Officer of Police has submitted an objection notice which is attached as **appendix B**.

6. POLICY AND STATUTORY CONSIDERATIONS

When determining the objection notice and whether to issue a counter notice⁴ the Committee must have regard to:

- The promotion of the licensing objectives;
- The Licensing Act 2003;
- The statutory guidance issued by the Secretary of State in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.
- The human rights of all the parties concerned to ensure both a fair and balanced hearing and to consider, if necessary, any public sector equality matters;

Any application will be considered on its individual merits. Equally, any person permitted by the Act to make relevant representations to the Committee will have those representations considered on their individual merit.

³ *Deregulation Act 2015 refers.*

⁴ *There is no prescribed format for a counter notice issued under section 105(3) of the act. This could be a letter or formal notice from your reporting officer informing the premises user that the committee have concluded that, in the circumstances and having regard to the promotion of the licensing objectives, the event cannot go ahead.*

The Act does permit the licensing authority to attach conditions but only if a counter notice is **NOT** issued **and** provided that the premises concerned are already subject to either a premises licence or club premises certificate. Any proposed conditions must already apply to the parent licence and must not be inconsistent with the carrying out of the proposed activities under the auspices of the TEN. The committee will be advised of any pre-existing conditions if mindful of imposing any conditions in relation to the TEN.

Premises users are not required to be on the premises for the entire duration of the event, but they will remain liable to prosecution for certain offences that may be committed at the premises during the temporary event if the event is not adequately managed/supervised including the laws governing sales of alcohol to persons under 18 years.

Chapter 7 and paragraphs 7.1 to 7.40 of the updated Statutory Guidance issued by the Secretary of State are relevant to the consideration of TENS, and in particular:

Para 7.6

"The police or EHA ("relevant persons" for the purposes of TENS) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENS user (see paragraph 7.36). If a relevant person sends an objection, this may result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENS would be exceeded (see paragraphs 7.15 - 7.22)".

Para 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".

Para 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 where there is an existing premises licence or club premises certificate at the venue or issue a counter notice to prevent the event going ahead.....".

After hearing the representations and having regard to the objection notice, the Committee must give the premises user a counter notice to prevent the TEN from taking place **if it considers it appropriate for the promotion** of one or more of the licensing objectives.

The licensing authority must subsequently take the following steps:

- a) in such cases where it decides not to give a counter notice, it must give the premises user and each relevant person a notice of the decision; and
- 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.

7. APPEALS

Schedule 5, part 3, of the Act sets out the appeal provisions in relation to the determination of an objection notice to a TEN submitted by a relevant person.

Should the Committee give a counter notice, the premises user may appeal against the decision to the Magistrates' Court.

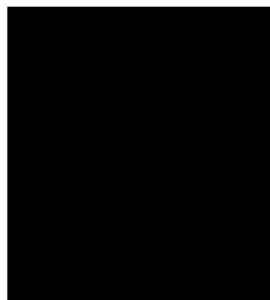
Should the Committee decide not to give a counter notice, the relevant person may appeal to the Magistrates' Court.

A copy of the current Statutory Guidance and the Act has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

8. APPENDICES

- A.** Copy of the redacted Temporary Event Notices and plan (if available)
- B.** Copy of the objection notice submitted by the relevant person
- C.** Copy of the submitted risk assessment
- D.** Response on behalf of applicant to Police objection

THE COMMITTEE IS REQUESTED TO DETERMINE THE OBJECTION NOTICE



For Licensing Manager
And on behalf of Head of Service