

**REPORT TO: LICENSING SUB-COMMITTEE - 21
JULY 2022**

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

Licensing Act 2003 - Temporary Event Notice - Consideration of Objection Notice - Pier Decking At Gaiety Bar, South Parade Pier, South Parade, Southsea

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 Head of Regulatory Services and in respect of a Temporary Event Notice ("TEN") received by the licensing authority under our reference (22/02374/LATENS).

2. THE PROPOSED PREMISES USER

The TEN has been given by:

Name: Mr Trevor Bratty

**Personal Licence:
(If applicable)** Yes (HPE0407)

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):** Pier Decking At Gaiety Bar
South Parade Pier
South Parade

Proposed licensable activities: Sale by retail of alcohol
Regulated entertainment

Proposed dates and timings: 31 July 2022 12:00 - 31 July 2022 20:00

A copy of the temporary event notice is attached as **Appendix A**.

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.

4. BACKGROUND INFORMATION

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 attending at any one time (***less than 499***).

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. 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 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

³ Deregulation Act 2015 refers.

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.

A local authority has powers under other legislation, for example, to deal with statutory noise nuisances, and may also require any premises user to comply with appropriate planning and/or other necessary building consents.

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

Regulatory Services have submitted an objection notice which states as follows:

Environmental Health wish to make representations with regards to this application for an event to held on the Decking at the Pier on 31st July 2022.

Here is a summary from the last event which was held on 2nd and 3rd July 2022 which we will be using as evidence at the Committee. A noise abatement notice will also be served on Tuesday when I am back in the office.

Summary

Regulatory Services were consulted on a Temporary Events Notice(TEN's) on 12th April 2022 in relation to an application for the provision of outdoor entertainment on the decking a the end of South Parade Pier on 2nd and 3rd July 2022. The applicant was Trevor Bratty, who is the director of T J Events Ltd. Mr Bratty is the person responsible for the premise licence for the Gaiety Bar, South Parade Pier. The area of the TEN's application is not covered by a premise licence.

Upon the receipt of the application the officer viewed South Parade Pier's web site and noted that the entertainment that they were providing on 3rd July was for Pompey Punk n Roll mid-summer party, however there is no information for the entertainment on 2nd July.

The mid-summer party on 3rd July also advertised as finishing at 19:00pm, however on the TEN's application a later time of 21:00pm was specified.

The applicants agent (licensing solicitor John Gaunt) was contacted and enquiries were made concerning the type of entertainment that was going to be provided on Saturday 2nd July and also how the noise levels from amplified voices from microphones and music would be controlled so that the noise does not reach the residential properties.

A response was not received from the applicants agent until after the TEN's response deadline (19th April 2022). The applicant's agent replied on 20th April 2022 and apologised for the delay in responding and stated that the person who was dealing with the application had been "off".

The applicant's agent informed the officer *that "The music on the 2nd of July will be provided by a DJ. The TEN has been asked for 9pm to allow some overrun but yes they are expecting it to finish around 7pm."*

"The speakers will be facing towards the sea and away from residents. There will be regular sound checks carried out at the façade of the residential properties to ensure no nuisance is caused."

It is routine not to oppose TEN's applications until there is a history of complaints, so therefore no representations were made on this occasion for this event.

On 2nd July the duty night noise officer received a voice message left at 15:33hrs from a resident complaining about the loud music coming from South Parade Pier. The complainant alleged that "there was very loud music that had been going on for hours and the drumming noise was not acceptable. He said that the music was so loud that his ornaments are vibrating."

The duty officer called the complainant back at the start of the service (18:15hrs) and informed him that she would be visiting the pier.

A second message had also been left by another complainant at 17:44hrs in relation to the volume of the music coming from the pier.

A voice mail was also left by a Community Warden at 17:50hrs who stated that he was in the car park by Canoe Lake and his van was vibrating due to the volume of the music which was being played at the pier.

The officer drove to the pier and stopped on South Parade outside one of the complainants properties (Seaview Apartments) to see if the music was audible in this location. The bass from the music was resonating around the area and was likely to be causing a significant disturbance to a number of residential properties in the area.

Due to the high volume of the music and bass the officer visited the pier to speak with the applicant of the TEN's. On walking onto the pier vibrations from the bass could be felt underfoot. The officer spoke with Trevor Bratty and his sound engineer and requested that the volume and the bass be reduced significantly. Mr Bratty informed the officer that the volume of the music will decrease over the night as he has arranged the DJ's so that they play quieter music the later the evening gets.

The sound engineer went to speak with the DJ's and informed the officer that he will monitor the noise levels in the surrounding area. The officer discussed Sundays events - Live Bands Rock and Roll with Mr Bratty and he said that this will not be a bassy event as it is live music.

The complaints were brought to Mr Bratty's attention at the earliest opportunity and before the any visits were made to the complainants properties, therefore the events organiser had a chance to reduce the music levels prior to any statutory nuisance being witnessed. Questions were also raised concerning mitigation at the TEN's application stage.

The officer left the pier and drove to St Helens Parade as she did not feel that the music levels had been reduced significantly enough to prevent further statutory nuisance from occurring.

The officer arrived at the complainants block of flats (St Helens Court, St Helens Road) at approximately 19:20hrs . The music level at this location was clearly audible. Once the officer had entered the building she noticed that the windows on the ground floor were vibrating due the high level of the bass. Upon entering the lift to the complainant's property, the bass could still be heard coming from South Parade Pier. The bass was still audible in the lift as it entered each floor.

The officer took noise measurements in the complainant's living room both with the window open and closed. The music in particular the bass was having a significant impact upon the complainant's home. When the windows were closed in his living room, the bass from the pier was making his radiator vibrate. The complainant had nowhere in his property to escape the noise.

Although the officer only received two calls on the 2nd July, these were from complainants that had previous contact with the service and had access to the out of hours night noise mobile number.

After the event, there was fifteen complaints received by Regulatory Services. All of the complainants reported that the event at the pier had been intrusive; the music was audible with windows closed and causing a significant impact upon their properties.

On Sunday 3rd July 2022 the officer carried out observations outside of St Helens Court, St Helens Parade at 18:20pm. On arrival there was loud music coming from a live band, the lyrics to the music were clearly audible. The music was audible in the car with the windows closed. However, by the time the officer had set up the noise monitoring equipment the music had stopped. The officer believed the music to be finishing at 19:00hrs and therefore, thought the bands had finished for the evening so left the area.

Six complainants reported that the music on Sunday 3rd July was extremely intrusive, and live singing and instruments could be heard with windows closed.

Level :

Noise measurements taken on 2nd July in complainant's living room with the window open and closed.

With the window closed the bass made the radiator vibrate.

Some lyrics audible at times with window open.

Recording window open 19:25:59 - 19:31:24

LAeq 52dB 50Hz 78dB 63Hz 67dB 80Hz 65dB 100Hz 61dB 125Hz 52dB

Lull with window open

LAeq 45dB 50Hz 54dB 63Hz 42dB 80Hz 38dB 100Hz 40dB 125Hz 39dB

Recording with window closed

LAeq 49dB 50Hz 72dB 63Hz 58dB 80Hz 50dB 100Hz 47dB 125Hz 42dB

Although no measurements were made for the event on Sunday, the music witnessed by the officer at St Helens Court, St Helens Parade was clearly audible.

Frequency:

This event took place due to an application under a TEN, as the location does not hold a premise licence. This was a two-day event and therefore could be considered not a one off due to other TEN's being applied for to hold future events.

There is a variation to the number of TEN's that can be applied from ranging from 5 to 50 per depending upon the circumstances of the applicant.

A further TEN has been submitted for outdoor event at the same location - decking at the end of the pier on 31st July 2022 from 12:00 to 20:00hrs

Duration:

**Saturday 2nd July 10:00 to 22:00hrs
Sunday 3rd July 10:00 to 21:00hrs**

Impact:

The level of the music and the bass coming from the pier was causing a statutory nuisance (public nuisance - TEN's) and it was wide spread impacting upon a large number of residential properties.

The furthest complainant lived over a thousand meters away from South Parade Pier.

The total number of complaints received after the event on Saturday totalled 15:

22/02000/ENI	22/02002/ENI	22/01999/ENI	22/01997/ENI
22/01983/ENI	22/01984/ENI	22/01977/ENI	22/01973/ENI
22/02001/ENI	22/01961/ENI	22/01982/ENI	22/01962/ENI
22/02004/ENI	22/02020/ENI		

The total number of complaints received after the event for Sunday totalled 6:

22/019161/ENI	22/01962/ENI	22/02020/ENI	22/02000/ENI
22/01983/ENI	22/02001/ENI		

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.

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.

Note: The area subject to this TEN does not form part of the licensed premises and therefore no conditions can be attached in this particular instance.

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

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.*

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 Notice and plan (if available)

THE COMMITTEE IS REQUESTED TO DETERMINE THE OBJECTION NOTICE

A handwritten signature in black ink, appearing to read "A. Humphreys". The signature is written in a cursive style with a large initial 'A'.

For Licensing Manager
And on behalf of Head of Service