

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>19 JULY 2012</b>
<b>TITLE OF REPORT:</b>	<b>NOTIFICATION OF A STANDARD TEMPORARY EVENT NOTICES (TEN) IN RESPECT OF THE 'CROWN &amp; ANCHOR, LUGWARDINE, HEREFORD, HR1 4AB' AND THE ISSUE OF AN OBJECTION NOTICE IN RESPECT OF THE TEN GIVEN BY THE ENVIRONMENTAL HEALTH OFFICER.' - LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>HEALTH &amp; WELLBEING SERVICE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Hagley

### **Purpose**

To consider the notification of a standard temporary event notices (TEN) in respect of the 'Crown & Anchor, Lugwardine, Hereford, HR1 4AB' and the issue of an objection notice in respect of the TEN given by the Environmental Health Officer.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

THAT Sub-Committee determine the application with a view to promoting the licensing objective of the prevention of crime and disorder in the overall interests of the local community. They should give appropriate weight to:

- The steps that are **appropriate** to promote that licensing objective,
- The objection notice issued by the Environmental Health Officer,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy

### **Key Points Summary**

- Objection Notice issued by Environmental Health Officer

## Options

There are three options available to the committee:

- a) Issue a 'counter notice' if it considers necessary for the promotion of the crime prevention objective, or
- b) Refuse to issue a counter notice and not attach any conditions, thereby authorising the Licensable Activity and hours as notified in the Temporary Event Notice.
- c) Refuse to issue a counter notice but attach conditions to the TEN. In effect this would authorise the Licensable Activities and hours as notified in the Temporary Event Notice providing the conditions were applied with.

## Reasons for Recommendations

Ensures compliance with the Licensing Act 2003.

## Introduction and Background

### Background Information

Applicant	<b>Michael Clifford</b> <b>Crown &amp; Anchor, Lugwardine, Hereford, HR1 4AB</b>	
Solicitor	<b>N/A</b>	
Type of application: <b>TENS Notification</b>	Date received: <b>11/07/12</b>	48 hour period concluded <b>13/07/12</b>

### TEN Notification

The notification of the Temporary Event Notices has received an objection from a relevant person, the Environmental Health Officer. It therefore is now brought before committee to determine the notification.

### Summary of Notification

The licensable activity notified is: -

Sale by retail of alcohol (for consumption both on and off the Premises), Provision of regulated entertainment, Provision of late night refreshment

Between Midday 10<sup>th</sup> August 2012 and 0100 on 11<sup>th</sup> August 2012

### Details of Event

A Birthday Party in Marquee with a pay bar and music

### Current Conditions Attached to Licence

General:

The types of regulated entertainments proposed re-instate the normal pub entertainments that were previously unregulated.

No new steps have been identified by risk assessment in relation to the four licensing objectives, except as below:

We have considered the terms of the local licensing policy in preparing this application.

Prevention of Crime:

We maintain a register to record incidents relevant to the four licensing objectives.

We have a comprehensive staff training programme and all staff are trained on the Licensing Act 2003 and drugs awareness.

We work closely with the police, local authority, licensed trade associations and other enforcement agencies to ensure that we adopt current industry best practice in support of the four licensing objectives.

We operate a responsible drinking policy and offer free soft drinks to designated drivers in parties of four or more.

Public Safety:

All relevant measures as above and:

We ensure that open containers are not taken from the premises.

We will operate a 30 minute 'wind down' period after permitted hours to ensure effective dispersal from the premises.

Prevention of Public Nuisance:

All relevant measures as above and:

Live music will end at 23:00 and all windows will be kept shut after 22:30.

All customers are asked to leave quietly after 23:00, and staff are trained to reinforce this message.

Protection of Children:

The restrictions set out in the Licensing Act 2003 will apply.

We operate a strict proof of age under age drinking policy, supported by comprehensive staff training.

We operate policy to ensure that all children are supervised by a responsible adult.

Children under 16 are not allowed in the bar after 21:00 unless dining and under the supervision of a responsible adult.

We have clearly defined designated non-smoking areas.

No unusual risks of harm to children have been identified.

No adult entertainment or services or activities must take place at the premises

(Adult Entertainment includes, but is not restricted to, such entertainment or services which would generally include topless bar staff, striptease, lap-table, or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language).

## **Summary of Representations**

A relevant person, the Environmental Health Officer, has made a written objection on 11<sup>th</sup> July 2012 on the grounds that the temporary event would undermine the Prevention of Public Nuisance Objective. Full details can be found within the background papers.

## **Key Considerations**

To consider what action should be taken, if any, to promote the licensing objectives.

## **Community Impact**

The granting or refusing of the Notification may have a serious impact on the Community.

## **Legal Implications**

The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

There is a right of appeal against the decision by either the person giving notification of the TEN or the relevant person. Such appeal must be made within 21 days of notification of the decision but not less than 5 working days before the event.

## **Consultees**

The Police are the only responsible authority able to issue an objection notice under the act.

## **Appendices**

Copy of TENs notification  
EHO Objection

## **Background Papers**

**Background papers were available for inspection in the Council Chamber 30 minutes before the start of the hearing.**

## **ADDITIONAL INFORMATION**

On 25<sup>th</sup> April 2012 the legislation changed in respect of TEN's. The amended Section are shown below

**104 Objection to notice by a relevant person**

- (2) Where a relevant person who is given a temporary event notice is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective, the relevant person must give a notice stating the reasons for being so satisfied (an "objection notice")—
  - (a) to the relevant licensing authority,
  - (b) to the premises user, and
  - (c) to every other relevant person.
- (3) The objection notice must be given before the end of the third working day following the day on which the relevant person is given a copy of the temporary event notice.
- (4) Subsection (2) does not apply at any time after the relevant person has received a copy of a counter notice under section 107 in respect of the temporary event notice.

**105 Counter notice following objection to standard temporary event notice**

- (1) This section applies where an objection notice is given under section 104(2) in respect of a standard temporary event notice.
- (2) The relevant licensing authority must—
  - (a) hold a hearing to consider the objection notice, unless the premises user, the relevant person who gave the objection notice and the authority agree that a hearing is unnecessary, and
  - (b) having regard to the objection notice, give the premises user a counter notice under this section if it considers it appropriate for the promotion of a licensing objective to do so.
- (3) The relevant licensing authority must—
  - (a) in a case where it decides not to give a counter notice under this section, give the premises user and each relevant person 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.
- (4) A decision must be made under subsection (2)(b), and the requirements of subsection (3) must be met, at least 24 hours before the beginning of the event period specified in the temporary event notice.
- (5) Where the premises are situated in the area of more than one licensing authority, the functions conferred on the relevant licensing authority by this section must be exercised by those authorities jointly.
- (6) This section does not apply—
  - (a) if the objection notice has been withdrawn (whether by virtue of section 106 or otherwise), or
  - (b) if the premises user has been given a counter notice under section 107.

**106 Modification of standard temporary event notice following objection**

- (1) This section applies where a relevant person has given an objection notice under section 104(2) in respect of a standard temporary event notice (and the objection notice has not been withdrawn).

- (2) At any time before a hearing is held or dispensed with under section 105(2), the relevant person may, with the agreement of the premises user and each other relevant person, modify the temporary event notice by making changes to it.
- (3) Where a temporary event notice is modified under subsection (2)—
  - (a) the objection notice is to be treated for the purposes of this Act as having been withdrawn from the time the temporary event notice is modified, and
  - (b) from that time—
    - (i) this Act has effect as if the temporary event notice given under section 100 had been the notice as modified under that subsection, and
    - (ii) to the extent that the conditions of section 98 are satisfied in relation to the unmodified notice they are to be treated as satisfied in relation to the notice as modified under that subsection.
- (4) A copy of the temporary event notice as modified under subsection (2) must be sent or delivered by the relevant person to the relevant licensing authority before a hearing is held or dispensed with under section 105(2).
- (6) This section does not apply if a counter notice has been given under section 107.
- (7) In this section “objection notice” has the same meaning as in section 104(2).

#### **106A Conditions on standard temporary event notice following objection**

- (1) This section applies where—
  - (a) a relevant person has given an objection notice under section 104(2) in respect of a standard temporary event notice,
  - (b) the objection notice has not been withdrawn, and
  - (c) the relevant licensing authority has decided under section 105 not to give a counter notice under that section.
- (2) The relevant licensing authority may impose one or more conditions on the standard temporary event notice if—
  - (a) the authority considers it appropriate for the promotion of the licensing objectives to do so,
  - (b) the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and
  - (c) the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.
- (3) Where the authority decides to impose one or more conditions under subsection (2)—
  - (a) the authority must give the premises user notice of the decision,
  - (b) the notice must be accompanied by a separate statement (the “statement of conditions”) which sets out the conditions that have been imposed on the temporary event notice, and
  - (c) a copy of the notice and statement of conditions must be given to each relevant party.
- (4) The notice and statement of conditions under subsection (3) must—
  - (a) be in the prescribed form,
  - (b) be given to the premises user in the prescribed manner, and
  - (c) be given no later than 24 hours before the beginning of the event period specified in the temporary event notice.
- (5) Where the premises are situated in the area of more than one licensing authority, the functions conferred on the relevant licensing authority by subsection (2) must be exercised by those authorities jointly.

**PART 3**  
**OTHER APPEALS**

**Temporary event notices**

- 16 (1) This paragraph applies where—
- (a) a standard temporary event notice is given under section 100, and
  - (b) a relevant person gives an objection notice in accordance with section 104(2).
- (2) Where the relevant licensing authority gives a counter notice under section 105(3), the premises user may appeal against that decision.
- (3) Where that authority decides not to give such a counter notice, relevant person may appeal against that decision.
- (4) An appeal under this paragraph must be made to a magistrates' court.
- (5) An appeal under this paragraph must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.
- (6) But 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.
- (7) On an appeal under sub-paragraph (3), the premises user is to be the respondent in addition to the licensing authority.
- (8) In this paragraph—  
“objection notice” has the same meaning as in section 104;  
“relevant licensing authority” has the meaning given in section 99 and  
“relevant person” has the meaning given in section 99A.