

**REPORT TO LICENSING SUB COMMITTEE**



<b>DATE</b>	<b>9<sup>th</sup> November 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>John Clucas</b>
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**Licensing Act 2003 Hearing of an application for a Temporary Event Notice following receipt of a notice of objections**

**PURPOSE**

1. To consider a notice of objection received by the Licensing Authority in response to a Temporary Event Notice given by Person A on 29th October 2021 in accordance with Part 5 of the Licensing Act 2003.
2. The premises are MODE Nightclub, 77 Hammerton Street, Burnley

**RECOMMENDATION**

3. Members are recommended to make a determination with a view to promoting the licensing objectives:
  - The prevention of crime and disorder
  - Public safety
  - Prevention of public nuisance
  - Protection of children from harm

The committee may:

- Allow the licensable activities to go ahead as stated in the notice, or
- Attach conditions to the TEN which must be drawn from the conditions attached to the existing premises licence, or
- Issue a Counter Notice, preventing the event taking place, to the premises user under Section 105(2b) if the Committee consider it appropriate for the promotion of the licensing objectives.

Committee must give a notice of the decision, with explanation, under Section 105(3a) to the premises user and the objecting relevant person.

**REASONS FOR RECOMMENDATION**

4. Unlike new or variation premises licence applications there is no provision within the TENs process for objections to be mediated out by the parties. Conditions can only be attached where a Premises Licence is in place at the premises, and only those conditions applied to the licence can be attached to the TEN. Furthermore, conditions can only be attached at a hearing. The Licensing Sub-Committee are responsible for determining such applications where objections are received.

## **SUMMARY OF KEY POINTS**

5. MODE Nightclub has a Premises Licence issued by Burnley Council. A copy of this is at Appendix A
6. That Premises licence allows Licensable activities until 0600 hrs and the Premises Licence Holder and DPS is Rebecca McQuoid. She has held both of these positions since 2014.
7. On Friday 29<sup>th</sup> October 2021 the applicant Rebecca McQuoid sent to the Licensing Authority a Late TEN in respect of an event on the 7<sup>th</sup> November and a standard TEN in respect of an event to be held on the 14<sup>th</sup> November.

The Police Objected to both and as a result the Late TEN (for 7<sup>th</sup> November) was issued with a counter notice. That matter has now been resolved, as where an objection is made to a late Ten then the event cannot go ahead under any circumstances.

This hearing therefore is for the Standard TEN application for an event on the Saturday / Sunday 13<sup>th</sup> to the 14<sup>th</sup> November 2021, and a copy of that application is at Appendix B.

The application seeks to extend the Licensable activity at the premises from 0600 hrs to 0800 hrs on Sunday 14<sup>th</sup> November 2021. And the activities applied for are the supply of alcohol and also regulated entertainment.

Under the Licensing Act the Standard TEN must be provided to the Police & also Environmental Health who are the only parties who are permitted to object.

On Tuesday 2<sup>nd</sup> November 2021 the Licensing Authority received `objections` from the Lancashire Constabulary (copy at Appendix C) and also the Environmental Health department (copy at Appendix D)

The licensable activities applied for are:

- The sale by retail of alcohol from 0600hrs till 0800hrs and
- The provision of regulated entertainment from 0600hrs to 0800 on Sun 14<sup>th</sup> November 2021.

On the application under the question – Please describe the nature of the event below it said - ` to extend the opening hours of the premises for a special event`

### **Relevant factual background information**

The Premises Licence for Mode was granted in 2014. (it was called Vogue at that time)

In December 2017 the premises was subject of a Review and came before a Licensing Sub Committee and representations were made by Lancashire Police, Lancashire Trading Standards and the Public Health Authority.

At that hearing it was agreed that the terminal hour for Licensable Activity would be revised from 0800 hrs to 0600 hrs, and the conditions on the Licence were replaced. A copy of the determination notice for that hearing is attached at Appendix E.

In May 2021 a further licensing hearing took place after a review of the Premises Licence was triggered by Lancashire police in respect of Mode. Further significant conditions were added to the Premises Licence and a copy of that Decision is attached at Appendix F.

### **Relevant extracts from the Guidance issued under Sec 182 of the Licensing Act 2005**

7.28 If the licensing authority receives an objection notice from the police or EHA that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection unless all parties agree that this is unnecessary. The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a “notice (statement of conditions)”) and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the licensing authority must give a counter notice.

7.33 If the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notice must be given within the period of three working days following the day on which they received the TEN.

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 which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings in respect of late TENS

and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.

7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.

#### Relevant extract from Burnley Borough Councils Licensing Policy

17.4 The police or Environmental Health may issue an objection notice because they believe the event would undermine the one or more of the four licensing objectives set out in the Act. The police or Environmental Health must issue an objection notice within three working days of being notified, but they can subsequently withdraw the notice. The issuing of such an objection notice requires the consideration of the objection by the council at a hearing in the case of a standard TEN. If an objection notice is issued in relation to a late TEN then the TEN is cancelled and licensable activities are not authorised.

### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

8. None

### **POLICY IMPLICATIONS**

9. The Council's Licensing Policy deals with TENs at section 17. Statutory Guidance issued under s182 Licensing Act provides further information at section 7.

### **DETAILS OF CONSULTATION**

10. The statutory consultation has taken place

### **BACKGROUND PAPERS**

11. None

### **FURTHER INFORMATION**

**PLEASE CONTACT:**

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**ALSO:**