

REPORT TO LICENSING SUB COMMITTEE



DATE	24th October 2022
PORTFOLIO	Community & Environment
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Licensing Act 2003 Hearing of an application for a Temporary Event Notice following receipt of a notice of objection

PURPOSE

1. To consider notice of objection received by the Licensing Authority in response to a Temporary Event Notice (TEN), provided at Appendix A given by Person A on 13th October 2022 in accordance with Part 5 of the Licensing Act 2003.
2. The premises is Bees Knees, Hargreaves St, Burnley.

RECOMMENDATION

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

The premises is subject to a Premises Licence PLA0252 provided at Appendix B including plan provided at Appendix C. Committee may, in respect of each Temporary Event Notice:

- Allow the licensable activities to go ahead as stated in the notice, or
- Attach conditions to the TEN, which must be drawn from 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 persons.

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

1. The TEN received is for 13/11/2022 - Remembrance Sunday, and the day of a football match between Burnley FC and Blackburn Rovers FC, which kicks off at 12.30pm.

The event on is described as opening at an earlier time and serving alcohol to customers at this time. Licensable activities to be carried on are:

- The on-sale by retail of alcohol from 10.00hrs to 11.00hrs

The event will take place within the existing licenced area of the premises. The TENs seek to provide additional hours of trading before the 11.00 opening time permitted by the Premises Licence.

On 13th October 2022 the Licensing Authority received an objection notice from Lancashire Constabulary in accordance with s104(2). The objection is provided at Appendix D.

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

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

5.4 Temporary Event Notices (TENs)

5.4.1 The Act enables certain organised events to provide one or more licensable activities at unlicensed premises for less than 500 people to take place following notification to the Licensing Authority, the Police and Environmental Health via a TEN. Only the Police and Environmental Health can object.

5.4.2 The Licensing Authority recognises that one-off events provide valuable opportunities for communities to mix and celebrate together. Advice and assistance will be available to bona fide community events who do not have a commercial background or ready access to legal advice. This will include, those seeking TENs on behalf of charities, community and voluntary groups. The Licensing Authority will ensure that local guidance about the temporary permitted activities is clear and understandable for such groups.

5.4.3 The use of multiple TENs for adjacent plots of land, or the artificial creation of a smaller TEN premises within the boundary of a larger event or festival for the purpose of utilising TENs for the sale of alcohol is considered outside of the scope and spirit of the Act. Premises Licences should be sought in these circumstances.

5.4.4 Other than for special occasions, multiple TENs for existing licensed premises will not be encouraged where the proposal is simply to extend the existing hours of operation, particularly into the sensitive hours of conflict between the night-time and day-time economies. Applications of this kind will be subject to increased scrutiny because the TENS process does not transfer licence/certificate conditions over to

the TEN for the additional hours, and in larger venues a TEN will impose a `cliff edge` reduction in capacity at the moment the activities move from the control of the licence/certificate to the TEN. Where extended licensing hours are desired, an application for variation of the premises licence is considered more appropriate than repeat TENS.

5.4.5 The previous history of an individual as a manager of licensable activities will be a relevant consideration in relation to objections and determination of TENS.

5.4.6 The Licensing Authority encourages early application for TENS well in advance of the event date. This is particularly relevant to events which are to take place in the open, or in/on temporary structures and where amplified music is to be played, particularly after 11pm. This is so that if there are potential objections these can be subject of discussion, negotiation, and if possible mutual agreement. This allows for withdrawal and resubmission of a TEN in certain circumstances, thereby reducing the likelihood of the need for a Licensing Hearing or the issue of a Counter Notice. Assistance with the planning of events can be provided through the Council's Events Safety Advisory Group.

5.6 Licensing Hours

5.6.1 Applicants are strongly encouraged only to apply for hours that they realistically intend to operate, as later hours are typically more likely to attract representations. Once granted a licence remains in force forever, unless surrendered, varied or reviewed, so Responsible Authorities should give careful consideration to licensed hours at the application stage.

5.6.2 Where its discretion is engaged at a hearing, the licensing authority will give consideration to the appropriateness of hours applied for, or hours permitted by the existing licence, having regard to any planning restrictions in relation to operating hours, the location of premises and their likely effect on the promotion of the four licensing objectives. It is recognised that in some circumstances flexible licensing hours for the sale of alcohol can help to ensure that concentrations of customers leaving premises simultaneously are avoided. At a hearing the licensing authority will consider restricting hours to ensure the promotion of the licensing objectives. Any new closing time will take account of the closing times of other premises in the vicinity so that staggered dispersal of customers is achieved.

5.6.3 The Licensing Authority considers that later hours will typically be more sensitive and higher risk in causing noise from regulated entertainment, anti-social behaviour from patrons in the vicinity of the premises, and crime and disorder from inebriated patrons. This will include late night food vendors. It therefore follows that additional measures may be required, including noise mitigation controls and an increasing number of SIA registered door supervisors may need to be employed the later the premises remains open, and these requirements may be considered as licence conditions.

5.6.4 It may also be appropriate, where later hours are requested for alcohol, to have a last entry condition as a condition of the Premises Licence to prevent vulnerable or intoxicated customers moving to the last venue open.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

2. None

POLICY IMPLICATIONS

3. The Council's Licensing Policy deals with TENs at section 5.4. Statutory Guidance issued under s182 Licensing Act provides further information at section 7.

DETAILS OF CONSULTATION

4. The statutory consultation has taken place following receipt of the TENs.

BACKGROUND PAPERS

5. None

FURTHER INFORMATION

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