

REPORT TO: LICENSING SUB COMMITTEE

DATE: 26 MAY 2021

TITLE: TEMPORARY EVENT NOTICES – THE PUB GARDEN, CHEQUERS, 2 MARKET STREET, OLD HARLOW, ESSEX, CM17 0AH

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EXECUTIVE SUMMARY

1. Following four individual applications for Temporary Event Notices in respect of **The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH** made by **Mr Hakan Hayrettin** on 15 May 2021, the Sub Committee is requested to consider these applications and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.
2. This report provides information for Members in respect of the objection notices received in relation to each of the temporary event notices (TEN) given under the Licensing Act 2003.

RECOMMENDATIONS

3. That the Sub Committee:

Consider each of the applications individually for temporary event notices listed and any **RELEVANT** representations and take such of the following steps, if any, as it considers appropriate for the promotion of the licensing objectives;

- a) Give the premises user a counter notice under Section 105 (2) of the Licensing Act 2003 if it is considered appropriate for the promotion of a licensing objective to do so; or

- b) Impose one or more conditions on the temporary event notice if:
 - i) it is appropriate for the promotion of the licensing objectives to do so, and the condition(s) are also imposed on a premises licence or club premises certificate that has effect in relation to all or part of the same premises as the temporary, and
 - ii) the condition(s) would not be inconsistent with the carrying out of the licensable activities under the temporary event notice; or
 - c) Disregard the objection notice
4. Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives. Where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:
- a) The prevention of crime and disorder
 - b) Public Safety
 - c) The prevention of public nuisance
 - d) The protection of children from harm
5. Members of the Licensing Sub Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to each of the applications and the representations by the parties in relation to the Temporary Event Notices.
6. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:
- a) The rules of natural justice
 - b) The provisions of the Human Rights Act 1998

BACKGROUND

7. The supply of alcohol, provision of regulated entertainment, and sale of late night refreshment are licensable activities under the Licensing Act 2003. Authorisation from the Council, in its role as the licensing authority, is required in order to carry on any of these activities at premises within the District.
8. The Act provides several forms of authorisation for different scenarios. For infrequent, one-off events with no more than 499 persons in attendance, premises users may give a temporary event notice. This is a light-touch form of authorisation, and providing the proposed event meets statutory criteria and the premises user has satisfied prescribed notification requirements, the event will automatically be deemed to be authorised. This authorisation may,

however, be overridden if a counter-notice is issued by the licensing authority in respect of the event, either by virtue of a breach of the statutory limits, or as a result of objections raised by a statutory consultee.

9. A TEN is submitted to the Licensing Authority by the premises user (an individual 18 years or over) and is copied to the Police and the Environmental Health Service as a means to authorise licensable activities where either:
 - a) no premises licence/club premises certificate exists
 - b) in cases where it is not being used
 - c) where the operating schedule including days and timings do not meet the need of the premises user.
10. TEN's may be given in respect of standalone events, or used in conjunction with a premises licence or club premises certificate to extend the scope of the permanent authorisation.
11. Standard TEN's may be given no later than 10 working days prior to a proposed event. When giving a TEN, the premises user must also serve copies on the relevant police and environmental health authorities (unless making an online application, in which case the licensing authority must fulfil this requirement), and those bodies may give notice of any objections to the proposed event within 3 working days of receipt. Where a valid objection to a standard TEN is received by a licensing authority, a hearing must be convened to consider the objection. The Act also provides for a smaller number of late TEN's to be given per year, no later than 5 working days prior to an event. An objection against a late TEN has the effect of an immediate veto to the proposed event.
12. The authority must also have regard to its Statement of Licensing Policy, and to the statutory guidance issued by the Home Office under section 182 of the Act. Chapter 7 of the guidance contains specific provisions in respect of the consideration of temporary event notices. There is no corresponding section with the council's licensing policy, although the general principles set out therein should be followed unless there is good reason to depart.
13. The licensing authority's powers in respect of temporary event notices are not of grant or refusal, but rather of intervention and veto. The licensing authority may only intervene if objections around the effect of the event on the licensing objectives are raised and upheld by the authority, or if a proposed event would fall outside of the permitted statutory limits on temporary events, which are as follows:
 - a) A premises may benefit from up to 15 TEN's per calendar year, having effect on no more than 21 days;

- b) A TEN may have effect for up to 168 consecutive hours (7 days);
 - c) There must be at least 24 hours between TENs at a premises;
 - d) An individual may give up to 5 TEN's per year (50 if they hold a personal licence). This limit also applies across associated persons (e.g. family members, husband and wife, business partners);
 - e) An individual may give no more than 2 late TEN's per year (10 with a personal licence). Any late TEN's also count towards the above limits.
14. The authority must issue a counter-notice, which vetoes a proposed event, if the event would cause the above limits to be breached. A counter-notice must also be issued in respect of a late TEN where an objection has been given.
15. The authority may issue a counter-notice, which vetoes a proposed event, if objections were raised by the police and/or environment health authorities to the event, and, having regard to that objection, the authority considers it appropriate for the promotion of a licensing objective to issue such a notice.
16. If the authority decides not to issue a counter-notice following objections, and the TEN relates to premises which are subject to a premises licence or club premises certificate, it may decide to impose one or more conditions from the licence or certificate upon the TEN, if this is considered appropriate for the promotion of the objectives.
17. The Sub-Committee must ensure that all licensing decisions have a direct relationship to the promotion of one or more of the licensing objectives. Every matter should be considered on its merits, and there must not be a 'blanket policy' to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded. Items must be considered with regard to the principles of fair process and the Human Rights Act.
18. It is considered inappropriate for licensing officers involved with the administration of TEN's to make recommendations. However responsible authority officers may raise objections in respect of temporary events where concerns arise.

ISSUES/PROPOSALS

19. Four individual temporary event notices were served on the licensing authority on 15 May 2021. The four notices are for the same premises, and

relate to the Garden Only area of the premises for event 'The Euro 2021 Football', event details are listed for each notice below:

APPLICANT	PREMISES NAME	ADDRESS
Mr Hakan Hayrettin	Chequers Pub Garden	2 Market Street Harlow Essex CM17 0AH
TEN No1 - LC334488518	Dates: 18 th – 23 rd June Inclusive	
TEN No 2 – LC334501163	Times: 21:00 – 22:30 Days: 6 For consumption both on the premises	
TEN No 3 - LC334505827	Dates: 29 th – 4 th July Inclusive Times: 21:00 – 23:00 Days: 6 For consumption both on the premises	
TEN No 4 - LC334510635	Dates: 6 th – 7 th July Inclusive Times: 21:00 – 23:00 Days: 2 For consumption both on the premises	
TEN No 4 - LC334510635	Dates: 11 th July Inclusive Times: 21:00 – 23:00 Days:1 For consumption both on the premises	
Total Number of days	15 days	

20. Copies of all four temporary event notices are set out in Appendices A1, A2, A3 and A4 to the report.

21. An objection notice in respect of all four temporary event notices was received from Harlow Council Environment Health Officer, nominated as a responsible authority under the Licensing Act 2003 on 15 May 2021, outlining concerns in respect of public nuisance. A copy of the objection notices are set out in Appendices B1, B2, B3 and B4 to the report.

22. An objection notice from Essex Police for each of the four temporary event notices was received on 15 May 2021 outlining concerns in respect of crime and disorder and public nuisance. The objection notices are set out in Appendices C1, C2, C3 and C4 to the report.
23. One further TEN application have been received in respect of this premises within this calendar year. This notice was withdrawn by the applicant and therefore does not count towards the permitted limits.
24. The premises user and the objecting responsible authority have been given notice of the hearing in accordance with statutory requirements.
25. The Chequers is a two-storey traditional style pub in the centre of Old Harlow. The pub sits in a conservation area with modern décor with some original features. The external side has been laid with cobble effect paving leading onto a large patio area to the rear, which can accommodate approx. 50 covers. This leads onto a grassed garden area which can accommodate approx. 40 - 50 covers.
26. On 1 April 2021 an application was made to transfer and vary the DPS in respect of the premises licence HARLOW/PREM/0012 issued under the Licensing Act 2003 for The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH.
27. The premises licence holder is Ei Group Ltd .A copy of the premises licence is attached as Appendix D to the report.
28. Mr Hayrettin is a tenant and DPS at this premises and the freeholder of the property is Ei Group Ltd.
29. The Licence is subject to a number of conditions attached following a review hearing by the local authority on 2 December 2020.
30. The review hearing held on 2 December 2020 was to consider an application for review of the premises licence made by Environmental Health on the grounds that the licence holder (previous) had failed to uphold the Licensing Objective of the prevention of public nuisance.

Reasons for Recommendations

31. Consider each of the applications individually for temporary event notices listed in respect of representations and take such of the following steps, if any, as it considers appropriate for the promotion of the licensing objectives;

- (a) Give the premises user a counter notice under Section 105 (2) of the Licensing Act 2003 if it is considered appropriate for the promotion of a licensing objective to do so; or
- (b) Impose one or more conditions on the temporary event notice if:
 - i) it is appropriate for the promotion of the licensing objectives to do so, and the condition(s) are also imposed on a premises licence or club premises certificate that has effect in relation to all or part of the same premises as the temporary, and
 - ii) the condition(s) would not be inconsistent with the carrying out of the licensable activities under the temporary event notice; or
- (c) Disregard the objection notice

32. The Licensing Act Sub Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003 and the Council's Constitution, and provide the key reasons why the recommendation/s has been made.

Statement of Licensing Policy

33. The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003. This is set out in Appendix E to the report.

34. There is no corresponding section with the council's licensing policy, although the general principles set out therein should be followed unless there is good reason to depart.

Secretary of State's Guidance

35. The Licensing Authority must also have due regard to the guidance issued under section 182 of the Licensing Act 2003 as set out in Appendix F to the report.

36. Section 7 of the guidance contains specific provisions in respect of the consideration of temporary event notices. There is no corresponding section with the council's licensing policy, although the general principles set out therein should be followed unless there is good reason to depart.

37. In particular 7.33, 7.34, 7.34, 7.5 and 7.6 give details where if the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives.

38. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.
39. Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1988 to exercise its various functions doing all that it can to prevent Crime and Disorder, and Anti-Social Behaviour, behaviour adversely affecting the environment as well as the misuse of drugs, alcohol and re-offending in the Local Environment.

Legal Considerations

40. Schedule 5 Part 3 of the Licensing Act 2003 sets out the rights and procedures for making appeals against the decision of the Licensing Authority:

Where the relevant Licensing Authority gives a counter-notice under section 105(3), the premises user may appeal against that decision.

Where that authority decides not to give such a counter-notice a “relevant person” as specified in section 99A of the Licensing Act 2003, may appeal against that decision.

An appeal must be made to the Magistrates’ Court The appellant commences an appeal under Part 3 of Schedule 5 to the Licensing Act 2003 by giving a notice of appeal to the designated officer for the Magistrates’ court within 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.

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.

On determining the appeal, the court may;

- a) Dismiss the appeal
- b) Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority; or
Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court and may make such order as to costs as it thinks fit.

IMPLICATIONS

Environment and Planning

As set out in the report.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT)

None specific.

Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

None specific.

Author: Andrew Murray, Head of Housing

Community Wellbeing (includes Equalities and Social Inclusion)

None specific.

Author: Jane Greer, Head of Community Wellbeing

Governance (includes HR)

Members must have due regard to the application for specific provisions in respect of the consideration of temporary event notices. These are signposted in section 7 of the report and Appendix F. The representations received should be considered and the application determined in accordance with the licensing objectives. Further legal advice in relation to any aspect of this application will be provided by an Officer at the Sub-Committee hearing to enable the process to be fair to all parties.

Author: Simon Hill, Head of Governance

Appendices

Appendix A1 - TEN Notice - LC334488518 – 18.06 - 23.06

Appendix A2 – TEN Notice - LC334501163 – 26.06 – 04.07

Appendix A3 - TEN Notice - LC334505827 – 06.07 – 07.07

Appendix A4 – TEN Notice - LC334510635 – 11.07

Appendix B1 - Copy of Representations Environmental Health 18.06 – 23.06

Appendix B2 - Copy of Representations Environmental Health 26.06 – 04.07

Appendix B3 - Copy of Representations Environmental Health 06.07 – 07.07

Appendix B4 - Copy of Representations Environmental Health 11.07

Appendix C1 – Copy of Essex Police Representations 18.06 – 23.06

Appendix C2 - Copy of Essex Police Representations 29.06 – 04.07

Appendix C3 - Copy of Essex Police Representations 06.07 – 07.07

Appendix C4 - Copy of Essex Police Representations 11.07

Appendix D – Copy of Premises Licence

Appendix E - Harlow District Council Statement of Licensing Policy

Appendix F - Secretary of State's Guidance