
**ANDY O'BRIEN
CHIEF EXECUTIVE**

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Dear Sir/Madam,

LICENSING ACT SUB-COMMITTEE

You are requested to attend a Meeting of the Licensing Act Sub-Committee in the **Coltman VC Room** at the **Town Hall, Burton upon Trent** on **Wednesday 9th August 2017** at **10.00 am**

Yours faithfully,

**ANDY O'BRIEN
CHIEF EXECUTIVE**

To: **The Chairman and Members of the Licensing Act Sub-Committee:**

Councillors: D F Fletcher
B G Peters
Mrs B Toon

PUBLIC ACCESS TO INFORMATION

Members of the Public may attend this Meeting and are also entitled to see the background papers to any report which is not likely to be considered in private. Copies of the public Agenda, background papers, and reports will also be supplied on payment of a copying charge.

Please contact: Monica Henchcliffe (01283) 508608
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AGENDA

1. **APOLOGIES FOR ABSENCE**
2. **APPOINTMENT OF CHAIRMAN**
3. **DECLARATION OF INTEREST**
4. **URGENT BUSINESS**

5. APPLICATION FOR A TEMPORARY EVENT NOTICE

The Report of the Head of Service regarding an application for a Temporary Event Notice under Section 100 of the Licensing Act 2003.

Reason for consideration by the Committee

Staffordshire Police have issued an objection notice in relation to the Temporary Event Notice.

1. Application

Applicants Name:	Reece Duncan
Premises Name and Address:	Allure, 6-8 Station Street, Burton upon Trent, DE14 1AN

A site plan is attached to the agenda as **Appendix 5a**.

A copy of the application is attached at **Appendix 5b**.

1.1 **Dates and times of event:** 17 August 2017 – 18 August 2017 22:00 – 06:00

1.2 **Nature of event:** Extended hours to accommodate our A-Level Results event.

1.3 **Licensable activities:** Sale by retail of alcohol, provision of regulated entertainment and provision of late night refreshment

1.4 **Personal Licence Holder:** Mr Reece Duncan

1.5 **Number of previous temporary event notices given in this calendar year:** One

2 **Relevant Representations from Staffordshire Police:**

Staffordshire Police have made a representation in response to the temporary event notice on the grounds that all of the licensing objectives would be undermined. A copy of the Police representation is attached to the report as **Appendix 5c**.

3 **Law**

Section 104(2) Licensing Act 2003 provides that “where a chief officer of police who receives a copy notice under subsection (1) is satisfied that allowing the premises to be used in accordance with the notice would undermine the crime prevention objective, he must give a notice stating the reasons why he is so satisfied –

- (a) to the relevant licensing authority, and
- (b) to the premises user

(3) The objection notice must be given before the end of the third working day on which the chief officer of police is given a copy of the temporary event notice under subsection (1).

Section 105 of the Licensing Act 2003 applies where an objection notice is given in respect of a temporary event notice. Sub-section (2) provides that the licensing authority must

- (a) hold a hearing to consider the objection notice, unless the premises user, the chief officer of police 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 necessary for the promotion of the crime prevention objective to do so.
- (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.

4 **National Guidance – Guidance issued under section 182 of the Licensing Act 2003**

The following extracts have been taken from the Guidance issued by the Secretary of State:

- 7.1 This Chapter covers the arrangements in Part 5 of the 2003 Act for the temporary carrying on of licensable activities which are not authorised by a premises licence or club premises certificate.

GENERAL

- 7.2 The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead, a person wishing to hold an event at which such activities are proposed to be carried on (the “premises user”) gives notice to the licensing authority of the event (a “temporary event notice” or “TEN”).
- 7.3 The TEN must be given to the licensing authority in the form prescribed in regulations made under the 2003 Act. The form requires the user to describe key aspects of the proposed event, including the general nature of the premises and the event, the licensable activities intended to be carried on at the proposed event, including whether they will include any relevant entertainment as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (i.e. displays of nudity designed to sexually stimulate any member of the audience including, but not limited to, lap dancing and pole dancing).
- 7.4 Unless it is sent electronically, it must be sent to the relevant licensing authority, to the police and “local authority exercising environmental health functions” (“EHA”) at least ten working days before the event. A premises user may also give a limited number of “late TENs” to the licensing authority less than 10 working days before the event to which they relate, although certain restrictions apply (see paragraphs 7.12 – 7.14). “Working day” under the 2003 Act means any day other than a Saturday, Sunday, Christmas Day, Good Friday or Bank Holiday. For limited purposes in relation to a TEN, the 2003 Act defines a “day” as a period of 24 hours beginning at midnight.

- 7.5 If a TEN is sent electronically via GOV.UK or the licensing authority's own facility, the licensing authority must notify the police and EHA as soon as possible and no later than the first working day after the TEN is given.
- 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 persons 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 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)
- 7.7 A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.

LIMITATIONS

- 7.15 A number of limitations are imposed on the use of TENs by the 2003 Act:
- the number of times a premises user may give a TEN is 50 times in a calendar year for a personal licence holder and five times in a calendar year for other people;
 - the number of times a premises user may give a late TEN is limited to 10 times in a calendar year for a personal licence holder and twice for other people. Late TENs count towards the total number of permitted TENs (i.e. the limit of five TENs a year for non-personal licence holders and 50 TENs for personal licence holders). A notice that is given less than ten working days before the event to which it relates, when the premises user has already given the permitted number of late TENs in that calendar year, will be returned as void and the activities described in it will not be authorised;
 - the number of times a TEN may be given for any particular premises is 15 times in a calendar year;
 - the maximum duration of an event authorised by a TEN is 168 hours (seven days);
 - the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year;
 - the maximum number of people attending at any one time is 499; and
 - the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user is 24 hours.
- 7.16 Any associate, relative or business partner of the premises user is considered to be the same premises user in relation to these restrictions. The 2003 Act defines an associate, in relation to the premises user, as being:
- the spouse or civil partner of that person;
 - a child, parent, grandchild, grandparent, brother or sister of that person;
 - an agent or employee of that person; or
 - the spouse or civil partner of a person listed in either of the two preceding bullet points.

- 7.17 A person living with another person as their husband or wife, is treated for these purposes as their spouse. 'Civil partner' has its meaning in the Civil Partnership Act 2004.
- 7.18 A TEN that is given may be subsequently withdrawn by the TEN user by giving the licensing authority a notice to that effect no later than 24 hours before the beginning of the event period specified in the TEN. Otherwise, the TEN will be included within the limits of the numbers of TENs allowed in a given calendar year, even if the event does not go ahead.
- 7.19 Once these limits have been reached, the licensing authority should issue a counter notice (permitted limits) if any more are given. Proposed activities that exceed these limits will require a premises licence or club premises certificate.
- 7.20 TENs may be given in respect of premises which already have a premises licence or club premises certificate to cover licensable activities not permitted by the existing authorisation.
- 7.21 In determining whether the maximum total duration of the periods covered by TENs at any individual premises has exceeded 21 days, an event beginning before midnight and continuing into the next day would count as two days towards the 21-day limitation.
- 7.22 There is nothing in the 2003 Act to prevent notification of multiple events at the same time, provided the first event is at least ten working days away (or five working days away in the case of a late TEN). For example, an individual personal licence holder wishing to exhibit and sell beer at a series of farmers' markets may wish to give several notices simultaneously. However, this would only be possible where the limits are not exceeded in the case of each notice. Where the events are due to take place in different licensing authority (and police) areas, the respective licensing authorities and relevant persons would each need to be notified accordingly.

WHO CAN GIVE A TEMPORARY EVENT NOTICE?

Personal licence holders

- 7.23 A personal licence holder can give a TEN at any premises on up to 50 occasions in a calendar year. This limit is inclusive of any late TENs given in the same year. The use of each TEN must of course observe the limits described above, including the limit of 15 TENs in respect of each premises in a calendar year

Non-personal licence holders

- 7.24 The 2003 Act provides that any individual aged 18 or over may give a TEN to authorise the carrying on of all licensable activities under the Licensing Act 2003, whether or not that individual holds a personal licence. Such an individual will not, therefore, have met the requirements that apply to a personal licence holder under Part 6 of the 2003 Act. Where alcohol is not intended to be sold, this should not matter. However, many events will involve a combination of licensable activities and the 2003 Act limits the number of notices that may be given by any non-personal licence holder to five occasions in a calendar year (inclusive of any late TENs in the same year). In every other respect, the Guidance and information set out in the paragraphs above applies.

STANDARD AND LATE TEMPORARY EVENT NOTICES

- 7.8 There are two types of TEN: a standard TEN and a late TEN. These are subject to different processes: a standard notice is given no later than ten working days before the event to which it relates; and a late notice is given not before nine and not later than five working days before the event.

Standard temporary event notices

- 7.9 “Ten working days” (and other periods of days which apply to other requirements in relation to TENs) exclude the day the notice is received and the first day of the event.
- 7.10 The police and EHA have a period of three working days from when they are given the notice to object to it on the basis of any of the four licensing objectives.
- 7.11 Although ten clear working days is the minimum possible notice that may be given, licensing authorities should publicise their preferences in terms of advance notice and encourage premises users to provide the earliest possible notice of events planned by them. Licensing authorities should also consider publicising a preferred maximum time in advance of an event by when TENs should ideally be given to them.

Late temporary event notices

- 7.12 Late TENs are intended to assist premises users who are required for reasons outside their control to, for example, change the venue for an event at short notice. However, late TENs may, of course, be given in any circumstances providing the limits specified at paragraph 7.15 are not exceeded.
- 7.13 Late TENs can be given up to five working days but no earlier than nine working days before the event is due to take place and, unless given electronically to the licensing authority, must also be sent by the premises user to the police and EHA. A late TEN given less than five days before the event to which it relates will be returned as void and the activities to which it relates will not be authorised.
- 7.14 A key difference between standard and late TENs is the process following an objection notice from the police or EHA. Where an objection notice is received in relation to a standard TEN the licensing authority must hold a hearing to consider the objection, unless all parties agree that a hearing is unnecessary. If the police, EHA or both give an objection to a late TEN, the notice will not be valid and the event will not go ahead as there is no scope for a hearing or the application of any existing conditions.

ROLE OF THE LICENSING AUTHORITY

- 7.25 The licensing authority must check that the limitations set down in Part 5 of the 2003 Act are being observed and intervene if they are not (see paragraph 7.15). For example, a TEN would be void unless there is a minimum of 24 hours between events notified by the same premises user, or an associate, or someone who is in business with the relevant premises user in respect of the same premises. This is to prevent evasion of the seven day (or 168 hour) limit

on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a TEN is treated as being from the same premises user if it is given by an associate.

- 7.26 Where the application is not within the statutory parameters described earlier, the licensing authority will issue a counter notice to the premises user.
- 7.27 Where the TEN is in order, the relevant fee paid, the event falls within the prescribed limits the licensing authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically). The licensing authority must do so, no later than the end of the first working day following the day on which it was received (or by the end of the second working day if it was received on a non-working day), unless an objection notice is received beforehand from the police or EHA on the basis of any of the four licensing objectives (see paragraphs below).
- 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.
- 7.29 Premises users are not required to be on the premises during the event authorised by the TEN, but they will remain liable to prosecution for certain offences that may be committed at the premises during the period covered by it. These include, for example, the offences of the sale of alcohol to a person who is drunk; persistently selling alcohol to children; and allowing disorderly conduct on licensed premises.
- 7.30 In the case of an event authorised by a TEN, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.
- 7.31 Section 8 of the 2003 Act requires licensing authorities to keep a register containing certain matters, including a record of TENs received. There is no requirement to record all the personal information given on a TEN.

POLICE AND ENVIRONMENTAL HEALTH INTERVENTION

- 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.
- 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. However, in most cases, where for example, alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (such as at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

MODIFICATION

- 7.36 As noted above, the police or EHA (as “relevant persons”) may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.

APPLYING CONDITIONS TO A TEN

- 7.37 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The licensing authority can only do so:
- if the police or the EHA have objected to the TEN;
 - if that objection has not been withdrawn;
 - if there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;
 - and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.
- 7.38 This decision is one for the licensing authority alone, regardless of the premises user’s views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

HEARINGS TO IMPOSE CONDITIONS

- 7.39 Section 105 of the 2003 Act is clear that a licensing authority must hold a hearing to consider any objections from the police or EHA unless all the parties agree that a hearing is not necessary. If the parties agree that a hearing is not necessary and the licensing authority decides not to give a counter notice on the basis of the objection, it may impose existing conditions on the TEN.

5. **Local Policy Considerations**

East Staffordshire Borough Council – Statement of Licensing Policy

- 5.1 In carrying out its duties under the Act, the Licensing Authority will actively promote the licensing objectives, namely: -
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance, and
 - the protection of children from harm
- 5.2 The Licensing Authority will view each objective with equal importance and pay due regard to any guidance issued by the Secretary of State under section 182 of the Act. However it should be stressed that irrespective of the content of this policy, it is the right of any individual or company to make an application under the Act and have the facts of the case considered on its individual merits.
- 5.3 The Licensing Authority has the ability to deviate from both the guidance issued by the Secretary of State and/or this statement of licensing policy where the facts of a case merit it. If such an occasion does arise then full reasons for such deviation will be given as part of the published decision.
- 3.6 The licensing regime is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs and at temporary events and any conditions imposed will be focused on matters which are within the control of individual licensees and others in possession of relevant authorisations. Therefore any conditions will centre on the licensed premises or event and the vicinity of those premises or event. The Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

6 **Decision Options**

Temporary Event Notices

- Issue a counter notice
- Issue a notice (statement of conditions)
- Allow the notice

7 **Appeals**

Counter notice issued – premise user may appeal to the Magistrates' Court (Schedule 5 Licensing Act 2003)

Where the authority decides not to give such a counter notice – Police may appeal to the Magistrates' Court (Schedule 5 Licensing Act 2003)

8 **Details of who has been invited to attend**

The applicant and/or a representative
A representative from Staffordshire Police

9 **Date and Time of Hearing**

9th August 2017 at 10:00am

10 **List of Appendices**

1. Site Plan
2. Copy of Temporary Event Notice
3. Copy of representation from Staffordshire Police

Report created by Sarah Bradley Licensing & Enforcement Team Leader.