

Objection notice received in respect of a standard Temporary Event Notice for Phoenix Fitness, Fore Street, Chard TA20 2DL

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Purpose of the Report

To inform members that a standard temporary event notice has been received under the Licensing Act 2003 from Mr Simon Troy Mainwaring for Phoenix Fitness, Fore Street, Chard TA20 2DL. It relates to an event on 13 October 2018. An objection notice has been duly served by Mrs Nicola King on behalf of the Chief of Police for Avon and Somerset Constabulary for this temporary event notice.

Recommendation

To consider the objection notice in accordance with the options detailed later in the report.

Background

A Temporary Event Notice is intended as a light touch process¹ and 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:

- no premises licence/club premises certificate exists
- in cases where it is not being used
- where the operating schedule including days and timings do not meet the need of the premises user.

Where an objection notice has been received from either the Police or the Environmental Protection department or both, the Council is the authority responsible for determining the notice under sections 105 and 106A of the Licensing Act 2003.

Licensing Objectives

The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The licensing objectives are to be considered paramount and the Council has a duty to promote them in its decision making process.

¹ Paragraph 7.2 of the Guidance issued under s182 of the Licensing Act 2003, April 2018

Proposed Activities and Hours

Day	Start Time	Finish Time	Maximum Number of persons at event at any one time	Licensable activity requested	Nature of Event
13 October 2018	17:00	23:00	100	Sale By Retail Of Alcohol 'On' and 'Off' the premises	Bar and Food Stall at Chard Carnival

Relevant Observations

Should the temporary event proceed; the premises user will be responsible for ensuring that there are no more than 100 persons at the premises. Should there be 101 or more persons in that area, it will mean that particular temporary event is unlicensed.

Further Information

The venue is not subject to a premises licence.

Consideration

In determining a temporary event notice with a view to promoting the licensing objectives in the overall interests of the community, the Committee must have regard to and give appropriate weight to the following considerations:

- Any Notice of Objection (including supporting documentation received)
- Guidance issued under s182 of the Act
- The Statement of Licensing Policy published in January 2014
- The steps necessary to promote the licensing objectives
- Human Rights considerations in particular Article 6, Article 8 and Article 1 of Protocol 1

Options

The options available to the committee in this case are as follows:

- Give a counter notice to the premises user so that event cannot proceed
- Permit the event to proceed in accordance with the temporary event notice

Section 106A of the Licensing Act 2003 permits licensing authorities to impose one or more conditions on a 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 a club premises certificate that has effect in respect of the same premises, or any part of the 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.

As there is no premises licence for the area defined by this T.E.N, no conditions can be imposed.

Right of Appeal

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,

- Dismiss the appeal
- 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.

Background Papers

The Licensing Act 2003

The Police Reform and Social Responsibility Act 2011

The Licensing Act 2003 (Hearings) (Regulations) 2005 No. 44

Live Music Act 2012

The Licensing Act 2003 (Permitted Temporary Activities) (Notices)(Amendment) Regulations 2012 No. 960

(Descriptions of Entertainment) (Amendment) Order 2013

The Legislative Reform (Entertainment Licensing) Order 2014

The Latest Guidance issued under section 182 of the Licensing Act 2003.

The Statement of Licensing Policy for South Somerset District Council issued January 2014

The Deregulation Act 2015
