

REPORT OF THE HEAD OF ENVIRONMENTAL SERVICES

**TO DEAL WITH AN ENVIRONMENTAL HEALTH OBJECTION TO A  
TEMPORARY EVENT NOTICE (TEN)**

**REASON FOR REPORT**

1. An objection to a Temporary Event Notice (TEN) has been received from Environmental Health which means the licensing authority must hold a hearing to consider the objection

**RECOMMENDATIONS**

1. That the Sub Committee considers the Environmental Health objection in the light of the prevention of public nuisance licensing objective

**RELATIONSHIP TO CORPORATE PLAN**

1. None

**FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS**

Any financial, legal and/or risk assessment implications are set out below:

<b>Financial</b>	If there is an appeal against the decision the Council could find itself bearing the costs
<b>Legal</b>	If the decision is not lawful the Council could find itself subject to appeal or judicial review
<b>Risk Assessment</b>	If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court

## **CONSULTATION CARRIED OUT WITH:**

1. There is no consultation process for TENs – the only responsible authorities who are formally notified of such applications are the police and “the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health” – here it is Environmental Health.

## **1.0 TEMPORARY EVENT NOTICE**

- 1.1 A Temporary Event Notice (TEN) has been received from Anthony Watts of Whitmoor Farm, Kentisbeare for “Faery Festival Family Music Event (with no DJs)” at Whitmoor Farm on 9, 10, 11 August 2013. It is from 3pm until 12.30am on Friday 9 August; 11am until 12.30am on Saturday 10 August; and from 11am until 9.30pm on Sunday 11 August. A copy of the TEN is attached as Annexe 1.
- 1.2 A TEN is what it says – a notification and the carrying out of licensable activities does not have to be authorised by the licensing authority following submission of an application. Instead, a person who wishes to hold an event at which licensable activities will be carried out (the premises user) gives notice of the event.
- 1.3 There are, however, two responsible authorities who are able to make objections to TENs – the police and Environmental Health and the legislation describes them as “a relevant person”. S.104(2) of the Licensing Act 2003 sets out that “Where a relevant person who is given a temporary event notice is satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective, the relevant person must give a notice stating the reasons for being so satisfied (an “objection notice”) to –
  - The relevant licensing authority
  - The premises user; and
  - To every other relevant person.”

## **2.0 OBJECTION NOTICE**

- 2.1 The objection notice must be given before the end of the third working day following the day on which the relevant person is given the TEN. This TEN was received electronically on Thursday 25 April 2013 and was automatically sent to the police and Environmental Health on the same day. The objection notice was received from Environmental Health on Monday 29 April and a copy is attached as Annexe 2.
- 2.2 The objection notice is on the prevention of public nuisance licensing objective and states “Last year MDDC’s Environmental Health (EH) objected to a TEN held at Whitmoor Farm due to historical noise complaints from music events held there. EH suggested a noise management plan during the pre-event stage with the responsible person but due to this not being applied for past events the objection was taken to a hearing for consideration. During the event multiple noise complaints were received. Environmental Health was monitoring the event and high music noise levels were recorded. The levels recorded were of such a level to be considered to be causing a statutory noise nuisance to neighbouring residents. Following the TEN a noise abatement notice was served on Mr A Watts. This noise abatement notice still applies to the site”.

2.3 The Pollution Control Officer also mentions the history of non-compliance with music events on this site and finishes by stating **“Therefore, I am objecting to this TEN as I have no confidence in the management of this event controlling the music noise levels and recommend refusal due to public nuisance being caused by the emitting of intrusive noise affecting nearby residents”**.

2.4 The Pollution Control Officer will be at the hearing to amplify his objection and will also make available some of the noise recording that took place last year which led to the service of the noise abatement notice. A map will be provided showing the location of the farm in relation to nearby residential properties.

### 3.0 LICENSING POLICY

3.1 The Licensing Act 2003 requires the Council as the Licensing Authority to formally adopt a policy setting out how it will deal with its duties under the Act. That policy must be reviewed every three years and this Council formally adopted the current policy on 15 December 2010 and it came into effect on 7 January 2011.

3.2 6.3 of this Council’s policy sets out “In considering licence applications, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case”.

### 4.0 GOVERNMENT GUIDANCE

4.1 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003, the latest version of which was published in April 2012 which takes into account the changes brought about by the Police Reform and Social Responsibility Act.

4.2 Paragraph 7.33 of the Guidance advises “If the police or the local authority exercising environmental health functions 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”.

### 5.0 LEGAL FRAMEWORK

5.1 Once a licensing authority receives an objection notice from a relevant person to a TEN it must hold a hearing within seven working days beginning with the day after the end of the period within which the objections may be made. That is why this hearing appears to have been set up with short notice. Similarly, the notice of hearing has to be sent out no later than two working days before the day of the hearing.

5.2 The Sub Committee is obliged to determine this application with a view to promoting the prevention of public nuisance licensing objective and is also obliged to have regard to its own licensing policy and the official guidance as looked at in 3 and 4 above.

5.3 Basically, the Sub Committee may either uphold the Environmental Health objection by giving a counter notice and setting out the reasons for the decision or decide not to give a counter notice, again setting out reasons, which would allow the event to go ahead as applied for.

5.4 What the Sub Committee may not do is impose conditions on the event but should Environmental Health and applicant come to an agreement and modify the notice then Environmental Health may withdraw the objection notice, which would remove the reason for the hearing.

**6.0 DETERMINATION**

6.1 Members are asked to determine this application, having heard Environmental Health and the applicant (and any representatives called by either party) in the light of the prevention of public nuisance licensing objective. This is the only licensing objective that may be taken into consideration and members may not consider the prevention of crime and disorder, public safety or the protection of children from harm in their deliberations.

6.2 Whether they decide to uphold the objection by giving a counter notice or not to give one and allow the event to go ahead they must give reasons. These reasons must be formally given to both the applicant and Environmental Health.

6.3 This Council has adopted a hearing procedure that sets out how hearings are conducted which is in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. A copy of that procedure is attached as Annexe 3.

**7.0 TIMESCALE**

7.1 If the decision is made to issue a counter notice then the applicant has a right of appeal to the Magistrates' Court within 21 days of formal notification of the decision. For TENs this right is restricted in that no appeal may be brought later than five working days before the day on which the Temporary Event Notice begins. Clearly, that will not apply in this case as this event is in August.

<b>Contact for any more information</b>	Mrs Marjory Parish (01884) 244619 Licensing and Community Safety Manager
<b>Background Papers</b>	Licensing Act 2003 and S.182 Guidance
<b>File Reference</b>	Licensing/Hearings/Whitmoor Farm Aug 2013 TEN
<b>Circulation of the Report</b>	Applicant Environmental Health

**MID DEVON LICENSING AUTHORITY**  
**Licensing Act 2003**

**OBJECTION NOTICE FORM FROM A RESPONSIBLE AUTHORITY**

**Responsible Authority** (please delete as applicable): Police / Environmental Health

<b>Your Name</b>	Ian Winter
<b>Job Title</b>	Pollution Control Officer
<b>Postal and email address</b>	Environmental Health Services Mid Devon District Council iwinter@middevon.gov.uk
<b>Contact telephone number</b>	01884 244601

<b>Name of applicant for TEN</b>	Mr A Watts
<b>Address of premises for proposed TEN</b>	Whitmore Farm Kentisbeare EX152RF
<b>Date this objection was given to:</b>	
<b>Licensing Authority</b>	29 <sup>th</sup> April 2013
<b>Premises user (applicant)</b>	29 <sup>th</sup> April 2013
<b>Any other relevant persons</b>	29 <sup>th</sup> April 2013

<b>Which of the four licensing Objectives does your objection relate to?</b>	Yes Or No	<b>Please detail the reason for your objection. Please use separate sheets if necessary</b>
<b>To prevent crime and disorder</b>	No	
<b>Public safety</b>	No	
<b>To prevent public nuisance</b>	Yes	<p>Last year MDDC's Environmental Health (EH) objected to a TEN at held at Whitmoor Farm due to historical noise complaints from music events held there. EH suggested a noise management plan during the pre-event stage with the responsible person but due to this not being applied for past events the objection was taken to a hearing for consideration. The hearing allowed the TEN to continue. During the event multiple noise complaints were received. Environmental Health were monitoring the event and high music noise levels were recorded. The levels recorded were of such a level to be considered to be causing a statutory noise nuisance to neighbouring residents. Following the TEN a noise abatement notice was served on Mr A Watts. This noise abatement notices still applies to the site.</p> <p>There's a lot of history of non-compliance with music events from this site and despite the high level of EH involvement the situation has not improved greatly. Noise abatement notices have been served due to high music levels despite the amount of joint working with a number of different past event organisers and the land owner (Mr Watts).</p> <p><b>Therefore, I am objecting to this TEN as I have no confidence in the management of this event controlling the music noise levels and recommend refusal due to a public nuisance being caused by the emitting of intrusive noise affecting nearby residents.</b></p>

<b>To protect children from harm</b>	No	

<b>Does a premises licence or club premises certificate have effect in relation to the premises (or any part of the premises)?</b>		No
<b>If yes, are there conditions on the licence, consistent with the activities applied for on the TEN, that you feel are appropriate to promote the licensing objectives?</b>		No

**Please state the relevant conditions below:**

Signed: Ian Winter

Date: 29<sup>th</sup> April 2013

**This form must be returned within the Statutory Period. For more details please check with the Licensing Section on 01884 244617/8/9.**

# **MID DEVON DISTRICT COUNCIL**

## **Licensing Committee**

### **Procedure for Hearings**

#### **1. Introduction**

The hearing will be conducted in accordance with The Licensing Act 2003 (Hearings) Regulations (2005). The Sub-Committee will follow the procedure set out below at all hearings under the Licensing Act (2003)

#### **2 The Officers**

2.1 Each Sub-Committee will comprise of three Councillors of Mid Devon District Council who will hear applications made under the Licensing Act (2003)

2.2 The Committee will be attended by a:

- (a) A Licensing Officer
- (b) Representative of Legal Services
- (c) Representative of Member Services

2.3 The role of the Licensing Officer will be to introduce the application, outline the relevant facts and any issues involved through the presentation of their report

2.4 The role of the representative of Legal Services will be to deal with any questions of law, matters of practice and procedure and where appropriate assist the Sub-Committee in formulating the reasons for its decision. They may ask questions of parties and witnesses in order to clarify the evidence and any issues in the case.

2.5 The role of the representative of Member Services will be to make a record of the proceedings both by way of notes of the evidence given and a minute of the decision reached, inclusive of the reasons for the decision.

#### **3. Procedures at the hearing**

3.1 The Chair of the hearing will introduce the members of the Sub-Committee and the Officers present at the hearing.

3.2 The Chair will introduce the matter to be resolved, and will ask the parties present at the hearing to introduce themselves.

3.3 The Chair will outline the procedure to be followed at the hearing.

3.4 Upon the failure of a party to attend the hearing, the Sub-Committee will decide whether to adjourn the matter, or proceed in the party's absence. If the decision is taken to proceed, the party's written application or representation will be taken into account.

3.5 The Sub-Committee will consider whether the hearing should be held in public or private session. The hearing will usually be heard in public except where the Sub-

Committee decide that it is in the public interest for the public to be excluded from a particular hearing, or part thereof or where the Sub-Committee make a resolution that the public and the press be excluded from the hearing, on the basis that either confidential or exempt information is likely to be disclosed.

- 3.6 The Sub-Committee will decide whether to grant any written request made by a party for permission to call a witness at the hearing. Any request may not be unreasonably withheld.
- 3.7 The Sub-Committee will consider any requests to present any new evidence or information that has not already been disclosed to all the parties and the Sub-Committee. The general rule is that the Sub-Committee must not consider information or evidence that was not disclosed to it or to the other parties prior to the hearing taking place, although all parties at the hearing can agree to that extra information being considered on the day of the hearing.
- 3.8 The Sub-Committee will consider any requests to call witnesses and will make a decision on such requests.
- 3.9 The Sub-Committee will consider any requests for permission to ask questions of other parties. The Sub-Committee will consider whether asking questions is required in order for it to consider the case properly. If permission is given to one party to ask questions, it will usually be given to all other parties at the hearing.
- 3.10 The Sub-Committee will decide the length of time that each party will be allowed to present their case.
- 3.11 The hearing will take the form of a discussion to be led by the Sub-committee
- 3.12 The Chair will ask the Licensing Officer to outline the matter before the Sub-Committee.
- 3.13 Where the written evidence or information provided by the applicant, responsible authorities and/or interested parties have raised legal issues or submissions, the Chair may request that any legal representatives present at the hearing and the legal representative of Legal Services address the Sub-Committee on the legal points raised.
- 3.14 The Applicant will make their case first either personally or through a representative. The Applicant may give further information in support of the application, but only in response to a point upon which the authority has given notice that it will want clarification.
- 3.15 Documentary evidence or other information produced by the Applicant may be considered, provided this has been produced prior to the hearing, or if not, with the consent of all the other parties. It may be necessary in some circumstances for the hearing to be put back until later in the day so that parties may consider additional information which is produced at the hearing.
- 3.16 The Applicant may then be questioned by members of the Sub-Committee. Questions will either be directed through the Chairman, or put directly by members with the agreement of the Chairman.



- 3.17 The Applicant may call any witnesses in support of his application, if this has been permitted by the Sub-Committee. The witnesses will address the Sub-Committee, which may then ask any question of the witnesses.
- 3.18 When the Applicant has completed the presentation of their case, the representatives of any responsible authorities who have made relevant representations address the Sub-Committee, and may be questioned by members of the Sub-Committee.
- 3.19 Witnesses may be called by the responsible authorities where permitted by the Sub-Committee. Documentary or other information produced on behalf of the responsible authority may be considered.
- 3.20 Thereafter, interested parties address the hearing, and they may be questioned by members of the Sub-Committee.
- 3.21 Witnesses who are permitted to be called in support of the submissions of the interested parties are then questioned by members of the Sub-Committee. Documentary or other information produced on behalf of an interested party may be considered.
- 3.22 Where the Applicant is a responsible authority or an interested party the licence holder will present their case after the applicant followed by any responsible authorities and then interested parties.
- 3.23 After the conclusion of the evidence, each party may sum up their case, by addressing the sub-committee in the order in which they presented their case.
- 3.24 The Sub-Committee will either leave the hearing room to deliberate or ask all parties to leave the room.
- 3.25 Depending on the nature of the application, a determination of the case may be made either at the conclusion of the hearing or within 5 working days.
- 3.26 Where the case is determined at the end of the hearing the Chairman will read the Sub-Committee's determination aloud together with the terms of the decision made and the reasons for such decision.
- 3.27 The Chairman will thank everyone for their contributions, and closes the meeting, or moves on to the next item on the agenda.

#### **4. After the Hearing**

- 4.1 Once the meeting of the Sub-Committee has been concluded, Member Services will prepare minutes of the hearings.
- 4.2 The Licensing Officer will issue a notice to all of the parties involved (whether present at the hearing or not), outlining the decision of the Sub-Committee.