

REGULATORY SUB COMMITTEE
DATE OF HEARING: 18 SEPTEMBER 2018

DETERMINATION OF A TEMPORARY EVENT NOTICE FOR 'YER TIZ RALLY', NEWTON ST CYRES RECREATION GROUND, NEWTON ST CYRES, EX5 5AT

Cabinet Member(s): Cllr Colin Slade

Responsible Officer: Simon Newcombe, Group Manager, Public Health and Regulatory Services

Reason for Report:

An objection to a Temporary Event Notice (TEN) has been received from Environmental Health which means the Licensing Authority must hold a hearing.

Recommendation:

That the Sub Committee consider the objection that has been made and decide whether or not the event should be allowed to go ahead.

Relationship to Corporate Plan: N/A

Financial Implications: The potential cost of defending an appeal in the courts.

Legal Implications: If there is an appeal against the decision the Council could find itself bearing the costs.

Risk Assessment: If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court (should there be time for such an appeal)

Equality Impact Assessment: No equality issues identified for this report.

Consultation carried out with: There is no 'consultation' process for TENs – the only responsible authorities who are formally notified of such notices are the Police and Environmental Health.

1.0 BACKGROUND

- 1.1 Temporary Event Notices (TENs) are intended to be a light touch approach to enable the carrying on of licensable activities on a temporary basis. As such they are not considered as 'applications' to be authorised by the Licensing Authority. They are 'notices' provided to a Licensing Authority which set out what licensable activities are due to take place.
- 1.2 TENs can last a maximum of 168 hours and cover up to 499 people attending the premises at any one time. There are two categories of TEN and these are a 'standard' TEN and a 'late' TEN. A standard TEN must be submitted at least 10 clear working days' before the event start date and a late TEN must be submitted between 5 and 9 workings before.
- 1.3 The Licensing Authority cannot oppose a notice. However, there are two 'responsible authorities' who are able to make objections – 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"
- 1.4 The licensing objectives are as follows:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 1.5 The main difference between a standard TEN and a late TEN is that if an objection notice is received by the Licensing Authority for a standard TEN then a hearing must be held to consider the matter. If an objection notice is received against a late TEN then the event cannot go ahead and there is no hearing.

2.0 HISTORY OF EVENT AND INFORMATION ABOUT THIS TEMPORARY EVENT NOTICE

- 2.1 The event is called the 'Yer Tiz Rally' and is said to be a non-for-profit event that has been held on an annual basis since 2011. In previous years the event has been held in West Devon and this is the first time that it will be held in Mid Devon. It is due to be held at Newton St Cyres Recreation Ground, Newton St Cyres, Devon, EX5 5AT.
- 2.2 The TEN has been submitted by Mr Richard Long and is to cover the sale of alcohol (for consumption on the premises), Live and recorded music and late night

refreshment. The following dates and times are listed on the TEN as when licensable activities will take place:

- Friday 21 September 12:00 to 01:00
- Saturday 22 September 12:00 to 01:00

2.3 A copy of the TEN is attached as Annex 1.

2.4 The sub-committee should be aware that a premises licence covers this site (licence number MDV PR0353) and conditions on this licence can therefore be imposed on the TEN. However, the licensing officer has viewed the conditions and does not believe that any are relevant to the objections raised. A copy of the premises licence will be available at the hearing should the sub-committee wish to view it.

3.0 OBJECTION NOTICES

3.1 The Police and Environmental Health must give any objections they have to the Premises User and the Licensing Authority before the end of the third working day, following the day on which they have received the TEN. As this TEN was submitted on 4 September 2018, objection notices had to be submitted no later than 7 September 2018.

3.2 The objection from Environmental health was received within the prescribed period. It is attached as Annex 2. The objection relates to two licensing objectives; public safety and the prevention of public nuisance.

3.3 The objection states that insufficient information has been provided in support of the TEN. It must be noted that unlike a premises licence application, there is no statutory requirement to submit certain documents or information with a TEN, such as a plan of the premises or the steps to be taken to promote the four licensing objectives. This is primarily because TENs were intended to be light touch. However, it must be noted that TENs can permit licensable activities at a range of events, from the local school fete for 50 people to festivals for 499 people over multiple days. The risks associated with these events can vary significantly and those considered higher risk are more likely to be asked to provide additional information by the Police and Environmental Health.

3.4 Mr Long has had discussions with Environment Health following their objection and as a result, he has submitted some additional information, including a plan of the premises. This is attached as Annex 3.

3.5 Environmental Health has documented the outstanding matters from their perspective and this is attached as Annex 4. The sub-committee should be aware that further talks between Mr Long and Environmental Health are likely and as such, should expect an update from Environmental Health on outstanding matters at the hearing. The hearing should then be focused on these matters.

- 3.6 A representative from Environmental Health will attend the hearing to present the objections they have and respond to any questions the sub-committee may have.

4.0 LICENSING POLICY & GOVERNMENT GUIDANCE

- 4.1 Members are obliged to have regard to the Council's Licensing Policy. The most recent version of this will be available at the hearing.

- 4.2 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003. The most recent version of this was published in April 2018. A copy will be available at the hearing but the following sections should be noted.

- 4.3 *If the licensing authority receives an objection notice from the police or EHA (Environmental Health) 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. (paragraph 7.28)*

- 4.4 *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. (Paragraph 7.33)*

- 4.5 *As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. (Paragraph 9.37)*

5.0 LEGAL FRAMEWORK

- 5.1 Where a Licensing Authority receives an objection notice it is required, by S.105(2) of the Licensing Act 2003 to:

- hold a hearing to consider the objection notice, unless the premises user, the relevant person who gave the notice and the Licensing Authority agree that a hearing is unnecessary; and

- having regard to the objection notice, give the premises user a counter notice if it considers it appropriate for the promotion of a licensing objective to do so.

5.2 When a hearing is required it must be held within seven working days, starting from the end of the period within which 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.

6.0 OPTIONS

6.1 The Sub Committee can decide to:

- Allow the licensable activities to go ahead as stated in the notice;
- Impose one or more existing licence conditions on the TEN; Or
- Stop the event from taking place by issuing a Counter Notice.

6.2 As mentioned in paragraph 2.4, there does not appear to be any relevant conditions on the premises licence to attach to this particular TEN. Within their representation, Environmental Health has also acknowledged this (see Annex 2).

7.0 DETERMINATION

7.1 Members are obliged to decide whether or not to issue a counter notice following consideration of the evidence presented to them. They may only issue a counter notice if they consider it appropriate for the promotion of the licensing objectives.

7.2 Where Members decide to serve a counter notice, the Licensing Authority must give the premises user;

- the counter notice; and
- a notice stating the reasons for the decision

A copy must also be given to the Police and Environmental Health.

7.3 Where Members decide not to serve a counter notice, the Licensing Authority must give the premises user, Environmental Health and the Police notice of this decision. The notice must include detailed reasons for the decision that is made.

7.4 This Council has adopted a procedure for hearings and this is attached as Annexe 5.

8.0 APPEAL

8.1 Under Paragraph 16 of Schedule 5 to the Licensing Act 2003 an appeal may be made against the Licensing Sub Committee's decision by:

- the premises user if a counter notice is issued; or
- Environmental Health if a counter notice is not issued

8.2 Any appeal must be made to the Magistrates' Court within 21 days of having received formal notification of the decision by the Licensing Authority. However, Paragraph 16 (6) of Schedule 5 to the Licensing Act 2003 states that '*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*'. This applies in this case because the event is due to start on 21 September 2018.

ANNEXES TO THIS REPORT

Annex 1	Copy of Temporary Event Notice
Annex 2	Environmental Health objection
Annex 3	Additional information from Mr Long
Annex 4	Additional information from Environmental Health
Annex 5	Hearing procedures

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Circulation of the Report: Legal / Regulatory Sub-Committee / Applicant