

REPORT OF THE HEAD OF ENVIRONMENTAL SERVICES

**LICENSING ACT 2003 SECTION 105 – CONSIDERATION OF A
POLICE OBJECTION NOTICE FROM DERBYSHIRE
CONSTABULARY TO A TEMPORARY EVENT NOTICE AT
ELVASTON CASTLE, BORROWASH ROAD, ELVASTON,
DERBYSHIRE, DE72 3EN**

1. PURPOSE/SUMMARY OF REPORT

- 1.1 To assist the Licensing & Appeals Sub-Committee's consideration of whether to issue a counter notice under section 105 Licensing Act 2003 to a Temporary Event Notice (TEN) for an event Elvaston Steam and Country Show at Elvaston Castle, Borrowash Road, Elvaston, Derbyshire.
- 1.2 The Council has a statutory duty to consider any police objection notice served on them under section 104 Licensing Act 2003 for a Temporary Event Notice. A Notice is also served by the Police on the premises user.
- 1.3 The information in this report submitted by the two parties will enable the Licensing & Appeals Sub-Committee to decide whether to issue a counter notice in accordance with the key objective, namely
 - The promotion of the crime prevention objective as set out in the Licensing Act 2003.
- 1.4 The other three licensing objectives cannot be taken into account when deciding whether or not to allow the Temporary Event Notice to go ahead following Police objections, that being
 - Public Safety
 - The prevention of public nuisance and;
 - The protection of children from harm

2. BACKGROUND

- 2.1 The Licensing Act 2003 provides for the licensing of licensable activities at temporary events at premises by way of a TEN served by the premises user on the Licensing Authority and the Police.
- 2.2 The Licensing Authority must consider objections to TENs and if the objections are upheld, must issue a counter notice. The effect of the counter notice is to prevent the temporary event from taking place.
- 2.3 Only the Police may object to temporary events, and only on the grounds of the crime prevention objective.

The TEN was received by the Licensing section at South Derbyshire District Council from Mr Ian Sheppard on 7th June 2010 (**The TEN is included as Appendix 1**).

- 2.4 Mr Sheppard is a Personal Licence Holder, and is entitled to serve 50 such notices in any 12 month period.
- 2.5 The premises is a 100ft x 40ft marquee, which has a fenced off area at the front with Security Industry Area licensed doormen controlling entry. Entry to the beer tent is by wristband only. Up to 12 TENs may be served in respect of any one premises or part thereof, in any calendar year, subject to a limit of 15 days in total. Temporary events may last for up to 96 hours, and must be at least 24 hours apart.
- 2.6 TENs can authorise attendance at the premises by no more than 499 persons to include staff, organisers or performers while the notified licensable activities are taking place.
- 2.7 The Licensing Authority may of its own volition serve a counter notice if any of the above limits have been, or will be exceeded.
- 2.8 The premises user wishes to sell alcohol, both on and off the premises and provide regulated entertainment; as follows;
- 18.00hrs to 23.00hrs on Thursday 1st July 2010
- 12.00hrs to 23.30hrs on Friday 2nd July 2010
- 10.00hrs to 23.30hrs on Saturday 3rd July 2010
- 10.00hrs to 18.00hrs on Sunday 4th July 2010

3. REPORT

- 3.1 In considering whether to issue counter notices, the Licensing & Appeals Sub-Committee should consider all the evidence before it. More weight should be given to evidence that is corroborated and that can be tested under questioning, but any evidence, including hearsay evidence, can be taken into account.
- 3.2 The Licensing & Appeals Sub-Committee should consider the extent to which, if at all, the Police objection engages the crime prevention objective.

4. CONSULTATION

- 4.1 An objection notice was received from the Police at 4.25pm on 8th June 2010 as Responsible Authority for the prevention of crime and disorder (**The notice is included as Appendix 2**).
- 4.2 The Police having reviewed the record of disorder at the venue object to the TEN on the grounds that the crime prevention objective will be undermined.
- 4.3 A TEN operated at the same event in 2009 and at this event the Police received calls for service in relation to disorder that was directly related to the sale and supply of alcohol at the event. During the period of the Notice, the Police had to request that the sales of alcohol cease in order to control disorder that was occurring on the temporary premises. The Chief Officer of Police submits that should this Temporary Event Notice be authorised, similar disorder may well take place and that the proposed premises user may well not be in a position to control or prevent the disorder
- 4.4 There is no power for the Licensing & Appeals Sub-Committee to impose conditions. The only action for the Committee may take is either to uphold, or to refuse to uphold, the objection notice.

5. LEGAL IMPLICATIONS

- 5.1 The decision whether to issue a counter notice must be made not less than 24 hours before the start of the event.
- 5.2 Issuing a counter notice creates the right of appeal by the premises user to the Magistrates Court within 21 days of the date of the notice of determination.
- 5.3 Failure to issue a counter notice creates the right of appeal by the Police to the Magistrates Court within 21 days of the date of the notice of determination.
- 5.4 No appeal may be brought later than 5 working days before the first day of the event
- 5.5 There is no provision for the attachment of conditions to Temporary Events by the Licensing Authority.
- 5.6 At any time before this hearing is held or dispensed with under section 105(2), the Chief of Police may, with the agreement of the premises user, modify the Temporary Event Notice by making changes to the notice returned to the premises user under section 102.

6. COMMENTS

Guidance issued under section 182 of the Licensing Act 2003 – pages 52 to 56 (**Guidance is included as Appendix 3**).

According to the representation that is made, options open to the Sub-Committee are:

1. Reject the representation and allow the event to proceed
2. Allow the event to proceed subject to modifications agreed by the Police to ensure so as the crime prevention objective will not be undermined.
3. Prevent the event by issuing a counter notice.

List of Appendices

1. Temporary Event Notice served on 7th June 2010
2. Notification of Representation to the Temporary Event Notice served on 8th June 2010
3. Guidance from section 182 issued under the Licensing Act 2003 relating to Temporary Event Notices

The applicant has been invited to attend the Licensing & Appeals Sub-Committee hearing, together with the Police.

Report created by Jackie Morton 10th June 2010