

<b>Item No 6</b>	<b>Classification: Open</b>	<b>Date: 17.12.08</b>	<b>Meeting name: Licensing Sub-Committee</b>
<b>Report Title</b>		<b>Licensing Act 2003 – Temporary Event Notice The Busey Building R / O 133 Rye Lane SE15</b>	
<b>Ward(s) or groups affected</b>		<b>The Lane</b>	
<b>From</b>		<b>Director of Environment and Housing</b>	

## **RECOMMENDATION**

1. That the Sub-Committee decide whether or not to issue a “Counter Notice” in respect of a “Temporary Event Notice” given by Mr. William George concerning an event to be held at The Busey Building 133 Rye Lane, SE15 on the 20 December 2008 20:00 to 06:00.

## **BACKGROUND INFORMATION**

2. On 24 November 2005 the Licensing Act 2003 came into effect establishing a new licensing regime for the following licensable activities -
  - a) The retail sale of alcohol;
  - b) The supply of alcohol to club members or on behalf of a club;
  - c) The provision of regulated entertainment; and
  - d) The provision of late night refreshments.
3. As part of the new regime, the Act establishes a process for the giving of “Temporary Event Notices” (TEN).
4. A premises user may serve a TEN, where it is proposed to use the premises concerned to provide one or more licensable activities for a period not exceeding 96 hours for less than 500 persons.
5. A person holding a Personal License issued under the Act may serve up to 50 TEN's in a calendar year. Non Personal License holders may serve up to 5 TEN's in the same period. No premises may be used for more than 12 TEN's in a calendar year or for more than 15 days in a calendar year. No premises may be used for temporary events that are less than 24 hours apart.
6. The TEN's process is designed to be a simple process. The person giving the TEN must give at least 10 working days notice to the licensing authority and must provide 2 copies of the notice to that authority and a further copy to the police within 24 hours. The police have 48 hours from receipt of the notice to consider and respond to it. If the police considers that the notice gives rise to concerns under the crime and disorder objective then the police will give an “objection notice” to the licensing authority. The giving of the “objection notice” initiates arrangements for the matter to be considered at a hearing in front of the Licensing Sub-Committee at least 24 hours before the date of the event. If a negotiated outcome can be reached between the police and the premises user before the hearing takes place, then the TEN may be amended and a copy returned to the premises user and the hearing need not take place. If no negotiated outcome may be reached then the matter proceeds to the hearing where the Sub-Committee will consider whether to issue a “Counter-Notice” in respect of the event, prohibiting it from taking place.

## **FACTORS FOR CONSIDERATION**

### **The TEN**

7. On the 5 December 2008 a TEN was received from Mr. William George in respect of an event scheduled to take place between the 20 December 2008, between 20:00 to 06.00hrs, at the premises known as The Busey Building, R/O 133 Rye Lane SE15. The TEN gives full background detail on the premises user and the event. A copy of the TEN application is attached the report as Appendix A.
8. Our records show that at the time of the writing of this report Mr. William Greg has not served any other TENs for this calendar year.

### **The Objection Notice**

9. The police served an objection notice in respect of the TEN on the 5<sup>th</sup> December 2008. A copy of the notice is attached as Appendix B.

### **Conciliation Process**

10. As requested the applicant has sent the police a (risk assessment form) which the police have read and responded to in an email dated the 10 December 2008. The conciliation emails from the applicant the police are attached to the report as Appendix C.

### **Consideration by the Sub-Committee**

11. It has not been possible to reach a negotiated outcome of this matter and the Sub-Committee is asked to consider whether the issue of a Counter-Notice is necessary for the promotion of the crime and disorder objective.

### **Map**

12. A map of the area is attached to this report as Appendix C.

### **Policy Considerations**

13. Section 4 of the Southwark Statement of Licensing Policy on "Administration, Exercise and Delegation of Function" deals with the parameters under which TEN's may be considered.

### **Community Impact Statement**

14. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the prevention of the crime and disorder objective.
15. In considering the TEN in terms of community impact the Sub-Committee must restrict its considerations to this matter.

## **RESOURCE IMPLICATIONS**

16. A fee of £21.00 has been paid by Mr. William Greg in respect of this TEN, this being the statutory fee payable.

## **CONSULTATIONS**

17. The Act provides for no consultations to take place other than process outlined in this report.

## **EQUAL OPPORTUNITIES IMPLICATIONS**

18. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

## **CONCURRENT REPORT BY THE STRATEGIC DIRECTOR OF LEGAL & DEMOCRATIC SERVICES**

19. The Sub-Committee is asked to consider the police objection notice in accordance with Section 105 of the Licensing Act 2003. The sub-committee must consider whether or not to issue a counter notice.
20. The principles, which the Sub-Committee must apply, are set out below.

### **Principles for making the determination**

21. The sub-committee must issue a Counter Notice if it is satisfied that the event would undermine the crime prevention objective set out in the Act. If the sub-committee is not so satisfied then it must not issue a counter notice.

### **Reasons**

22. The Sub-Committee must give reasons for its decision to issue or not to issue a counter notice.

## **Hearing Procedures**

23. Subject to the Licensing Hearing regulations, the Licensing Committee may determine its own procedures. Key elements of the regulations are that
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations
  - Members of the authority are free to ask any question of any party or other person appearing at the hearing
  - The committee must allow the parties an equal maximum period of time in which to exercise their rights to
    - Address the authority
    - If given permission by the committee, question any other party.
    - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
  - The committee shall disregard any information given by a party which is not relevant
    - to the particular application before the committee, and
    - the licensing objectives.
  - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
  - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their

application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

24. This matter relates to the determination of an application for a Temporary Event Notices License under section 105 of the Licensing Act 2003. Regulation 26(1)(c) requires the Sub-Committee to make its determination at the conclusion of the hearing.

**Council’s multiple roles and the role of the Licensing Sub-Committee**

25 Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council’s broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council’s Statement of Licensing Policy.

26. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

Background papers	Held at	Contact
Licensing Act 2003 DCMS Guidance Secondary regulations Statement of Licensing Policy Various papers from the application file	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs. Kirty Read at the Chaplin Centre. Telephone 020 7525 5748
Lead Officer	Gill Davies, Director of Environment and Leisure	
Report Author	David Swaby, Principal Licensing Officer	
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Key Decision	No	
Consultation with other Officers / Directorates / Executive Member		
Officer title	Comments sought	Comments included
Strategic Director of Legal & Democratic Services	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	11 December 2008	