

Item No: 7.	Classification: Open	Date: 17 March 2010 10am	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003 - Temporary Event Notice Oriwu Spot, 44 Wanley Road, 374 SE5 8AT	
Ward(s) or groups affected		South Camberwell	
From		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Sub-Committee decide whether or not to issue a Counter Notice in respect of a Temporary Event Notices" given by Mr Olarenwaju Jimoh, concerning events to be held at Oriwu Spot, 44 Wanley Road, London, SE5 8AT on the mornings of 20 March, 2,3,& 4 April 2010.

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.
6. No premises may be used for temporary events that are less than 24 hours apart.
7. 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 consider 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.
8. 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.

KEY ISSUES FOR CONSIDERATION

The Temporary Event Notice

9. On both 9 February & 2 March 2010 Temporary Event Notices (TENs) were received from Mr Olanrewaju Jimoh in respect of events to be held at the premises known as Oriwu Spot, 4 Wanley Road, London, SE5 8AT.

10. The TENs is summarised as follows;

- Saturday 20 March 2010 - 01.30 - 03.30 ;
 - Friday 2 April 2010 - 01.30 – 04.00,
 - Saturday 3 April 2010 – 01.30 – 04.00
 - Sunday 4 April 2010 – 00.30 – 03.30
- Events to be held will be birthday party and Easter party celebrations. Maximum people permitted on the premises at any one time not to exceed 65. Licensable activities to be the extension of the sale of alcohol by retail and the provision of regulated entertainment. Copies of the TENs are attached as Appendix A

The Objection Notice

11. Metropolitan Police served objection notices in respect of both TENs. The objection notices are on the grounds of crime and disorder complaints received by the Safe Neighbourhood Team from local residents. Copies of the notices are attached as Appendix B

CURRENT PREMISES LICENCE

12. The premises currently holds a premises licence under the Licensing Act 2003 which allows for the follow licensable activities;

Regulated Entertainment

- Films - Sun – Thurs 10.00 - 12midnight; Fri & Sat 10.00 – 01.00:
- Live Music, Recorded music, Dance performances and facilities for dancing indoors: Sun – Thurs – 19.00 – 23.00; Fri & Sat 19.00 12 midnight
- Late night refreshment – Sun – Thurs : 23.00 – 12 midnight; Fri & Sat 23.00 -01.00

Sale and supply of alcohol

- Sale of alcohol on and off the premises –Sun – Thurs 10:00 to 12 midnight and Fri & Sat 10.00 – 01.001:00 on Monday to Sunday

Opening hours

- Sun – Thurs 10.00 – 00.30: Fri -& Sat 10.00 01.30 .

13. Mr Olarenwaju Jimoh is the Designated Premises Supervisor specified on the premises licence.

Consideration by the Sub-Committee

14. 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

15. A map of the local area is attached as Appendix C. The premises is shown at the centre of the map and has a triangle and its name indicating its position. The circle shown on the map has a radius of 100 meters and is shown for the purposes of scale only.

16. Other licensed premises in the local vicinity are also shown and named on the map.

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 pursuit 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 the applicant in respect of each 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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

18. The Sub-Committee is asked to determine the application for a Temporary Event License under Section 105 of the Licensing Act 2003 and to consider whether or not counter notice should be issued in the circumstance. It must only issue a Counter Notice if they believe the event would undermine the crime prevention objective set out in the Act

19. The principles, which Sub-Committee members must apply, are set out below.

Principles for making the determination

20. The general principle is that applications for temporary event notices applications must be granted unless relevant representations are received from the Police. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application within a prescribed time.

21. Relevant representations are those which

- Are about the likely effect of the granting of the application on the promotion of the crime prevention of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

22. If relevant representations are received then the Sub-Committee must have regard to them in determining whether they are necessary for the promotion of the crime prevention objective of the Licensing Act

- Issue a counter notice by adding to, omit, and/or alter the conditions of the license or,
- Reject the whole or part of the application for variation

Conditions

23. The Sub-Committee's discretion is thus limited. It must not attach any conditions on the carrying on of permitted licensable activities. The Sub-Committees function is limited to determining whether a Counter Notice should be issued.

24. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing Procedures

26. 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.
27. 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.
28. Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
29. 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.
30. 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.
31. Members will be aware of the Council's Code of Conduct which requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.
32. Under the Human Rights Act 1998. the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.

33. Where the relevant a counter notice under section 105(3) is given the premises user may appeal against that decision. Where a counter notice is not given, the chief officer of police may appeal against that decision. The appeal must be made to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against. No appeal may be brought later than five working days before the day on which the event begins.

Guidance

34. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

APPENDICES

No.	Title
Appendix A	Copies of the Temporary Event Notices (TENs)
Appendix B	Copies of Police representation
Appendix C	Map of local vicinity

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	8 March 2010	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law and Governance	Yes	Yes
Finance Director	No	No
Executive Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	8 March 2010	