

**LICENSING PANEL**

(Licensing Act 2003 Functions)

**Agenda Item 50**

Brighton &amp; Hove City Council

|                          |  |   |                            |
|--------------------------|--|---|----------------------------|
| <b>Subject:</b>          | <b>Notification of a Temporary Event Notice under the Licensing Act 2003</b> |   |                            |
| <b>Premises:</b>         | <b>The Circle Brighton, 55 North Street, Portslade, BN41 1DH</b>             |   |                            |
| <b>Applicant:</b>        | <b>Fash Ghiaci</b>   |   |                            |
| <b>Date of Meeting:</b>  | <b>16 October 2018</b>   |   |                            |
| <b>Report of:</b>        | <b>Director of Safer Communities</b>   |   |                            |
| <b>Contact Officer:</b>  | <b>Name:</b>   | <b>Donna Lynsdale</b>                           | <b>Tel: (01273) 292494</b> |
|                          | <b>Email:</b>  | <b>donna.lynsdale@brighton-hove.gcsx.gov.uk</b> |                            |
| <b>Ward(s) affected:</b> | <b>South Portslade</b>   |   |                            |

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 To consider a notification of a Temporary Event Notice in view of a formal objection to it by a relevant person under section 104(2) of the Licensing Act 2003.

**2. RECOMMENDATIONS:**

- 2.1 That the Panel consider whether it is necessary for the promotion of the licensing objectives of the **Prevention of Crime and Disorder** and **Public Safety** to issue a counter notice to prevent the event from taking place.

**3. CONTEXT/ BACKGROUND INFORMATION & CONSULTATION**

- 3.1 This Temporary Event Notice relates to the time period: **27<sup>th</sup> – 28<sup>th</sup> October 2018**

- 3.2 The proposed activities are:

|                                  | <b>Proposed Activities</b>      |
|----------------------------------|---------------------------------|
| <b>Sale by Retail of Alcohol</b> | 18:00 – 04:00 – on the premises |
| <b>Regulated entertainment</b>   | 18:00 – 04:00                   |
| <b>Late Night Refreshment</b>    | 23:00 – 04:00                   |

- 3.3 The area to be covered by the temporary event notice: **the licensed area of the premises only**

- 3.4 Please see a copy of the Temporary Event Notice attached at **Appendix A**.

## **Objections received**

- 3.5 The **Sussex Police** representation on the Temporary Event Notice was made no later than 72 hours following receipt of the Temporary Event Notice. Their objection was made on the grounds of the Prevention of Crime and Disorder and Public Safety
- 3.6 Please see representation letter from Sussex Police attached in **Appendix B**.
- 3.7 A map detailing the location of the premises is attached at **Appendix C**.

## **4. COMMENTARY ON THE LICENSING POLICY**

- 4.1 The following extracts from Guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application and **numbered as they appear in the Guidance**:

### **General**

- 7.2 The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead, a person wishing to hold an event at which such activities are proposed to be carried on (the “premises user”) gives notice to the licensing authority of the event (a “temporary event notice” or “TEN”).
- 7.6 The police or Environmental Health Authority (EHA) (“relevant persons” for the purposes of TENs) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.36). If a relevant person sends an objection, this may result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded (see paragraphs 7.15-7.22 of the Guidance).
- 7.7 A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
- 7.28 If the licensing authority receives an objection notice from the police or EHA 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.

### **Police and environmental health intervention**

- 7.32 The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives.
- 7.33 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.
- 7.34 Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.
- 7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.
- 7.36 However, in most cases, where for example, alcohol is supplied away from licensed premises at a temporary bar under the control of a personal

licence holder, (such as at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

### **Modification**

7.37 As noted above, the police or EHA (as “relevant persons”) may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.

### **Applying conditions to a TEN**

7.38 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The licensing authority can only do so:

- if the police or the EHA have objected to the TEN;
- if that objection has not been withdrawn;
- if there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;
- and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.

7.39 This decision is one for the licensing authority alone, regardless of the premises user’s views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

5.1 The licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

*Finance Officer Consulted Michael Bentley*

*Date: 08/10/2018*

### Legal Implications:

5.2 The licensing authority must act to promote the four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

*Lawyer Consulted: Rebecca Sidell*

*Date: 08/10/2018*

Equalities Implications:

5.3 Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

Sustainability Implications:

5.4 Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Appendix A – Temporary Event Notice
2. Appendix B – Representation made by Sussex Police
3. Appendix C – Map of the area
4. Appendix D – Current Premises Licence

**Documents in Members' Rooms**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2016 as amended 24th March 2016.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018.

**Background Documents**

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2016 as amended 24th March 2016.

