



LICENSING HEARING PANEL

11 OCTOBER 2019

LICENSING ACT 2003 CONSIDERATION OF A TEMPORARY EVENT NOTICE

FORT AMHERST, DOCK ROAD, CHATHAM, KENT, ME4 4UB

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Summary

The licensee for Fort Amherst, Dock Road, Chatham, Kent, ME4 4UB has served a Temporary Event Notice (TEN) on Medway Council, Environmental Health and the Police in accordance with Part 5 of the Licensing Act 2003.

The event is a charity black tie ball, including the sale by retain of alcohol and the provision of regulated entertainment, on 6 December 2019 between the hours of 19:30 hours and 00:00 hours.

Objections have been received from Environmental Protection and to date no agreement has been reached.

1. Budget and Policy Framework

1.1 Medway Council has published its Statement of Licensing Policy, which it takes into account in all applications relating to the Licensing Act 2003.

2. Background

2.1 The Licensing Hearing Panel is asked to determine a Temporary Event Notice, issued under s.100 of the Licensing Act 2003, relating to Fort Amherst, Dock Road, Chatham, Kent, ME4 4UB. A copy of the Temporary Event Notice is attached at **Appendix A**.

2.2 The licensee for Fort Amherst has served the Temporary Event Notice on Medway Council, Environmental Health and the Police in accordance with Part 5 of the Licensing Act 2003. The event is a charity black tie ball, including the sale by retain of alcohol and the provision of regulated

entertainment, on 6 December 2019 between the hours of 19:30 hours and 00:00 hours.

- 2.3 In general terms, Temporary Event Notices are for one or more licensable activities on a temporary basis. These are dealt with in Part 5 of the Licensing Act 2003. Each respective Temporary Event cannot exceed 168 hours as they are designed for “light touch” licensing for events such as garden parties, fetes, fairs etc. The maximum number of persons attending is 499 and only 12 Temporary Event Notices can be given for a premises in the same year. There must be a minimum of 24 hours between each event.
- 2.4 The Police and Environmental Protection can object to a Temporary Event Notice under Section 104 of the Licensing Act 2003 on the basis they are satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective.
- 2.5 The Licensing Act 2003 (the 2003 Act) requires the Council (as licensing authority) to carry out its various functions so as to promote the following four licensing objectives:
 - the prevention of crime and disorder
 - the protection of public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 2.6 The 2003 Act requires the Council to publish a ‘Statement of Licensing Policy’ that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act. The Council adopted its Statement of Licensing Policy on 1 May 2018. As required by section 5 of the Act this policy has been subject to periodic revisions with the current policy set to expire on 30 April 2023. The policy will be available at the meeting for reference purposes.
- 2.7 Under the 2003 Act, licensing authorities, in carrying out their functions, must have regard to guidance issued by the Secretary of State under section 182. The Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Provided that the licensing authority has properly understood and considered the Guidance, it may depart from it when it has reason to do so. However, as the licensing authority is under a duty to have regard to the Guidance, it will need to give full reasons for any departure from it. This would be a key consideration for the courts should departure from the Guidance result in a determination which gives rise to an appeal or judicial review. The Guidance will be available at the meeting for reference purposes.
- 2.8 A copy of the Council’s approved procedure for hearings of the Panel in relation to an application is included in the agenda for the meeting.
- 2.9 The licensing authority has received an objection to a Temporary Event Notice in respect of Fort Amherst, Dock Road, Chatham, Kent, ME4 4UB, including the sale by retail of alcohol and provision of regulated entertainment. Pursuant to section 105, the Licensing Authority must hold a hearing to consider the objection notice.

- 2.10 The Vice-Chairman of the Licensing and Safety Committee has agreed to this urgent item following an objection to the application by Environmental Protection. Schedule 1 of the Licensing Act 2003 (Hearings) Regulations 2005 state that a hearing must be held within 7 working days beginning with the day after the end of the period within which an objection may be made.
- 2.11 The reason of special circumstances for this urgent item is that, in the opinion of Environmental Protection, the applicant has not given sufficient information to demonstrate that noise management has been considered. As a result it has been necessary to convene a meeting of the Licensing Hearing Panel as a matter of urgency to consider the matter.

3. Relevant Representations

- 3.1 Environmental Protection has objected on the basis of undermining the Prevention of Public Nuisance licensing objective. This is due to the nature and location of the event and historic complaints. A copy the representation is attached at **Appendix B**.

4. Policy Considerations

- 4.1 Medway Council has published its Statement of Licensing Policy, which it will consider alongside the amended Guidance issued by the Home Office under section 182 of the Licensing Act 2003 in all applications.

5. Risk Management

- 5.1 The Council has to consider and determine this application, which is a function relating to licensing and registration as set out in Schedule 1 to the Functions Regulations, the Licensing Act 2003, the Gambling Act 2005 and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees, in accordance with the law (both statutory and case law), relevant statutory guidance and statements of policy.

6. Financial and legal implications

- 6.1 None unless there is an appeal about the Panel decision to Magistrates' Court which proves to be successful and which could therefore result in costs being awarded against the Council.
- 6.2 This hearing is regulated by the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).
- 6.3 The Licensing Panel is obliged to determine this application with a view to promoting the four licensing objectives. In making its decision, the Licensing Panel is also obliged to have regards to the Secretary of State's Guidance and the Council's adopted Licensing Policy.
- 6.4 The Licensing Panel must also have regard to all representations made and the evidence it hears and must take either of following steps as it considers necessary for the promotion of the licensing objectives:

- Approve the event
- Refuse the event

6.5 The Licensing Panel may only impose conditions on the Temporary Event Notice if the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises.

6.6 There is the possibility of a challenge by way of appeal to the decision by either the applicant or objectors should either have the requisite grounds to do so. Legal advice will be given to Members as appropriate at the meeting. However, whatever the decision of the Panel, this must be based on the evidence placed before it in line with the licensing objectives and the Panel must decide what weight to attribute to this information.

7. Recommendation

7.1 That the Licensing Hearing Panel, having regard to the Licensing Act 2003, the statutory guidance issued under S182, the Council's Statement of Licensing Policy and all matters before it, both written and oral, considers and determines a Temporary Event Notice issued under s.100 of the Licensing Act 2003.

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Appendices

Appendix A – Temporary Event Notice

Appendix B – Objection from Environmental Protection

Background papers

None