

Report to: Licensing Sub-Committee.

Date of Meeting: 15th August 2021

**Report Title: Application for a Temporary Events Notice, with an objection.
The Crypt & Bat and Bee 53-57 Robertson Street, Hastings TN34 1HY**

Report By: Andrew Palmer, Assistant Director, Housing and Built Environment

Purpose of Report

To consider an Objection Notice to a Temporary Event Notice (TEN) served on behalf of The Crypt 53-57 Robertson Street, Hastings TN34 1HY Responsible Authorities. One.

Recommendation(s)

- 1. The Sub-Committee considers the Temporary Event Notice in the light of the Objection Notice made by Sussex Police and resolves to take such steps as it considers appropriate and proportionate for the promotion of the Licensing Objectives and determine whether to serve a Counter Notice.**

Reasons for Recommendations

The Sub-Committee must consider the oral representations and information given at the hearing before reaching a decision

Introduction

1.0 Background

1. Authorisation from the Council is required for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment.
2. While most large-scale or permanent businesses will hold Premises Licences to authorise their activities, the Licensing Act 2003 (“the Act”) also provides a light-touch mechanism for smaller, infrequent events, known as a Temporary Event Notice (“TEN”).
3. An individual (known as the “premises user”) may give notice of a proposal to use premises for a temporary event, engaging in one or more licensable activities for a period of no more than 168 consecutive hours. The Licensing Sub-Committee is required to consider any Objection Notice received and must give the premises user a Counter-Notice under Section 105 of the Act if it considers it appropriate for the promotion of a Licensing Objective to do so. The temporary event may not proceed if a Counter-Notice has been issued.
4. On the 2nd August 2022, Hastings Borough Council was served a TEN in respect of **The Crypt & Bat and Bee 53-57 Robertson Street, Hastings TN34 1HY. (Attached at Appendix A).**
5. This premise holds a licence to operate until 03:30hrs (Opening hours below) under the Act (**Attached at Appendix B**), The premise is located within Area 1a (Hastings Town Ctr) of the Council Special Saturation Policy (Cumulative Impact).

The opening hours of the premises:

SUNDAY – WEDNESDAY 08.00 – 02.30

THURSDAY – FRIDAY 08.00 – 03.30

SATURDAY 11.00 – 04.30

ON FRIDAY, SATURDAY AND SUNDAY ONLY PRECEDING A BANK HOLIDAY MONDAY, UNTIL 04.00.

ON CHRISTMAS EVE AND NEW YEARS EVE UNTIL 04.00.

2.0 Application

6. The TEN requests the following on the morning of Saturday 27th August 2022:

Opening Hours: 03.30 hours until 04.00 hours on the same day.

The Sale by Retail of Alcohol: 03.00 hours until 04.00 hours on the same day.

The supply of Alcohol by or on Behalf of a Club to, or to the Order of, a Member of the Club 00.00 hours until 04.00 hours on the same day.

It should be noted that this ‘tick’ and the hours are a mistake on the notification form as the premises holds a premises licence, not a club certificate to which this refers. You should only tick this box when applying for a temporary event notice if your event is taking place on a premises that is licensed by a club premises certificate and alcohol is only being supplied to members of that club and no one else.

The Provision of Regulated Entertainment: 03.00 hours until 04.00 hours on the same day.

The Provision of Late Night Refreshment: 03.00 hours until 04.00 hours on the same day.

3.0 Consultation

7. The fee for giving a TEN is prescribed within the Act
8. The Act provides for periods of notice and the number of events that may be held. Notice must be given to the Licensing Authority, Police and Environmental Protection ten working days before the beginning of the event period.
9. The Police and Environmental Protection then have three working days to lodge objections with the Licensing Authority and Applicant.
10. A copy of the Police Objection Notice to the TEN, which was received on **4th August 2022**, is attached at **Appendix C**. Environmental Protection have not made any representations.
11. Objections must relate to the undermining of the Licensing Objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm. Copies of the TEN are required to be served on a list of Responsible Authorities at the same time as placing the TEN before the Licensing Authority, this has been done.
12. The Act does not make provision for further consultation with any other Responsible Authorities nor interested parties, and there is no requirement for the premises user to publicise their TEN.

4.0 Legal Considerations

13. When carrying out its licensing functions, the Sub-Committee shall act with regard to the Council's Licensing Policy, Statutory Guidance, and with a view to promoting the Licensing Objectives. The Licensing Objectives are:
 - the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm

14. Part 5 of the Act provides a system of permitted temporary activities, under which licensable activities can be carried out on a temporary basis (for a period not exceeding 7 days) without the need for a premises licence or a club premises certificate.
15. If an Objection Notice to a TEN is made by a Responsible Authority and no compromise can be reached between the parties, a hearing must be held.
16. Paragraph 7.28 of the Section 182 Guidance sets how the Authority should decide what actions are appropriate.
17. If the Licensing Authority receives an Objection Notice from the police or EH 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.
18. The Licensing Sub-Committee may decide to allow the licensable activities to go ahead as stated in the TEN. If the TEN 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.
19. Section 105(2)(b) of the Act requires that the Licensing Authority must, having regard to the Objection Notice, give the premises user a Counter Notice under this Section if it considers it, "appropriate for the promotion of a Licensing Objective to do so." The temporary event may not proceed if a Counter-Notice has been given.
20. Section 106A(2) of the Act provides that the Licensing Authority may impose one or more conditions on the standard TEN if:
 - a) it considers it appropriate for the promotion of the Licensing Objectives to do so.
 - b) the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of or in any part of the same premises as the TEN.
 - c) the conditions would not be inconsistent with the carrying out of licensable activities under the TEN.
21. 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.
22. It is considered inappropriate for officers involved in the administration of notices to make recommendations. However, the Sub-Committee may choose whether to have regard to any representations made by police officers or Council's Noise and Pollution Team if they believe that using the premises in accordance with the TEN will undermine the Licensing Objectives.
23. Subject to both the Council's Statement of Licensing Policy and Statutory Guidance having been properly considered a Sub-Committee may depart from them if there are good reasons for doing so. Full reasons must be given and Sub-Committees

should be aware that such departures could give rise to an Appeal or Judicial Review.

- Human rights considerations must be taken into account fully in balancing licensing issues, in particular, Article 1 of the First Protocol and Article 8 to the European Convention on Human Rights which are applicable in England and Wales via the Human Rights Act 1998. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property. Holding a premises licence would be considered a possession. Article 8 relates to the right to respect for private and family life, home and correspondence. These are however qualified rights and can be deprived of “in the public interest”. Interference is permissible if what is done:- Has its basis in law;
 - Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
 - Is proportionate to the aims being pursued; and,
 - Is related to the prevention of crime; or, the protection of public order or health.
24. In accordance with the provisions of Part 3 of Schedule 5 of the Act, where the Licensing Authority gives a Counter-Notice under Section 105, the premises user may Appeal against the decision. Where the Licensing Authority does not give a Counter-Notice, the person giving the Objection Notice may Appeal against the decision. In both cases, Appeals must be made to a Magistrates Court within 21 days of receiving notification of the decision - however, no Appeal can be brought less than 5 working days prior to the first proposed event day.

5.0 Options

25. The Sub-Committee must ensure that all licensing decisions have:

- a direct relationship to the promotion of one or more of the 4 Licensing Objectives.
- regard to the Statement of Licensing Policy.
- regard to the Secretary of State's Guidance.
- there must not be a 'blanket policy' to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.

26. You the Sub-Committee have the following options

- Issue a Counter Notice (refusal)
- Not issue a Counter Notice (grant)
- Grant the TEN with conditions (as per existing conditions upon the licence)

27. Full reasons must be given and Sub-Committees

Wards Affected

Castle Ward.

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness

Crime and Fear of Crime (Section 17)

Risk Management

Environmental Issues

Economic/Financial Implications

Human Rights Act

Organisational Consequences

Local People's Views

Anti-Poverty

Additional Information

Appendix A. Temporary Event notice.

Appendix B. Licence summary.

Appendix C. Sussex Police Letter of Objection.

Officer to Contact

Stewart Bryant, Licensing Lead.

stewart.bryant@hastings.gov.uk

01424 783232
