

# Licensing Sub-Committee

9 September 2020



<b>Subject</b>	Objection to Temporary Event Notices served under the Licensing Act 2003		
<b>Purpose</b>	To consider whether to grant or reject One Temporary Event Notice (TENS) in the light of objection notices served by the local authority exercising environmental health functions and by the police.		
<b>Report of</b>	Deputy Chief Executive	Ward	Staines
<b>Contact</b>	Paul Morey, Licensing Enforcement Officer (01784) 446450		

<b>Description and Location</b>	<p>Signature Van Hire, 273-275 London Road, Staines-Up-on-Thames TW18 4JJ.</p> <p>The address is located off the A30 a Major dual carriageway in Staines-Up-on-Thames. There are two companies who occupy the site. One of them is a van rental company on site called Signature Van Hire. The other is DCW Penrose &amp; Co Ltd.</p> <p>The nature of the premises is detailed in the temporary event notice application form for 12-13 September 2020 as 'Signature Car Hire' The area used as 'Car Lot and Car Park'. The Plan is attached at <b>Appendix A</b></p>
<b>Temporary Event Notice</b>	<p>Notice is given of an event to take place on 12-13 September 2020, which is described as a Family Event and BBQ. The maximum number of people/performers to attend is quoted as 250</p> <p>A copy of the Notice is attached at <b>Appendix B</b>.</p>
<b>Objection Notices</b>	Objection Notices have been received from the Police and Environmental Health. Attached at <b>Appendices C and D</b>
<b>Options</b>	<p>Having had regard to the objection notices, and in order to promote any of the four licensing objectives, the Sub-Committee may in respect of the event to be held on 12 13 September 2020 from 12.00-23.00:</p> <ul style="list-style-type: none"><li>▪ Serve a counter notice, or</li><li>▪ Not serve a counter notice.</li></ul>

## 1. Background

- 1.1 The Environmental Health Team at Spelthorne Borough Council ("the Council") has been involved with three unlicensed music events at 273-275 London Road, Staines-upon-Thames TW18 4JJ ("the Land"), over three consecutive Saturdays (18 July 2020, 25 July 2020 and 1 August 2020). No temporary event notices were applied for any of these events.
- 1.2 The Council received 4 complaints about the first event, a further 12 about the second event and a further 8 about the last event. According to residents, the events took place between approximately 14:00-23:00. The complaints referred to noise from the music events, heard loudly in the residential area. The residents complained that attendees of the events left litter in the residential area and could be seen urinating in the streets.
- 1.3 An out of hours Environmental Protection Officer attended the events on 18 July 2020 and 25 July 2020 and met with the residents in relation to their concerns but did not note any issues nor any nuisance taking place. On the 18 July a statutory nuisance from noise was witnessed from one property but this was addressed by the Officer by asking the event organisers to turn the music down, the organisers complied. Police officers also attended the events on 18 July 2020 and 25 July 2020 and did not notify the Council of any concerns. No statutory noise nuisance was observed on the 25 July.
- 1.4 On 31 July 2020, Counsel for the landlord (Cristal Ltd) emailed V10 Developments Ltd., stating that it had been brought to the landlord's attention that the Land had been sub-let to a third party, and that the third party was organising informal parties on the Land, asking them to ensure that those cease to be organised, that no breaches of the abatement notice or any other applicable legislation should occur, that there be no noise nuisance and that no unlicensed licensable activities take place on the Land.
- 1.5 On the 1 August 2020 the out of hours noise Officer and an Environmental Health Officer attended the event and a statutory noise nuisance was witnessed. Therefore the Council served a noise abatement notice on the landowners (Cristal London Ltd) and the event organisers (State of Happiness). The notice to the landowners required the occupier to abate the statutory nuisance within 12 hours from the time of service and for there not to be any recurrence of the statutory nuisance. Specifically, the Schedule attached to the notice specified that the occupier ought to "cease the use on the land of any amplification equipment, such as loud speakers, amplifiers and microphones that can be used for music and voice amplification at a volume that is likely to cause nuisance to residents of nearby residential premises." The notice recorded the fact that failure to comply with it could lead to summary conviction and provided information on how to appeal the notice.
- 1.6 On 1 August 2020, an out of hours noise Officer arrived at the Land to address the residents' further concerns. The Officer recalled that *"at around 1620 hours the music volume increased and I listened to the heavy base sound from XXX property. At 1640 hours, I witnessed a statutory nuisance in XX bedroom with the window open.... At 1835 hours and 1936 hours the music volume increased again. I witnessed the music from the complainant's*

*front drive and I was satisfied of the likelihood of a statutory nuisance from within the complainant's property."*

- 1.7 At 20:40 on 1 August 2020, a Senior Environmental Health Officer, arrived at the Land to serve a noise abatement notice on Signature Van Hire, a rental van agency who are the occupiers of the Land.
- 1.8 Surrey Police attended the premises and felt the situation warranted the serving of a Closure Notice and at a subsequent Court hearing, were granted a partial closure order (Anti-Social Behaviour, Crime and Policing Act 2014 Section 80) in respect of this site at Guildford Magistrates Court on 7 August 2020. The closure order prohibits anyone (save for those persons specified on the order) from remaining on or entering the site. The closure order allows "any person with a ticket to an event on the Site, which event benefits from an extant authorisation under the Licensing Act 2003". The Partial Closure Notice is still in force.
- 1.9 On the 19 August 2020 following the receipt of representations from both Spelthorne Borough Council's Environmental Health Department and Surrey Police, a Licensing Sub-Committee was held. After hearing evidence from all parties concerned and deliberating the matter, the Sub-Committee directed that counter notices should be served with regards to the TENs for 21 August 2020 to 22 August 2020 and also 28 August 2020 to 31 August 2020. The TENs, Sub-Committee decision notice and counter notices are attached at **Appendix E**
- 1.10 On the 20 August 2020, Hello Complete Licensing UK (James Hofferlner) as an agent on behalf of Shawn Alexander, submitted two temporary event notice applications. One for the 5 September 2020 and the other for 6 September 2020. After speaking with the licensing department James Hofferlner withdrew the TEN application for 6 September 2020 as it was not a valid application.
- 1.11 The Licensing Authority held a Safety Advisory Group meeting with partner agencies on 28 August 2020 to discuss the application for the proposed site. An update was planned to be provided at the hearing to outline the concerns raised by those agencies. A large number of concerns were voiced by all parties regarding the failure to submit safety information in a timely manner. This included health and safety, traffic / crowd management etc. The most urgent failure was noted as the lack of a coherent plan to deal with Covid 19 requirements regarding social distancing and the movement of people on the site. Hello Complete Licensing submitted the Health and Safety documentation at 14.09 on Friday 28 August 2020.
- 1.12 On the 2 September a SAG was held with the applicant's agents and partner agencies. Whilst there were a number of issues discussed regarding items raised during the earlier meeting, it was again the lack of a coherent, viable Covid 19 plan that caused the most concern. After discussing this area at length, it was still not considered as a viable plan. This failure resulted in Ian Good of Surrey County Council Emergency Planning referring the matter to the Department of Public Health for further consideration.
- 1.13 On the 3 September 2020 following the receipt of representations from both Spelthorne Borough Council's Environmental Health Department and Surrey Police, a Licensing Sub-Committee was held. At the start of the hearing Mr

Richard Sutherland, consultant for the applicant, withdrew the application for the planned event on the 5 September 2020.

- 1.14 At the time of completing this report, the Licensing Authority is intending to set up a meeting with the applicants and all interested parties with regard to the proposed site and the security risk assessment, health & safety risk assessment, fire risk assessment, noise impact assessment, COVID -19 risk assessment. If this is arranged in the short timeframe available, then a verbal update, of the outcome will be given at the time of the hearing. It was noted that the applicant did not supply any documentation covering these areas at the time that the application for the TEN was submitted.

## **2. Application Summary**

- 2.1 In total five valid TEN applications have been received for the site.
- 2.2 Another standard TEN application has been submitted and this is outlined below.
- 2.3 The application has been submitted by an agent, James Hoffelner on behalf of Black Steel Limited. A search on Companies House website lists the company with one director 'Shawn Waynerick Barry Alexander' under the company number: 11878527.
- 2.4 There is no premises licence for licensable activity at the address the notices have been applied for.

### **TEN application – 12-13 September 2020**

- 2.5 The TEN was received electronically on 26 August 2020 for an event to be held for two days on the 12 – 13 September 2020. It was automatically electronically served by the Licensing Authority at the same time on the Police and Environmental Health.
- 2.6 The notice was given in respect of an event to be held on 12-13 September 2020 from 12.00-23.00. The event is described as 'family friendly BBQ' in the application form. The licensable activity stated on the form is for the sale by retail of alcohol for on premises only. The notice giver has advised that the retail sale of alcohol will take place between 12.00 (midday) and 23.00. The maximum number of people at any one time they intend to allow to be present at the premises during the times they intend to carry on licensable activities, including staff, organisers and performers is 250.

## **3. Temporary Event Notices**

- 3.1 The system of permitted temporary activities is 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 of the event (a "temporary event notice" or "TEN").
- 3.2 The TEN must be given to the licensing authority in the form prescribed in regulations made under the 2003 Act. Unless it is sent electronically, it must be sent to the relevant licensing authority, to the police and local authority exercising environmental health functions at least ten working days before the event (although a premises user may give a limited number of TENs to the licensing authority less than 10 days before the event to which they relate).

- 3.3 The police or local authority exercising environmental health functions may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their intervention may in some cases result in the licensing authority imposing conditions on a temporary event notice. When giving a temporary event notice, consideration should be given to the four licensing objectives. The licensing authority only otherwise intervenes if the statutory permitted limits on temporary event notices would be exceeded.

- 3.4 TENs are served under section 100 of the Licensing Act 2003.

#### **4. Objections from ‘relevant persons’**

- 4.1 Objections have been received from ‘relevant persons,’ namely the Police and Environmental Health, who believe the application undermines the licensing objectives.

- 4.2 The TEN was objected to by Surrey Police on 25 August 2020. A copy of the objection is attached at **Appendix C**.

- 4.3 The TEN was objected to by Environmental Health on 25 August 2020. A copy of the objection is attached at **Appendix D**.

#### **5. Licensing Policy**

- 5.1 The Sub-Committee must have regard to the Council’s Statement of Licensing Policy 2019- 2024.

#### **6. National Guidance**

- 6.1 The Sub-Committee must also have regard to the National Guidance issued in April 2018 by the Secretary of State under section 182 of the Licensing Act 2003.

#### **7. Making a decision**

- 7.1 If the licensing authority receives an objection notice from the police or local authority exercising environmental health functions that is not withdrawn, it must hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The Licensing Sub-Committee may decide to allow the licensable activities to go ahead as stated in the notice.

- 7.2 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.

- 7.3 In this case, the notice is not given in connection with a premises licence.

- 7.4 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.

- 7.5 Government Guidance issued under section 182 of the Licensing Act 2003 has the following in relation to objections to TENs by the police or Environmental Health Authority (EHA):

*Section 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”

*Section 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.”

*Section 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.”

- 7.6 In addition to this, Section 7.7 of the guidance says that “A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.”

## **Appendices:**

### **Appendix A – Location Plan**

### **Appendix B – Temporary Event Notice**

### **Appendix C – Objection Notice from Surrey Police**

### **Appendix D – Objection Notice from Environmental Health**

### **Appendix E – Sub-Committee decision notice for the hearing on 19 August 2020 and counter notices**