

OPEN FOR PUBLICATION

Licensing Act Sub-Committee

09 August 2023

Determination of an Objection to a Temporary Event Notice – Proper Sound, Macclesfield

Report of: Jayne Traverse, Executive Director – Place

Ward(s) Affected: Macclesfield Central

Purpose of Report

- 1 The report provides details of a Temporary Event Notice, given under section 100 of the Licensing Act 2003 in respect of:

Proper Sound, 8 Chestergate, Macclesfield, SK11 6BA

- 2 The Licensing Authority has received an objection notice from the Council's Environmental Protection Team, acting within its statutory functions in relation to the minimising or preventing the risk of pollution of the environment or of harm to human health (eg noise pollution/nuisance).

Executive Summary

- 3 The Licensing Authority is required to consider the objection notice given by the Council's Environmental Protection Team in respect of proposed temporary activities.

RECOMMENDATIONS

The Licensing Act Sub-Committee is recommended to:

1. Consider the temporary event notice given, the objection received and determine whether -

- a) To take no action; or
- b) To give a Counter Notice under section 105 of the Licensing Act 2003; or
- c) To exercise powers conferred by section 106A of the Licensing Act 2003 to impose conditions on the premises user (where those conditions are already extant on a premises licence)

Background

- 4 On the 27th July 2023 the Licensing Authority received a Temporary Event Notice (TEN) given by Lucie Wright for the premises known as:

Proper Sound, 8 Chestergate, Macclesfield, SK11 6BA

- 5 The notice seeks to authorise the sale of alcohol and regulated entertainment at the premises on the 12th August 2023. The Notice setting out the permitted temporary activities is at appendix 1.
- 6 The Council's Environmental Protection Team has submitted an objection notice in respect the Temporary Event Notice. The objection notice is set out at Appendix 2. The objection relates to the prevention of public nuisance objective.
- 7 The premises is an existing licensed premises benefiting from a licence issued under the Licensing Act 2003. The licence, number PREM1349, is set out at appendix 3. The licence was granted following a Hearing of the Licensing Act Sub-Committee on the 17th June 2021. A copy of the decision notice and conditions imposed by the Sub-Committee is attached at appendix 4. The current version of the licence was issued in November 2022 following a transfer application.
- 8 Cheshire Police have not submitted an objection notice.
- 9 Section 104 of the Licensing Act 2003 provides that where a 'relevant person' (i.e. the Chief Officer of Police or the Environmental Health Service) are satisfied that allowing a premises to be used in accordance with a temporary event notice would undermine a licensing objective, that 'relevant person' is required to give a notice ("an objection notice") stating the reasons for being so satisfied.
- 10 Where a licensing authority receives an objection notice it is required, by section 105(2) of the Licensing Act 2003 to:
- a) hold a hearing to consider the objection notice, unless the premises user, the relevant person who gave the notice and the licensing authority agree that a hearing is unnecessary; and
 - b) having regard to the objection notice, give the premises user a counter notice if it considers it appropriate for the promotion of a licensing objective to do so.

- 11 In circumstances where an objection notice has been given (and not withdrawn) and the licensing authority has determined not to give a counter notice under section 105, the authority may impose one or more conditions on the standard temporary event notice if:
- a) the authority considers it appropriate for the promotion of the licensing objectives to do so;
 - b) if the conditions are already imposed on the premises licence that has effect in respect of the premises; and
 - c) the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.
- 12 The effect of issuing a counter-notice would mean that any proposed activities could not take place. If the premises user were to provide licensable activities without an authorisation under the Licensing Act 2003, offences contrary to section 136 of the Licensing Act 2003 would be committed. Upon summary conviction this offence is dealt with by up to six months imprisonment and/or a fine (amount unlimited)
- 13 Any conditions imposed under section 106A of the Licensing Act 2003 can only be a replication of those conditions already present on the premises licence.
- 14 Members should note that the existing licence allows the sale of alcohol to be provided until 19:30 each day. The licence also allows an extension until 21:00 on six occasions a year. The Sub-Committee cannot amend those existing permission at this hearing.
- 15 Members should also note the deregulation of entertainment and the types of entertainment that no longer need authorisation under the Licensing Act 2003.
- 16 The premises user has confirmed their intention to have a DJ playing music until 22:30. DJs are normally considered as playing recorded music. As the premises licence benefits from a premises licence that includes the sale of alcohol for consumption on the premises, this type of entertainment is not considered a licensable activity for the period of the licensable hours (ie until 19:30 or until 21:00 if the relevant permission is exercised) provided that the audience does not exceed 500.

Consultation and Engagement

- 17 Consultation in respect of a Temporary Event Notice is prescribed in the Licensing Act 2003.
- 18 Each notice is sent to both Cheshire Police and Environmental Protection for consultation, acting as relevant persons for the purposes of the Act.

There is no public consultation in respect of these notices and no consultation with other responsible authorities.

- 19 An objection notice can be given within 3 working days. Receipt of an objection notice will trigger a hearing of the Licensing Act Sub-Committee.

Reasons for Recommendations

- 20 The Licensing Act Sub-Committee is required to determine this matter in accordance with the provisions of the Licensing Act 2003 (and subordinate legislation) and the Council's Constitution.

Other Options Considered

- 21 In accordance with the statutory responsibilities placed on the Council, acting as the Licensing Authority under the Licensing Act 2003, there are no other available options.

Implications and Comments

Monitoring Officer/Legal

- 22 There are no other legal implications of this report

Section 151 Officer/Finance

- 23 There are no implications for finance and there will be no direct impact on the Council's MFTS.

Policy

- 24 The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.
- 25 The Licensing Authority must also have due regard to the guidance issued under section 182 of the Licensing Act 2003.
- 26 Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.

Equality, Diversity and Inclusion

- 27 There are no direct equality implications

Human Resources

- 28 There are no human resources implications

Risk Management

- 29 The Licensing Sub-Committee will hear representations made on behalf of both the premises user and the 'relevant person' who has submitted the objection notice and will make a decision on the basis of the evidence presented to it.
- 30 Section 181 and Schedule 5 (part 3) of the Licensing Act 2003 make provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority.
- 31 In respect of this notice, if a Counter-Notice were to be issued the premises user would have no right of appeal. This is in accordance with Scheduled 5 Part 3 para 16 (6) of the Licensing Act 2003.
- 32 Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it is considered desirable to do so. Careful consideration should be given to the notice and objection with a view to appropriately and proportionately promoting the statutory Licensing Objectives.
- 33 The Sub-Committee, in respect of this notice, must have regard to the Guidance issued under Section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy.
- 34 Members are also reminded that in determining the application in accordance with the Licensing Act 2003, Members must also have regard to:
- The rules of natural justice
 - The provisions of the Human Rights Act 1998

Rural Communities

- 35 There are no implications for rural communities

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 36 There are no implications for children and young people

Public Health

- 37 There are no direct implications for public health

Climate Change

- 38 There are no implications for Climate Change

Access to Information	
Contact Officer:	Jennifer Rowney – Senior Licensing Officer licensing@cheshireeast.gov.uk
Appendices:	Appendix 1 – Temporary Event Notice Appendix 2 – Objection Notice Appendix 3 – Premises Licence PREM1349 Appendix 4 – Decision Notice for PREM1349 Appendix 5 – Map of the area
Background Papers:	Revised Guidance issued under section 182 of the Licensing Act 2003 CEC Statement of Licensing Policy adopted under section 5 of the Licensing Act 2003 Licensing Act Sub-Committee 17/06/2021 – Premises Licence Hearing