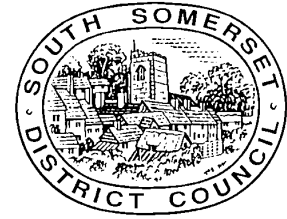


South Somerset District Council

Notice of Meeting



Licensing Sub Committee

Making a difference where it counts

Tuesday 29th November 2016

1.30 pm

**Council Chamber A
Council Offices
Brympton Way
Yeovil
BA20 2HT**



(disabled access and a hearing loop are available at this meeting venue)

Members listed on the following page are requested to attend the meeting.

The public and press are welcome to attend.

If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Jo Morris, Democratic Services Officer**, website: www.southsomerset.gov.uk

This Agenda was issued on Wednesday 23 November 2016.

Ian Clarke, Assistant Director (Legal & Corporate Services)

This information is also available on our website
www.southsomerset.gov.uk



Licensing Sub Committee Membership

Clare Aparicio Paul (Chairman) Crispin Raikes

David Norris

South Somerset District Council – Council Aims

South Somerset will be a confident, resilient and flexible organisation, protecting and improving core services, delivering public priorities and acting in the best long-term interests of the district. We will:

- Protect core services to the public by reducing costs and seeking income generation.
- Increase the focus on Jobs and Economic Development.
- Protect and enhance the quality of our environment.
- Enable housing to meet all needs.
- Improve health and reduce health inequalities.

Members Questions on reports prior to the Meeting

Members of the Committee are requested to contact report authors on points of clarification prior to the Committee meeting.

Information for the Public

The Statutory Licensing Committee has responsibility for all activities under the Licensing Act 2003 and the Gambling Act 2005 except for policies and fees. Established under the Licensing Act 2003, It exercises the functions of the Licensing Authority which itself is the Council.

The Other Licensing Committee can be responsible for all other licensing matters. Established by the Council under discretionary power contained in section 101 of the Local Government Act 1972.

It is lawful for the membership of the two committees to be the same, but they are differently constituted and run under different powers.

Meetings of the Licensing Sub Committee are held as required in the Council Offices, Brympton Way.

Licensing Sub Committee agendas and minutes are published on the Council's website www.southsomerset.gov.uk

The Council's Constitution is also on the web site and available for inspection in council offices.

Further information can be obtained by contacting the agenda co-ordinator named on the front page.

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Licensing Sub Committee

Tuesday 29 November 2016

Agenda

Preliminary Items

1. Declarations of Interests

In accordance with the Council's current Code of Conduct (adopted July 2012), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting. A DPI is defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012 No. 1464) and Appendix 3 of the Council's Code of Conduct. A personal interest is defined in paragraph 2.8 of the Code and a prejudicial interest is defined in paragraph 2.9. In the interests of complete transparency, Members of the County Council, who are not also members of this committee, are encouraged to declare any interests they may have in any matters being discussed even though they may not be under any obligation to do so under any relevant code of conduct.

2. Procedure to be followed under the Licensing Act 2003 when an objection to a Temporary Events Notice (TEN) has been received (Pages 4 - 7)

3. Objection notice received in respect of a standard Temporary Event Notice for The Real China, 66 Middle Street, Yeovil, BA20 1LX (Pages 8 - 11)

Agenda Item 2

Procedure to be followed under the Licensing Act 2003 when an objection to a Temporary Events Notice (TEN) has been received

Pre meeting Prior to the start of the Hearing the Democratic Services Officer will check that any person wishing to address the Sub-Committee is either:

The Notice Giver or their representative
The representative of the Chief of Police or
The representative of the Environmental Protection Service

and is entitled to do so.

Where there is any doubt about the person's eligibility to address the Sub-Committee, the Democratic Services Officer will seek advice from the Legal Officer(s)

1. **The Chairman will introduce:**

- members of the Sub-Committee (which will be made up of three District Councillors)
- the officers present
- the Parties and their representatives (if any)

The Chairman will ask, before starting the Hearing, if any Notices of Objections are being withdrawn.

2. At the start of the hearing **the Chairman will advise: -**

- all Parties of the reason for the Hearing and the procedure to be adopted.
- that where a Party wants another person to appear at the Hearing they must ask permission (under Regulation 8(2)) although such permission will not be unreasonably withheld. No permission is needed where the other person is acting only as the Party's representative.
- that if any Party wishes to ask the Sub-Committee to consider documentary or other information at the hearing, which was not provided before the Hearing, then all Parties must consent.
- that if any Party does not attend or is not represented at the hearing, the Hearing can go ahead but the Sub-Committee will consider the Temporary Event Notice, Notice of Objection and any supporting information from either party received by the statutory deadline.
- that in some circumstances, the Hearing may be adjourned, where the Sub-Committee consider the public interest demands it.

3. **The Chairman will ask each Party to confirm receipt** of the following documents:

- Officer's report relating to the case
- The procedure to be adopted during the Hearing
- That the Notice Giver has received a copy of any objections

- Any queries on the procedure or the factual content of the Licensing Officer's report should be dealt with at this point, with the assistance of the legal officer(s), as required.

4. **The Chairman will then ask** the Licensing Officer to present their report.

5. **The Chairman will inform all present** - that each Party will be given an equal amount of time to put forward their case. This will normally be a maximum of five minutes. However, the Chairman has discretion about the time given to each Party and may vary the time limit where reasonable to do so although reasons will be given and fairness maintained.

6. **The Chairman will invite:**

- The representatives of the Chief of Police and/or the Environmental Protection Service to address the Sub-Committee on matters they have already raised in their Notice(s) of Objection and any supporting information received before commencement of the hearing.

No new information can be presented at the hearing unless all Parties agree; however, where the authority has notified the Party that it requires clarification on any points, this should be provided at this stage.

The Chairman will then invite:

- The Notice Giver to present their case against the Objection Notice(s) to the Sub-Committee

The Chairman will permit a Member to seek immediate clarification of a point made by a Party, their representative or any another person permitted to attend where, prior to this point in the Hearing, circumstances arise which make it desirable to do so, provided that the question is relevant and helps the proper conduct of the Hearing. The rules of natural justice will be followed.

No Cross examination will be permitted without the consent of the Sub-Committee and this will only be given where Committee considers that cross-examination is required for it to consider the Notices and any supporting information.

7. **The Chairman will ask** whether anyone has any further relevant comments to make and whether each Party is satisfied with the conduct of the Hearing.

8. **The Chairman will then invite** Members of the Sub-Committee to ask any questions of any of the Parties or any other person permitted by the Sub-Committee to appear at the Hearing.

9. **The Chairman will check with the legal adviser(s) that all relevant points have been addressed before asking the Parties to leave the room while** the Sub-Committee consider its decision in private. Only the clerk and the legal adviser(s) will remain with the Sub-Committee although only the sub-committee will be making the decision.

10. **Once in private the Chairman will advise the other Members** that they must consider all the information before them in making their decision but will disregard any information which is not relevant to the Notice, and which does not relate to promoting the Licensing Objectives. Members will take account of the Statutory Guidance and the Council's Statement of Licensing Policy. If Members require further information from any Party or any further evidence, they will re-convene the hearing with all Parties able to be present.
11. **The Chairman will ensure, on the Parties return to the Hearing room,** that any legal advice given to the Sub-Committee in private is summarised to the Parties.
12. **The Chairman will notify** all Parties of their decision and the reasons for the decision. The decision will be given orally, at the Hearing, in a plain English format to help those attending the Hearing to understand it more easily. This is not the official written Notice of Decision which will be sent to all of the Parties shortly afterwards. If there is insufficient time to communicate this decision in writing before the temporary event takes place, the decision will be given in full at the hearing.

Where the Sub-Committee is unable to give a decision at the meeting, **the Chairman will advise all Parties when a decision can be expected.** The decision will be sent to all Parties within the timescales set down in the Regulations.

13. **The Chairman will inform all Parties** of their possible rights of appeal.

NOTES

1. A Party is either the Notice Giver or the representative of the Chief of Police and/or the Environmental Protection Service
2. Where an adjournment is granted, the Sub-Committee will notify the Parties forthwith of the date, time and place to which the Hearing has been adjourned.
3. Under no circumstances must the Parties or their representatives offer Members of the Sub-Committee information in the absence of other Parties. Similarly, Members will not attempt to illicit information from any Party to the Hearing in the absence of the others. Members will not make pronouncements on the merits of the case until all the evidence has been heard. These are essential elements of the rules of natural justice.
4. The Chairman may vary this procedure, as circumstances require but will have regard to the rules of natural justice.
5. The Hearing will normally take place in public.

The Sub-Committee may also require a Party to leave the hearing if that Party is behaving in a disruptive manner. The Sub-Committee can refuse to re-admit the Party or re-admit upon conditions but the Party can

nevertheless submit to the Sub-Committee before the end of the Hearing any written information it would have been entitled to submit orally at the Hearing.

6. District Councillors representing the area (District Council Ward) where the applicant lives, or have declared an interest, will not form part of the Sub-Committee.
7. Where any irregularity is brought to the attention of the Sub-Committee during the hearing, the Sub-Committee may, if it feels that a Party has been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure that irregularity before it makes its determination. However, any irregularity from a failure to follow this procedure shall not of itself render the proceedings void and any clerical errors may be corrected.

Agenda Item 3

Objection notice received in respect of a standard Temporary Event Notice for The Real China, 66 Middle Street, Yeovil BA20 1LX

Assistant Director: Laurence Willis
Report Author: Anita Legg – Licensing Officer
Contact Details: anita.legg@southsomerset.gov.uk or 01935 462137

Purpose of the Report

To inform members that a standard temporary event notice has been received under the Licensing Act 2003 from Mr Michael William Cornelius for The Real China, 66 Middle Street, Yeovil BA20 1LX and further that an objection notice have been duly served by Mrs King on behalf of the Chief of Police for Avon & Somerset Constabulary.

Recommendation

To consider the objection notice in accordance with the options detailed later in the report.

Background

A Temporary Event Notice is intended as a light touch process¹ and is submitted to the Licensing Authority by the premises user (an individual 18 years or over) and is copied to the Police and the Environmental Health Service as a means to authorise licensable activities where either:

- no premises licence/club premises certificate exists
- in cases where it is not being used
- where the operating schedule including days and timings do not meet the need of the premises user.

Where an objection notice has been received from either the Police or the Environmental Protection department or both, the Council is the authority responsible for determining the notice under sections 105 and 106A of the Licensing Act 2003.

Licensing Objectives

The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The licensing objectives are to be considered paramount and the Council has a duty to promote them in its decision making process.

Proposed Activities and Hours

SALE BY RETAIL OF ALCOHOL

¹ Paragraph 7.2 of the Guidance issued under s182 of the Licensing Act 2003, March 2015

'On' the premises sales only

Day	Start Time	Finish Time
26 December 2016	19:00	Midnight
27 December 2016	00:01	02:00

Regulated Entertainment was not included within this TEN, although there is mention that there will be live music at the event. It is possible that another TEN will be submitted by another person for the music. The premises could however be defined as a workplace² for up to 500 persons in order to take advantage of the exemption for live music; however it is only applicable between 08:00 and 23:00³.

Maximum Number of persons at event at any one time

150

Nature of Event

Charitable Live Music Event with pay bar

Relevant Observations

The venue is subject to a premises licence; however as the premises licence does not include live music there are no conditions relating specifically to music. The conditions consistent with the operating schedule attached to the licence are as follows:

Prevention of Crime & Disorder

1. There will be no promotion that encourages illegal, irresponsible or immoderate consumption.

Prevention of Public Nuisance

1. Reasonable steps are to be taken to recognise the rights of the local residents and to encourage customers to leave the premises quietly.

Protection of Children

1. The company to ensure that alcohol is not served to people who are underage

Further Information

The mandatory conditions relating to a premises with both 'on' and 'off' sales are also attached to the licence.

Mr Cornelius does hold a personal licence and has advised the following information in the T.E.N:

- The event is only for those persons 18+ (assume he means years);

² Regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992,

³ The Live Music Act 2012 ("2012 Act") <http://www.legislation.gov.uk/ukpga/2012/2>; Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 ("2013 Order") <http://www.legislation.gov.uk/uksi/2013/1578/contents/made>; The Legislative Reform (Entertainment Licensing) Order 2014 ("2014 Order") <http://www.legislation.gov.uk/uksi/2014/3253/introduction/made>; and the Deregulation Act 2015 ("2015 Act").

- There will be two SIA licensed security persons present
- No drinks will be allowed [to be taken] out of the upstairs function room;
- Risk assessments are planned;
- There are multiple fire exits and procedures.
- Only the upstairs of the premises will be used for the event; the restaurant will be closed [during the event].
- A volunteer [will be] taking tickets at only one entrance

The Temporary Event Notice must be determined on its own merit.

Considerations

In determining a temporary event notice with a view to promoting the licensing objectives in the overall interests of the community, the Committee must have regard to and give appropriate weight to the following considerations:

- Any Notice of Objection (including supporting documentation received)
- Guidance issued under s182 of the Act
- The Statement of Licensing Policy published in January 2014
- The steps necessary to promote the licensing objectives
- Human Rights considerations in particular Article 6, Article 8 and Article 1 of Protocol 1
- Temporary Event Notices are to be determined separately upon its own merits

Options

The options available to the committee in this case are as follows:

- Give a counter notice to the premises user so that event cannot proceed
- Permit the event to proceed in accordance with the temporary event notice
- Impose one or more conditions on the temporary event notice that have the same effect as those conditions that are already included on the premises licence

Section 106A of the Licensing Act 2003 permits licensing authorities to impose one or more conditions on a standard temporary event notice if:

- a) the authority considers it appropriate for the promotion of the licensing objectives to do so
- b) the conditions are also imposed on a premises licence or a club premises certificate that has effect in respect of the same premises, or any part of the premises, as the temporary event notice, and
- c) the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.

Right of Appeal

Schedule 5 Part 3 of the Licensing Act 2003 sets out the rights and procedures for making appeals against the decision of the Licensing Authority:

Where the relevant Licensing Authority gives a counter-notice under section 105(3), the premises user may appeal against that decision.

Where that authority decides not to give such a counter-notice a “relevant person” as specified in section 99A of the Licensing Act 2003, may appeal against that decision.

An appeal must be made to the Magistrates’ Court

The appellant commences an appeal under Part 3 of Schedule 5 to the Licensing Act 2003 by giving a notice of appeal to the designated officer for the Magistrates’ court within 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.

But no appeal may be brought later than five working days before the day on which the event period specified in the temporary event notice begins.

On determining the appeal, the court may,

- Dismiss the appeal
- Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority; or
- Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.

and may make such order as to costs as it thinks fit.

Background Papers

The Licensing Act 2003

The Police Reform and Social Responsibility Act 2011

The Licensing Act 2003 (Hearings) (Regulations) 2005 No. 44

Live Music Act 2012

The Licensing Act 2003 (Permitted Temporary Activities) (Notices)(Amendment) Regulations 2012 No. 960

(Descriptions of Entertainment) (Amendment) Order 2013

The Legislative Reform (Entertainment Licensing) Order 2014

The Latest Guidance issued under section 182 of the Licensing Act 2003.

The Statement of Licensing Policy for South Somerset District Council issued January 2014
