

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

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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
