

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 17 July 2024

Report by: Jonathan Geall, Head of Housing and Health

Report title: Consideration of five Temporary Event Notices given for the Dog and Whistle Festival, Hillside Farm, Pepper Hill, Great Amwell, Hertfordshire (24/0978/TEN, 24/0979/TEN, 24/0980/TEN, 24/0981/TEN and 24/0982/TEN)

Ward(s) affected: Great Amwell and Stansteads

Summary

- Five Temporary Event Notices (TENs) have been given by Mr Ricky Harding, the premises user, to allow licensable activity for the Dog and Whistle Festival. Objections have been received from both Hertfordshire Constabulary and Environmental Health in their role as statutory consultees. Where objections are received against a TEN, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide on the licensing activities covered by that TEN. This report is to inform the decision of the Licensing Sub-Committee.

RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

(A) The allowing of licensable activities covered by five Temporary Event Notices be decided.

1.0 Proposal(s)

1.1 Members of the Licensing Sub-Committee should determine licensable activities covered by each notice through consideration of the information contained in this report and appendices combined with submissions made at the Licensing Sub-Committee hearing.

2.0 Background

- 2.1 Under the Licensing Act 2003 the council is the administrative body for TENs. Where a TEN is given by a premises user and no objection is received the authority acknowledges that TEN and the event can take place.
- 2.2 The Police and Environmental Health are the only Responsible Authorities who may object on the grounds of any of the four Licensing Objectives in the Licensing Act 2003. There is no scope in law for public consultation in respect of a Temporary Event Notice.
- 2.3 Where valid objections are received the council's discretion is engaged. A Licensing Sub-Committee has the delegated authority to determine whether or not to allow licensable activities cover by TENs. This decision must be made whilst having regard to the Licensing Objectives, the council's own Statement of Licensing Policy and to statutory guidance issued by the Secretary of State under section 182 of the Licensing Act.
- 2.3 The Licensing Objectives are:
- Prevention of Crime and Disorder
 - Public Safety
 - Prevention of Public Nuisance; and
 - Protection of Children from Harm.

3.0 Reason(s)

- 3.1 The five TENs from Mr Ricky Harding were validated on 1st July 2024. The premises user is seeking to have five TENs in one location to allow a festival to take place for approximately 2,000 people over two days, 20th and 21st July 2024.
- 3.2 The following licensable activities and timings have been requested:

TEN	Licensable Activity	Day	Hours applied for
24/0978/TEN (TEN 1)	Sale by retail of alcohol (for consumption on and off the premises) Provision of regulated entertainment	Saturday and Sunday	12:00 – 22:00

TEN	Licensable Activity	Day	Hours applied for
24/0979/TEN (TEN 2)	Sale by retail of alcohol (for consumption on and off the premises) Provision of regulated entertainment	Saturday and Sunday	12:00 – 22:00
24/0980/TEN (TEN 3)	Sale by retail of alcohol (for consumption on and off the premises) Provision of regulated entertainment	Saturday and Sunday	12:00 – 22:00
24/0981/TEN (TEN 4)	Sale by retail of alcohol (for consumption on and off the premises) Provision of regulated entertainment	Saturday and Sunday	12:00 – 22:00
24/0982/TEN (TEN 5)	Sale by retail of alcohol (for consumption on and off the premises) Provision of regulated entertainment	Saturday and Sunday	12:00 – 22:00

- 3.3 Under national legislation and regulations, each TEN enables a maximum number of people permitted on the premises at one time as 499, which includes any employees or performers. This makes the maximum capacity of the festival 2,495 within the areas providing licensable activity but does not restrict the overall numbers allowed on the site.
- 3.4 All of the TENs given request the same timings and activities but for different areas of the field, a redacted copy of each of the TENs is included for completeness as **Appendix ‘A’, ‘B’, ‘C’, ‘D’ and ‘E’**.
- 3.5 The plan, provided by the premises user, showing the location for each of the TENs is **Appendix ‘F’**.

- 3.6 During the three-day statutory consultation period both Hertfordshire Constabulary and Environmental Health objected to all five TENs. The Environmental Health objection is attached as **Appendix ‘G’** and Hertfordshire Constabulary’s objection is **Appendix ‘H’**.
- 3.7 The objection from Environmental Health suggests that the Prevention of Public Nuisance Licensing Objective would be undermined if each event covered by each TENs is allowed to go ahead without conditions being attached. Hertfordshire Constabulary’s objection suggests that the Prevention of Crime and Disorder and Public Safety Licensing Objectives would be undermined if each event covered by each TENs is allowed to go ahead without conditions being attached.
- 3.8 Both Responsible Authorities reference conditions from a premises licence that is in place for the field where it is proposed that the licensable activities covered by the five TENs will take place. This premises licence (22/0576/PL) is for Stone Valley Festival South and **Appendix ‘E’** contains the annex 2 conditions attached to that licence.

Policy and Guidance

- 3.9 Section 8 of the Policy deals with the Licensing Objectives:

8.1 The Licensing Authority must carry out its functions with a view to promoting the four Licensing Objectives, each of which has equal importance:

- *the Prevention of Crime and Disorder,*
- *Public Safety,*
- *the Prevention of Public Nuisance, and*
- *the Protection of Children from Harm.*

8.2 It is recognised that the licensing function is only one means of securing the delivery of the above Objectives and should not therefore be seen as a means for solving all local problems. The Licensing Authority will therefore continue to work in partnership with all stakeholders and partners towards the promotion of the Licensing Objectives.

8.3 The Licensing Authority expects applicants to address the licensing objectives within their operating schedules, having regard to the nature of the premises, the licensable activities to be provided, operational procedures, and the nature of the location and the

needs of local communities. The operating schedule should contain sufficient information to enable the Licensing Authority, responsible authorities and other persons who may be affected by the operation of the licensed premises to assess whether the steps which will be taken to promote the licensing objectives are sufficient to mitigate any potential adverse impact.

- 3.10 Section 8 of the Policy deals with the “Licensing Objectives” that have been referred to by the Police and Environmental Health.

Paragraphs 8.6 to 8.13 deal with the Licensing Objective of “Prevention of Crime and Disorder”.

Paragraphs 8.15 to 8.19 deal with the Licensing Objective of “Public Safety”.

Paragraphs 8.20 to 8.30 deal with the Licensing Objective of ‘Prevention of Public Nuisance’.

- 3.11 Section 9.0 of the Policy deals with “Stakeholder engagement and representations” and paragraphs 9.10-9.11 deal with a Temporary Event Notice (TEN). This section states:

9.10 The Police and the Council’s Environmental Health team are the only responsible authorities the law requires to be notified of and have the right to object to Temporary Event Notices (TENs). They have an ability to assist the Licencing Authority by making appropriate objections during the consultation period following submission of a TEN.

9.11 The format and content of objections are not defined in legislation or guidance. It would assist the licensing authority in their decision making if responsible authorities could include in their submissions as much of the following information as possible in support of their position:

- *a commentary on past events at the venue / event*
- *any evidence of breaches of relevant statutory requirements*
- *a summary of complaints, if any, from the public concerning the premises*

- 3.12 Chapter 7 of the Home Office-issued ‘[Guidance issued under section 182 of the Licensing Act 2003](#)’ (herein ‘the Guidance’) covers the

arrangements in Part 5 of the Licensing Act 2003 for the temporary carrying on of licensable activities which are not authorised by a premises licence or club premises certificate:

General

7.2 *The system of permitted temporary activities is intended as 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 to the licensing authority of the event (a “temporary event notice” or “TEN”).*

7.6 *The police or EHA [Environmental Health Authority] (“relevant persons” for the purposes of TENs) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.36). If a relevant person sends an objection, this may result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded (see paragraphs 7.15-7.22).*

Role of the licensing authority

7.27 *Where the TEN is in order, the relevant fee paid and the event falls within the prescribed limits, the licensing authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically). The licensing authority must do so, no later than the end of the first working day following the day on which it was received (or by the end of the second working day if it was received on a non-working day), unless an objection notice is received beforehand from the police or EHA on the basis of any of the four licensing objectives (see paragraphs below).*

7.28 *If the licensing authority receives an objection notice from the police or EHA 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. The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. 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 or certificate 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. 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.*

7.30 *In the case of an event authorised by a TEN, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.*

Police and environmental health intervention

7.32 *The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives.*

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.*

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. Following the hearing, the licensing authority may decide to impose conditions which already apply to an existing premises licence or club*

premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings (or appeals) in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.

7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.

Applying conditions to a TEN

7.38 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The licensing authority can only do so:

- if the police or the EHA have objected to the TEN;*
- if that objection has not been withdrawn;*
- if there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;*
- and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.*

7.39 This decision is one for the licensing authority alone, regardless of the premises user's views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

Officer observations

- 3.13 The Dog and Whistle Festival is scheduled to take place on the 20th and 21st July 2024.
- 3.14 As detailed in the Police objection this festival was originally going to take place at a different venue and a premises licence had been applied for in that location. Having been unable to secure permission from the owner for use of their venue, the organiser found the proposed site but no longer had time to apply for a premises licence. Five TENs to cover licensable activity at the event were subsequently received by the Licensing Authority.
- 3.15 TENs are described in the guidance as “*a light touch process*” and are generally not used for licensing larger events such as festivals. However, nothing in the legislation, guidance or regulations prohibits their use in this way.
- 3.16 Both the Police and Environmental Health have made objections and are seeking to add conditions from an existing premises licence to mitigate their concerns. Members are free to attach relevant conditions from the premises licence that is in place if it is considered appropriate for the promotion of the Licensing Objectives.
- 3.17 Paragraph 7.39 of the Guidance states:
- This decision is one for the licensing authority alone, regardless of the premises user's views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.*
- 3.18 Environmental Health are seeking to attach eight conditions to address their concerns and the Police are seeking to add 16 conditions, from the premises licence, to the licensable activities for which the TENs have been given.
- 3.19 Given that the event is taking place a few days after the hearing members may wish to ask the premises user what, if any, preparations

they have made to comply with the proposed conditions if the Licensing Sub-Committee is minded to attach all or some of them.

- 3.20 Members are reminded that the conditions on the existing premises licence are not bespoke to this event. That said, there is no option under the legislation to add *specific* conditions for this festival under the TEN regime, so members need to be satisfied that the conditions suggested are adequate to address concerns and that they are achievable by the premises user.
- 3.21 None of the suggested conditions deal with how the premises user will control access to each area covered by each individual TEN, given that a TEN may only cover 499 people consisting of staff, performers and those attending. With two TENs covering each of the two stage, there is thus a maximum of 998 people that should be able to watch the regulated entertainment on any particular stage. So, with the potential to have 2,500 or more people on site, member may wish to ask the organiser what measures have been put in place should they be faced with all the attendees wanting to watch the same stage at the same time?
- 3.22 Members need to satisfy themselves that there will be adequate measures in place to ensure that the limitations of the TENs are not exceeded. However, as any measures the premise user states will be in place cannot be conditioned, members must also be confident that it is more likely than not that the premises user will do what they say.
- 3.23 Members should consider if they believe the premises user has provided evidence that the licensable activities covered by the TENs, if allowed, would promote, and not undermine, the Licensing Objectives. This evidence should be balanced against the evidence given by those objecting to the TENs.
- 3.24 If the Sub-Committee believes that allowing the licensable activities covered by the TENs would promote the Licensing Objectives, then the TENS, should be allowed as requested.
- 3.25 If the Sub-Committee believes that allowing the TENs as submitted would not promote the Licensing Objectives, then the starting point should be to consider if there are conditions *on the existing premises licence* that could be added to mitigate concerns.
- 3.26 In considering the application of existing premises licence conditions, members should decide whether these steps would in fact address the

concerns raised if the decision was made to allow the hours and activities as requested.

- 3.27 Aside from adding conditions, it is open to members to limit the hours of operation and/or activities further but clear reasons for this step would need to be given.
- 3.28 However, if adding conditions and/or limiting the hours or area beyond those requested does not mitigate members' concerns regarding the promotion of the Licensing Objectives then the licensing activities TENs should be disallowed.
- 3.29 Put in its simplest terms, what are the minimum measures that can be put in place to address concerns? Refusal of the event's licensable activities covered by the TENs should be the last option considered.
- 3.30 When the Licensing Sub-Committee gives its decision to those in attendance it should be made clear to all parties how much weight has been attached to each submission and why and what evidence members have relied upon when reaching their decision. A decision should be given for each individual TEN:
- 24/0978/TEN
 - 24/0979/TEN
 - 24/0980/TEN
 - 24/0981/TEN
 - 24/0982/TEN
- 3.31 The comments, observations and suggestions contained within the body of this report and associated appendices do not fetter the Sub-Committee's discretion to reach the decision they believe is most appropriate when considering all the merits of the individual case.

4.0 Options

4.1 The actions open to the Licensing Sub-Committee are:

- allow the licensable activities as applied for by some or all the TENs as submitted; or
- allow the licensable activities as applied for by some or all the TENs but at the same time impose conditions *from the existing*

premises licence and/or amend the activities or times requested; or

- if members believe that there is evidence that shows that there are no steps that can be taken to ensure that the TENs sought would promote the Licensing Objectives then the licensable activities covered by the TENs should not be allowed.

4.2 As stated in the Guidance, the council's decision should be evidence based, justified as being appropriate for the promotion of the Licensing Objectives and proportionate to what it is intended to achieve.

5.0 Risks

5.1 A decision on the TENs must be made and any decision made can be appealed at the Magistrates' Court. Therefore, the Licensing Sub-Committee should ensure that when giving their decision on the application they give clear reasons on how and why they have made their decision. In doing so, the council's ability to defend its decision is strengthened and the risk of its decision being over-turned on appeal is lessened, although, of course, this risk can never be entirely removed.

6.0 Implications/Consultations

6.1 As with any TEN, a three working day consultation was undertaken with the Police and Environmental Health.

6.2 The three-day consultation commenced on 1st July 2024 and ended on 4th July 2024.

Community Safety

6.3 The report details the three of the four Licensing Objectives on which objections have been based therefore Community Safety will be considered when determining the application.

Data Protection

6.4 Where the appendices have shown personal data, this has been redacted.

Equalities

6.5 Consideration has made to the Equality Act 2010 and the Public Sector Equality Duty in this report and will be considered during the Licensing Sub-Committee hearing.

Environmental Sustainability

6.6 No

Financial

6.7 There will be a cost to the authority in holding the Licensing Sub-Committee hearing; this will be covered by the existing budget. There would be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrates' Court and the authority chooses to defend that appeal.

Health and Safety

6.8 No

Human Resources

6.9 No

Human Rights

6.10 As with all applications and Council functions, the Human Rights Act 1998 has been considered in this report and will be considered during the Licensing Sub-Committee hearing.

Legal

6.11 All statutory requirements have been considered in preparing this report.

Specific Wards

6.12 Yes – Great Amwell and Stansteads

7.0 Background papers, appendices, and other relevant material

7.1 Revised Guidance issued under section 182 of the Licensing Act 2003 (December 2023) - <https://www.gov.uk/government/publications/explanatory->

[memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003](#)

- 7.2 East Herts Statement of Licensing Policy 2021-2026
<https://cdn-eastherts.onwebcurl.com/s3fs-public/2022-03/Statement%20of%20Licensing%20Policy%202021-26%20Mar%202022.pdf>
- 7.3 **Appendix ‘A’** – Temporary Event Notice
- 7.4 **Appendix ‘B’** – Site plans
- 7.5 **Appendix ‘C’** – Environmental Health objection
- 7.6 **Appendix ‘D’** – Police objection
- 7.7 **Appendix ‘E’** – Premises licence conditions

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