



Oldham
Council

Licensing Panel

Licensing Act 2003 Temporary Event Notice

M35 Music – Music Event – Austerlands Cricket Club, Thorpe Road, Oldham, OL4 3QW

Report of Executive Member for: Neighbourhoods

Officer contact: David Smith
Ext. 3472

7th August 2018

Reason for Decision

The purpose of this report is to inform Members of a Temporary Event Notice which has been served on the Council in relation to a music event by M35 Music in a Marquee on the Cricket Pitch of Austerlands Cricket Club, Thorpe Road, Oldham which, due to representations being received, has been referred to this Panel for determination.

Recommendations

Members are recommended to consider the application, taking into account the representations received.

Licensing Act 2003 – Temporary Event Notice**M35 Music (Stephen O'Mara) – Marquee on the Cricket Pitch of Austerlands Cricket Club, Thorpe Road, Oldham****1 Background**

- 1.1 The purpose of this report is to inform Members of a Temporary Event Notice which has been served on the Council in relation to a music event by M35 Music in a Marquee on the Cricket Pitch of Austerlands Cricket Club, Thorpe Road, Oldham which, due to representations being received, has been referred to this Panel for determination pursuant to Section 105 of the Licensing Act 2003.
- 1.2 The event itself initially came to light when the Licensing Authority were made aware of the event following complaints received from local residents. The event had been advertised on social media as being a music event due to commence at 12:00hrs Sunday 26th August 2018, ending at 04:00hrs Monday 27th August 2018. No authorisations had been sought, nor granted for the licensable activities detailed in the event.
- 1.3 Following being made aware of the event, the organiser, Mr Stephen O'Mara (the applicant) and a representative of Austerlands Cricket Club were invited to the Licensing Office to meet with an officer of the Licensing Authority and the Police Licensing Officer to discuss the overall concerns of the proposed event and the unauthorised licensable activity element of the proposed event. This meeting took place on the 26th June 2018.
- 1.4 Following the serving of the Temporary Event Notice on the 24th July 2018, a further mediation meeting was held on the 26th July 2018 between the event organisers, the Licensing Authority, Police and Environmental Health. The Police and Environmental Health provided the applicant with a compromise (see para 3.6) to the times of the event.
- 1.5 This compromise was not accepted by the applicant.

2 Recommendations

- 2.1 Members are asked to consider the notice, taking into account the representations received.

3 The Notice

- 3.1 On the 24th July 2018, the applicant, Mr Stephen O'Mara of M35 Music, served a Temporary Event Notice for the premises named above.
- 3.2 Details of the licensable activities and the times applied for are as follows:-

Licensable Activity	Days & Times	
Supply of alcohol by or on behalf of a club to, or to the order of, a member of the club (on the premises)	Sunday 26 th August 2018	12:00 – 00:00

Provision of Regulated Entertainment	Sunday 26 th August 2018	12:00 – 00:00
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- 3.3 The premises/marquee on the Cricket Pitch named in the temporary event notice currently holds no authorisations for licensable activities.
- 3.4 A copy of the notice (redacted) is attached at **Appendix 1**.
- 3.5 Supporting documentation from the applicant has been supplied and is listed as follows:
- **Appendix 2** – Risk Assessment for Marquee
 - **Appendix 3** – Insurance for Marquee
 - **Appendix 4** – Map/Site plan
 - **Appendix 5** – Noise Level Information Letter
 - **Appendix 6** – Event Risk Assessment
 - **Appendix 7** – General Risk Assessment
- 3.6 The compromise that Police and Environmental Health delivered to the applicant was a 23:00hrs finish to licensable activities in the Marquee. This was with a view to a desire of the applicants wanting to provide a VIP after-party for a limited number of guests who have attended the music event in the Austerlands Cricket Club clubhouse, which is authorised by a Premises Licence. A further TEN would be required to be served for an extension to the times authorised by the Premises Licence and the compromise delivered by the Police and Environmental Health was a 02:00hrs finish to licensable activities as opposed to a 03:00hrs finish as sought by the applicant. It is relevant to note that the 'after-party' element forms no part of this determination.

4 **Representations**

- 4.1 There have been two objections to the notice served on the Licensing Authority, one by the Environmental Health Team, and one by Greater Manchester Police, they are attached as **Appendix 8** and **9** respectively.
- 4.2 The reasons for the objection from Environmental Health are:-
1. A concern that the application for the playing of both recorded and live music outdoors in a marquee until midnight has the potential to cause serious problems to the local residents in terms of noise nuisance.

The reasons for the objection from Greater Manchester Police are:-

1. A concern the event will impact upon the local community and lead to an increased risk of crime & disorder as well as anti-social behaviour.

5 **Licensing Policy**

- 5.1 Members considering this application should take note of the Authority's Licensing Policy Statement when determining an application, particularly Section 8 (page 13 onwards) with reference to Public Nuisance.
- 5.2 Members should consider the impact of the licensing objectives on the local community.

6 **Secretary of States Guidance**

- 6.1 Chapter 7 of the Secretary of States Guidance from April 2018 relates to Temporary Events. Section 7.32 to 7.36 state:
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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 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.
- 7.36 However, in most cases, where for example, alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (such as at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

Modification

- 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. There is no scope under the 2003 Act for the modification of a late TEN.

- 6.2 The Guidance then goes on to advise on the imposition of conditions.

Applying conditions to a ten

- 7.38 The 2003 Act provides that only the licensing authority can impose conditions from the existing conditions on the premises licence or club premises certificate to a TEN. The licensing authority can only do so:
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- if the police or the EHA have objected to the TEN;
 - if that objection has not been withdrawn;
 - 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.

6.3 A copy of the Secretary of State's Guidance will be available at the hearing.

7 Options for the Panel

7.1 When determining the Notice Members having regard to the representations, may take such steps as they consider appropriate for the promotion of the licensing objectives. The steps are -

- Confirm the notice as served on the Licensing Authority
- To reject the notice and issue a counter notice

7.2 Any steps appropriate to promote the licensing objectives should be specified. If no steps are appropriate the notice should be granted.

7.3 Findings on any issues of fact should be on the balance of probability.

7.4 In arriving at a decision Members must have regard to the relevant provisions of national guidance and the licensing policy statement and reasons must be given for any departure.

7.5 The decision should be based on the individual merits of the case.

8 Consultation

8.1 Consultation in accordance with the Act has taken place with the Police and Environmental Health Team.

9 Legal Services Comments

The Panel may reject the application and issue a counter notice if it considers it appropriate for the promotion of a licensing objective to do so. The applicant has a right of appeal to the magistrates court against the issue of a counter notice. In dealing with the application the Panel must have regard to the Secretary of State's Guidance. (A Evans)

10 Environmental and Health & Safety Implications

10.1 Such implications are covered by the objection made by Environmental Health and within the Councils Statement of Licensing Policy

11 Equality, community cohesion and crime implications

11.1 The Council's 'Statement of Licensing Policy' takes into account these matters. All decision made by the Licensing Panel, must have regard to this policy and National Guidance.

12 Equality Impact Assessment Completed?

12.1 No

13 **Background Papers**

13.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

File Ref: Records held in Directorate
Officer Name: David Smith
Contact No: 0161 770 3472

14 **Appendices**

Appendix 1 – the Temporary Event Notice (redacted)

Appendix 2 – Risk Assessment for Marquee

Appendix 3 – Insurance for Marquee

Appendix 4 – Map/Site plan

Appendix 5 – Noise Level Information Letter

Appendix 6 – Event Risk Assessment

Appendix 7 – General Risk Assessment

Appendix 8 – Objection from Environmental Health

Appendix 9 – Objection from Greater Manchester Police
