

REPORT TO:	LICENSING ACT 2003 SUB-COMMITTEE
DATE:	17 MARCH 2022
SUBJECT:	TEMPORARY EVENT NOTICES (TENS) – PREMIER STORE, 103-105 NEWMARKET, LOUTH, LN11 9EG
PURPOSE:	To consider objection notices issued by Lincolnshire Police regarding two TENSs for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
KEY DECISION:	Not Applicable.
REPORT OF:	Service Manager – Safer Communities
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer)
WARD(S) AFFECTED:	Louth
EXEMPT REPORT?	The content of this Report is not exempt from publication.

SUMMARY

This Report considers objection notices made by Lincolnshire Police in relation to two Temporary Event Notices (TENSs) served by Mr Janushanth Thuraisingam (the premises user) for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG. The TENSs seek to authorise the sale of alcohol (for consumption off the premises) at the store during the following period:

- Tuesday 22 March to Sunday 27 March 2022
- Tuesday 29 March to Sunday 03 April 2022

The proposed event periods will be from 0700 to 2300 Hours each day.

RECOMMENDATIONS

The Sub-Committee must consider the objection notices issued by Lincolnshire Police and having regard to the notices, give the premises user a counter notice (under Section 105 of the Licensing Act 2003) in relation to the Temporary Event Notices (TENSs) if it considers it necessary for the promotion of a licensing objective to do so. Such counter notice would have the effect of cancelling the TENSs.

If the Sub-Committee considers that it is not necessary to issue a counter notice, then the Licensing Authority should take no action.

REASONS FOR RECOMMENDATIONS

The Licensing Authority must hold a hearing to consider the objection notice unless all parties agree that a hearing is unnecessary.

All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003.

OTHER OPTIONS CONSIDERED

Under the terms of the Licensing Act 2003 this Authority must consider the objection notice. There is no other option but to undertake the hearing – unless of course the objection notice or the TEN is withdrawn.

1. BACKGROUND

1.1. Temporary Event Notices (TENs): The premises user intends to carry on the following activity during the currency of the notices - sale of alcohol (for consumption off the premises). The convenience store (subject of the TENs) does not currently hold a premises licence for the sale of alcohol (see Paragraphs 2.5 to 2.7 of this Report).

1.2. Premises User Details:

Premises User: Mr Janushanth Thuraisingam

Premises: A convenience store known as Premier Store (previously known as Costcutter), 103-105 Newmarket, Louth, LN11 9EG. A plan showing the location of the Premier Store is attached at **Appendix A** of this Report. Copies of the Temporary Event Notices (TENs), subject of this Report, will be available at the hearing for Members to inspect should they wish to do so. A site plan of the store is attached at **Appendix B**.

1.3. The TENs seek to authorise the sale of alcohol (for consumption off the premises) during the following periods:

- Tuesday 22 March to Sunday 27 March 2022
- Tuesday 29 March to Sunday 03 April 2022

The proposed event periods will be from 0700 to 2300 Hours each day.

1.4. Mr Janushanth Thuraisingam has indicated on the TEN forms that he does not currently hold a personal licence. Therefore, under the terms of the Licensing Act 2003 he may only serve 5 TENs during the calendar year.

2. REPORT

- 2.1. As required under the terms of the Licensing Act 2003 the TENs have been copied to Lincolnshire Police and the Council's Environmental Health Team. Lincolnshire Police have issued an objection to the TENs. Under the terms of the 2003 Act the Licensing Authority must now hold a hearing to consider the objection notice. Such a hearing must normally commence within 7 working days of the closing date for objections.
- 2.2. Copies of the notices of objection, issued by Lincolnshire Police, are attached at **Appendix C** of this Report.
- 2.3. Section 104 of the 2003 Act requires that the Police and the Environmental Health Team serve any objection notice on the Licensing Authority and the premises user within three working days of receipt of the TEN. The objection notices have been served within the requisite three working day period.
- 2.4. The Police's objection notices have been issued on the grounds of public safety, the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm licensing objectives.
- 2.5. The store does not currently hold a premises licence. A premises licence was previously held at the store - however, that premises licence was revoked by a Licensing Sub-Committee hearing held on 14 July 2021. The revocation decision was not appealed to the Magistrates Court. The decision notice from 14 July 2021 premises licence review hearing is attached at **Appendix D** of this Report.
- 2.6. The premises licence review held on 14 July 2021 related to an illegal worker who was found to be working at the premise. In addition, the Sub-Committee heard details from Lincolnshire Police of other issues initially encountered at the premises during a compliance visit, namely:
 - stock without price labels,
 - staff were unable to work the CCTV,
 - CCTV operating not in accordance with requirements,
 - no written authorisation from the Designated Premises Supervisor (DPS) for other staff to sell alcohol.
- 2.7. The Sub-Committee noted how there had been some improvements undertaken at the premise following this first Police visit:
 - price labels were now shown,
 - staff were able to work the CCTV,
 - a written authorisation was now in place,
 - along with some evidence of staff training.
- 2.8. The Licensing Sub-Committee must only issue a counter notice (effectively cancelling the TENs - pending any available appeal to the Magistrates Court) if it is persuaded by the

Police that it is appropriate to do so in order to promote one or more of the licensing objectives.

2.9. **Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003:** It is considered that the extracts from the national guidance, shown at **Appendix E** of this Report, have a bearing upon the TEN review.

2.10. The Home Office Section 182 Guidance indicates that the Police should usually be the Licensing Authority's main source of advice on matters relating to the prevention of crime and disorder licensing objective. However, the Police must ensure that their representations can stand up to scrutiny at a licensing hearing. The relevant section of the Home Office Guidance is detailed below:

THE ROLE OF RESPONSIBLE AUTHORITIES

Paragraph 9.12 - Each Responsible Authority will be an expert in their respective field, and in some cases, it is likely that a particular Responsible Authority will be the Licensing Authority's main source of advice in relation to a particular licensing objective. For example, the Police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The Police should usually therefore be the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any Responsible Authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing Authorities must therefore consider all relevant representations from Responsible Authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all Responsible Authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

2.11. **Local Policy Considerations:** It is considered that the extracts from the Local Policy, shown at **Appendix F** of this Report, have a specific bearing upon the TEN review.

3. CONCLUSION

3.1. The Licensing Act 2003 sets out options which the Licensing Authority can utilise in order to promote the licensing objectives following the consideration of a TEN. The licensing objectives are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

3.2. Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CORPORATE PRIORITIES

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

STAFFING

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

- 1.** Part 5 of the Licensing Act 2003 restricts objections to TENs to the Police and the Council's Environmental Health Team. The Police and/or the Environmental Health Team may object on the ground that they are satisfied that allowing the premises to be used in accordance with the notice would undermine one or more of the licensing objectives. In such circumstances, the Police and/or the Environmental Health Team must give an objection notice to the Licensing Authority and the premises user stating the reasons why they are so satisfied.
- 2.** The Police, the Environmental Health Team and the premises user may agree modifications to the TEN.
- 3.** Unless the premises user, the Police, the Environmental Health Team and the Licensing Authority agree that a hearing is unnecessary, or the TEN is modified as indicated above, the Licensing Authority is required to hold a hearing to consider the objection notice.
- 4.** The Sub-Committee, in considering the objection to the TEN, must have regard to the Authority's Licensing Policy, the guidance issued by the Home Office and the evidence before it at the hearing.
- 5.** The Sub-Committee cannot modify the TEN in any shape or form; only the Police, the Environmental Health Team and the premises user can agree to modify the TEN. If the Police, the Environmental Health Team and the premises user do not agree to modify the TEN then the Sub-Committee must consider the TEN in the format that it was made.
- 6.** If the Sub-Committee decide to issue a counter notice (cancelling the TEN) then it must also give the premises user, the Environmental Health Team and the Police a notice stating a reason for its decision. In deciding to issue a counter notice the Sub Committee must have regard to the objection notice and only issue such a counter notice if it considers it appropriate for the promotion of a licensing objective to do so (Paragraph 105 (2)(b) of the Licensing Act 2003 refers). The licensing objectives are:
 - The prevention of public nuisance
 - Public safety
 - The prevention of crime and disorder

- The protection of children from harm

7. Both the premises user, the Environmental Health Team and the Police may appeal a decision made by the Sub-Committee, regarding a TEN, to the Magistrates Court. However, Part 3 (6) of Schedule 5 of the Licensing Act 2003 states:

No appeal may be brought later than five working days before the day on which the event period specified in the TEN begins.

Therefore, there is not enough time for an appeal to be submitted in respect of the first TEN subject of this Report.

8. The Licensing Act 2003 does not permit the Licensing Authority to attach conditions to TENs of this type.

DATA PROTECTION

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

FINANCIAL

This TEN review is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved. The premises user must pay a fee of £21.00 in relation to each TEN submitted to the Licensing Authority.

As with all licence applications it is possible that if a Licensing Committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

RISK MANAGEMENT

There is a theoretical risk of civil action against the Licensing Authority if it is found not to have exercised due diligence in licensing matters.

STAKEHOLDER / CONSULTATION / TIMESCALES

The objection notices have been served within the requisite three working day period.

REPUTATION

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CONTRACTS

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CRIME AND DISORDER

All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

Equality Implications: There are no equality implications arising from the recommendations of this Report.

Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The premises user is entitled to a fair hearing; Article 6 of the European Convention on Human Rights applies.

Safeguarding Implications: There are no specific safeguarding implications arising from the recommendations of this Report.

HEALTH AND WELL BEING

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

ACRONYMS

TEN – Temporary Event Notice.

APPENDICES	
Appendices are listed below and attached to the back of the report: -	
APPENDIX A	Location plan of Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX B	Internal Plan of Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX C	Objection Notice submitted by Lincolnshire Police in respect of the TEN for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX D	Decision Notice – Revocation of the premises licence for the Premier Store, 103-105 Newmarket, Louth, LN11 9EG.
APPENDIX E	Extracts from the Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003.
APPENDIX F	Extracts from the Local Licensing Policy Statement.

BACKGROUND PAPERS	
Background papers used in the production of this report are listed below: -	
Document title	Where the document can be viewed
Guidance issued by the Home Office to Licensing Authorities under Section 182 of the Licensing Act 2003	https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003

The Council's Statement of Licensing Policy adopted under the Licensing Act 2003.	https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

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