

Report of	Meeting	Date
Deputy Chief Executive/Director of Early Intervention and Support	Licensing Act 2003 Sub-Committee	10 August 2017

**TO DETERMINE A TEMPORARY EVENTS NOTICE RECEIVED FROM APPLEJAX NIGHTCLUB CHORELY FOLLOWING OBJECTION TOWARDS THE NOTICE MADE UNDER SEC 104 OF THE LICENSING ACT 2003 RECEIVED FROM LANCASHIRE CONSTABULARY ON THE GOUNDS OF CRIME PREVENTION.**

**PURPOSE OF REPORT**

- To ask Members to determine representations received from the Chief Officer of Police in relation to a Temporary Events Notice

**RECOMMENDATION(S)**

- Members are recommended to consider the contents of the report and any representation received from Mr Peter Verhaege and Lancashire Constabulary and determine the Temporary Events Notice.

**EXECUTIVE SUMMARY OF REPORT**

- Officers received a Temporary Events Notice (TEN's) made by Mr Verhaege on 28 July 2017. Officers are satisfied the TEN's was served in accordance with Part 5 of the Licensing Act 2003. Officers received representation towards the said TEN's on 2 August 2017 made by Lancashire Constabulary in accordance with Section 105 of the Licensing Act 2003. The Licensing Authority must hold a hearing to consider the objection notice unless Lancashire Constabulary, the premises user and the Licensing Authority agree that a hearing is unnecessary.

<b>Confidential report</b> Please bold as appropriate	Yes	No
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**CORPORATE PRIORITIES**

- This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities	X	An ambitious council that does more to meet the needs of residents and the local area	

## BACKGROUND

5. Officers received a Temporary Events Notice (TEN's) made by Mr Verhaege on 28 July 2017, the notice details additional hours for Applejax Nightclub, at 1 Backmount Chorley for the period; 03.30 – 06.00 hours on the following days; Saturday 26, Sunday 27 & Monday 28 of August.
6. Officers are satisfied the TEN's was served in accordance with Part 5 of the Licensing Act 2003. The Temporary Events Notice is attached as **Appendix 1**.
7. Members will be aware that Applejax Nightclub has enjoyed a premises licence for a considerable number of years and pre-dates the Licensing Act 2003. The current Premises Licence PLA0281 was granted on 13 October 2005 following a hearing to determine an application made at that time under the Licensing Act 2003 transitional arrangements. The Premises Licence is attached as **Appendix 2**.
8. Officers received representation towards the said TEN's on 2 August 2017 from the Chief Officer of Lancashire Constabulary. The Substance of the representation states;  
  
"Police believe that with increased hours and the increase in customer footfall on this Bank Holiday weekend, (that include payday weekend), crime and disorder will inevitably occur at the premises and immediate surroundings and believe that the longer the premises are open with fewer Police resources at this time of day the public will be less safe."  
The representation is attached as **Appendix 3**.
9. In response to the representation received officers contacted the applicant Mr Verhaege on the same day to establish if he would consider any amendment to the application that might satisfy the Chief Officer of police, or withdraw the application.
10. Mr Verhaege was insistent that the Event should go ahead, pointing out that the premises had benefited from many previous TEN's made in a similar nature over a number of years without incident. Mr Verhaege did offer to employ 1 additional SIA licensed door staff to be present on the additional hours sought for the period 03.30 – 06.00 on 28 August 2017 to address the concerns raised by the police in relation to the TEN sought. The applicant believes this action is reasonable and proportionate given the experiences of past August bank holiday trade, as the Sunday evening / Monday morning is the only part of that weekend where he may expect an increase in trade. The applicant states that the premises have a robust reputation promoting a zero tolerance towards crime and disorder working closely with the Police and the Town Centre CCTV team. Mr Verhaege states the premises track record over many years is an example of exemplary industry practice.
11. Licensing records indicate that the Licensing authority have received 18 Temporary Event Notices dating back to December 2012 many of which sought authority to extend the licensable activity for a number of days over bank holidays ,this being similar to the TEN's detailed above. Officers are unaware of any representations being received in relation to any previous TEN's sought in relation to Applejax.
12. Officers are unaware of any concerns in relation to crime and disorder being raised by the Police to the Licensing Authority in relation to Applejax. Lancashire Constabulary did raise an issue in relation to a TEN's served by Mr Verhaege for the 28 May 2017 to extend the licensable activity for Applejax, on that occasion the timings of the TEN inadvertently left a 30 minute gap between the end of normal licensable permissions and the start time of the Tens. This was viewed as an administrative issue on behalf of the applicant, subsequent TENs have been received with no representation being received from either Lancashire Constabulary or the Council's Environmental Health team.

13. Officers understand that Lancashire Constabulary have a number of incidents relating to Applejax that support the representation received, the incident logs will be made available at the hearing.
14. Legal Implications  
Pursuant to the provisions of section 105(2)(a) of the Licensing Act 2003, the Licensing Authority must hold a hearing to consider the objection notice, unless all parties (i.e. - the premises user, the relevant person who gave the objection notice and the licensing authority) agree that a hearing is unnecessary. The hearing must be held in accordance with the provisions of the Licensing Act 2003 (Hearings) Regulations 2005.
15. The Licensing Committee is required to give appropriate weight to the objection (including supporting information), the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's statement of licensing policy and the steps that are appropriate to promote the licensing objectives.
16. Having considered those relevant matters and the objection notice, the Licensing Committee is required to do one of the following:
  - a. Give the premises user a counter notice (prohibiting the event) if it considers it appropriate for the promotion of a licensing objective(s) to do so, and a notice stating the reasons for its decision, and give each relevant person (police and environmental health authority) a copy of both these notices;
  - b. Decide not to give a counter notice, giving notice of this decision to the premises user and each relevant person (police and environmental health authority).
17. It should be noted with these options that clear reasons should be given to the parties for the decision to issue or not to issue a counter notice.
18. In the case of TEN in respect of a premises for which there is already a premises licence (or club premises certificate) in place, the licensing authority can impose conditions from the existing premises licence or club premises certificate if:
  - the police or environmental health authority have objected to the TEN(s)
  - the objection has not been withdrawn
  - the relevant licensing authority has decided under section 105 of the Licensing Act 2003 not to give a counter notice
  - it considers that imposing the conditions would be appropriate to promote the licensing objectives
  - the conditions would not be inconsistent with the carrying out of the licensable activities under the TEN
19. Where the licensing authority decides to impose conditions, the Licensing Act 2003 and relevant regulations set out the manner in which these must be notified to the premises user.
20. In addition to determining the application in accordance with the legislation, Members must also have regard to the following –
  - The common law rules of natural justice.
  - The provisions of the Human Rights Act 1998.
  - The considerations in section 17 of the Crime and Disorder Act 1998 as below:

'Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

21. Officer understand that when Applejax have in the past extended their licensable provision's by way of a TEN's, the premises is managed using the existing conditions of the Premises Licence as attached.
22. Mr Verhaege and Lancashire Constabulary have been sent on 3 August the Notice of hearings pursuant to Licensing Act 2003 (Hearings) Regulations 2005. Schedule 1. Copies of the notices are attached as **Appendix 4**.

#### IMPLICATIONS OF REPORT

23. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

#### COMMENTS OF THE MONITORING OFFICER

24. The procedure for considering an objection to a Temporary Event Notice and the Council's powers to make a decision to issue a counter notice (preventing the event taking place) or to allow the event (and attach one of the existing conditions attached to the premises licence) are addressed within the body of the report. The report also mentions that the Council must have regard to the section 182 guidance issued by the Home Office and the Council's own licensing policy. The event must not be for more than 168 hours and the maximum number of persons in attendance must be less than 500, including staff and performers. The police may appeal the decision not to issue a counter notice and the premises user may appeal a counter notice. Both appeals are made to the magistrates' court. No appeal may be brought later than five working days before the temporary event begins.

JAMIE CARSON  
DEPUTY CHIEF EXECUTIVE / DIRECTOR OF EARLY INTERVENTION & SUPPORT

Background Papers			
Document	Date	File	Place of Inspection
Licensing Act 2003, Secretary of State Section 182 Guidance The Council's Statement of Licensing Policy	April 2017	*	

Report Author	Ext	Date	Doc ID
Mr S Culleton	5665	7 August 2017	

