

**Report of Application:**

Temporary Event Notice for Memling's Grill and Restaurant, The Agora Centre, Wolverton

**Application Reference No:** 142384

**1. Summary of Application**

1.1 A Temporary Event Notification (TEN) has been given to the Licensing Authority by Sasa Lama for a weekend event at Memling's in Wolverton covering Friday 27 to Sunday 29 January 2017. The TEN is for the indoor supply of alcohol, provision of regulated entertainment and late night refreshment. The premises tend to operate as a restaurant and dance venue and the timings concerned as follows:

(a) Friday 27 January 2017

13:00hrs to 02:00hrs on the morning of Saturday 28 January 2017

(b) Saturday 28 January 2017

13:00hrs to 02:00hrs on the morning of Sunday 29 January 2017

(c) Sunday 29 January 2017

14:00hrs to 23:45hrs

1.2 A copy of the TEN concerned is provided at **Annex A**.

**2. Existing Activities**

2.1 The premise no longer holds a premises licence. This was revoked in May 2016 by the Council due to a series of issues arising. A summary of why this was is provided at **Annex B** as the decision notice at the time. Following the revocation the premises appealed the decision and continued to operate (as they were entitled to do) until the case was to be heard in the Magistrates Court. In September 2016 the licence holder ceased to exist as a legal entity and the licence was deemed lapsed by the Authority irrespective of the pending appeal. However this was contested by the licence holder and was subject to further arranged Court hearings. However, in November 2016 a few days before the first appeal hearing proper the appeal to the revocation was withdrawn and the licence was deemed revoked and lapsed.

**3. Background information**

3.1 Since the licence ceased, the premises user (Sasa Lama) who was the Designated Premises Supervisor on the previous premises licence has given

a series of Temporary Event Notices at the premises covering most weekends.

- 3.2 There is a limit on the number of days that Temporary Event Notices can cover in a calendar year and the limit was exceeded for 2016 resulting in a Counter Notice being served on one occasion (see **Annex C**). There was also two occasions when TENs was objected to by the Police in terms of hours which led to agreed amendments and a further TENs given on 30 December was rejected for being received after the latest date allowed for by the legislation.
- 3.3 In January the situation has continued as per December with Sasa Lama submitting a series of TENs for weekends in January.
- 3.4 A spreadsheet is provided at **Annex D** to demonstrate the situation since the premises licence finally ceased but in effect most TENs have not been objected to.
- 3.5 Individual premises may only have 21 days of licensable activity a year using TENs and, including this contested notification, thirteen of those have already been used.
- 3.6 There are limited controls over the use of TENs because the system is designed to be 'light touch'. Only the Chief of Police and/ or Environmental Health may object to a TEN. In this instance the Police have objected on grounds of crime and disorder because the premises has been identified as carrying out licensable activities without a TENs in place over the weekend of 6 to 8 January 2017.
- 3.7 Where a standard TEN is objected to, the matter is referred for a hearing and a Licensing Sub-Committee will then determine whether to:
  - (a) issue a counter notice preventing the event from going ahead; or
  - (b) take no action and reject the objection notice (allow the event to go ahead as served).

#### 4. **Relevant Persons Objecting**

- 4.1 A copy of the objection from Thames Valley Police is attached at **Annex E**.
- 4.2 Environmental Health has not issued an objection.

#### 5. **Decision**

- 5.1 The Sub-Committee has two options:
  - (a) determine to issue a Counter Notice, which upholds the objection and effectively prevents the licensable activities from being provided; or
  - (b) take no action and issue a notice stating why a counter notice wasn't issued.

5.2 It is also possible for the Temporary Event Notice to be modified through agreement between the Police and Sasa Lama. This would effectively remove the objection and could negate the need for the Sub-Committee and decision.

## 6. **Officer Observations**

6.1 The Sub-Committee will wish to know why licensable activities took place on 6 to 8 January 2017 without a TEN as this is the reason that the objection has been lodged to this latest event. In fact a TEN was submitted for these dates but it was rejected because it was submitted too late under the legislation to be accepted. **Annex F** shows the email of rejection sent to the premises user at the time. This was in addition to two phone messages being left.

6.2 As a breach of the Licensing Act has been established, the Police have felt compelled to object on principle to the next TENs they could.

6.3 Being a light touch process there are limited steps the Sub-Committee can take. Sasa Lama could provide reassurance that she understands the Temporary Event Notice process and that offences won't be committed in future but conditions cannot legally be added to a TEN in this instance. The Sub-Committee simply have to decide whether allowing this TEN will undermine the Licensing Objectives, or not.

6.4 The crux of the matter is that an event was held over a weekend without a TEN and that the premises user had been notified there was no authorisation in place for that event. Sasa Lama has either therefore knowingly or unwittingly committed offences under the Licensing Act because of this and obtained an advantage in terms of the number of licensable events the premises may have this year. As Sasa Lama is a personal licence holder she can be expected to have an understanding of the TENs system especially as she has submitted multiple notifications over the last two months.

6.5 As a result of the issue arising on 6 to 8 January 2017, the Council has served a Closure Notice for Memling's on Sasa Lama (see **Annex G**) as a precursor to obtaining a closure order if further unauthorised activities continue and the option of consideration of prosecution remains.

## 7. **Policy Considerations**

Relevant extracts from the **Licensing Act 2003 Section 182 Revised Guidance** is included below:

### Temporary Event Notices

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 (“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).
- 7.14 A key difference between standard and late TENs is the process following an objection notice from the police or EHA. Where an objection notice is received in relation to a standard TEN the licensing authority must hold a hearing to consider the objection, unless all parties agree that a hearing is unnecessary. If the police, EHA or both give an objection to a late TEN, the notice will not be valid and the event will not go ahead as there is no scope for a hearing or the application of any existing conditions.
- 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. (Or)...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.
- 7.33 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.
- 7.36 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.

- 7.40 Where a TEN is not prominently displayed at the premises, the police and licensing officers have the right under sections 109(5) and (6) of the 2003 Act to request the premises user (or relevant nominated person who has the TEN in their custody) to produce the TEN for examination. If the police do not intervene when a TEN is given, they will still be able to rely on their powers of closure under the Anti-social Behaviour, Crime and Policing Act 2014.

Relevant extracts from the **Milton Keynes Statement of Licensing Policy 2013-2019** is included below:

## **2.1 Temporary Events Notices - Standard and Late**

- 2.1.5 The most important aspects of the system of temporary event notices are that no permission is required for these events from the licensing authority.

2.1.10 The purpose of the notification requirement is to enable the licensing authority to check that the limitations set down in the Act are being observed and to intervene if they are not. Where the application exceeds the limitations the licensing authority will issue a counter notice to the premises user. However, where the notice is in order, the prescribed fee paid, the event falls within the limitations in the Act and there has been no relevant objection, then the licensing authority will record the notice in its register and send an acknowledgement to the premises user. If an acceptable objection is received then a hearing will be convened.

2.1.11 Relevant persons have the opportunity to consider whether they should prevent the event taking place for reasons relating to the licensing objectives.

2.1.12 The Act provides that relevant persons may issue objection notices subject to legal timeframes because they believe the event would undermine the licensing objectives. This can be withdrawn if satisfactory negotiations take place. The issuing of such an objection notice relating to a standard TEN requires the consideration of the objection by the licensing sub-committee at a hearing. Consideration by the licensing authority is confined to the licensing objectives. At the hearing, the relevant person and the premises user may put arguments to the licensing sub-committee, following which a counter notice may be issued by the licensing authority as an outcome of the hearing. Should an objection be received in relation to an application for a late TEN due to timescales the licensing authority will issue a counter notice no later than 24hrs before the beginning of the scheduled event as no hearing is permitted.

2.1.13 A hearing would not be necessary if the objection notice was withdrawn. If the police do not intervene, they will still be able to rely on their powers of closure should disorder or disturbance subsequently arise.

Contact Officer

For further information on this application please contact Ed Fisher on telephone 01908 252409 or e-mail: [eddie.fisher@milton-keynes.gov.uk](mailto:eddie.fisher@milton-keynes.gov.uk)