

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

11 March 2010

Report of the Central Services Director

Part 1- Public

Delegated

1 CONSULTATION DOCUMENT – GOVERNMENT PROPOSAL TO EXEMPT SMALL LIVE MUSIC EVENTS FROM THE LICENSING ACT 2003

1.1 Background

- 1.1.1 Prior to the implementation of the Licensing Act 2003 in 2005, live music played to the public was subject to the requirement of a Public Entertainment Licence. An exemption to this requirement was the provision of live music played by not more than two persons. This became known as the ‘two in a bar’ rule.
- 1.1.2 The Licensing Act 2003 dispensed with this exemption and it became a requirement that all public live music played to an audience would either be subject to a Premises Licence or a Temporary Event Notice (TEN). The TEN procedure permits any premise to apply for an occasional licence to carry out a licensable activity on up to twelve occasions a year.
- 1.1.3 The Act did make a provision for dancing and live music in certain small places. Subject to a premises being licensed for the supply of alcohol for consumption on that premises and the provision of music entertainment; and subject to the conditions of those premises being primarily used for the consumption of alcohol, a capacity not exceeding 200 persons, and providing the music entertainment takes place between 8am and midnight, any local authority imposed condition relating to the provision of music would not have effect unless that condition was necessary for the prevention of crime and disorder and/or public safety.
- 1.1.4 The Government’s new consultation document for small live music events proposes to make live music between the hours of 8am and 11pm held inside a building and to an audience of 100 or less, not a licensable activity.
- 1.1.5 The proposals would create a ‘revocable exemption’, in that small live music events at either licensed or unlicensed premises will be exempt provided they comply with the above requirements. This exemption could be removed by a local resident or Environmental Health on application, subject to a hearing and a right of Appeal by either party.

- 1.1.6 In the last year alone, the House of Commons Culture Media and Sport Committee recommended the re-introduction of the 'two in a bar', rule exemption for venues of any size, and an exemption for venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music.
- 1.1.7 Additionally, a proposed Private Members' Bill sought, amongst other matters, a total exemption for live music in certain licensed venues and an exemption for live amplified or 'minimally amplified' music by no more than two performers in any premises.
- 1.1.8 The Government would appear to have decided not to follow the House of Commons Committee's recommendations nor adopt the Private Members' Bill.
- 1.1.9 The Government are of the view that those potentially affected by noise or other anti-social effects of live music are subject to a whole host of existing remedies including Noise Abatement Notices via the Environmental Health Section, the Noise Act 1996, and the Anti-Social Behaviour Act 2008.
- 1.1.10 The consultation document is attached to this report (Annex 1).
- 1.1.11 The view of this Authority's Environmental Protection Team (EPT) is not to agree with the proposal to exempt small live music events from the Licensing Act 2003 for the following reasons:
- Currently conditions can be applied to a licence to minimise the impact of music noise on the surrounding community, to prevent the occurrence of noise nuisance and reduce the likelihood of the licence being called in for review. This offers control over potential problems arising from the playing of live music, prior to the event being held at the licensed premises, the proposal would remove this control
 - For the majority of premises, it is the volume at which the music is played that is likely to result in public nuisance being caused, rather than the size of the audience.
 - The EPT considers an exemption for non-amplified music, with a limited number of performers, to be a better option.
 - The consultation proposes to exempt small live music events, not venues, so there is the potential for a single venue to host several small live music events simultaneously or sequentially.
 - The EPT believe that the proposal to issue an exemption for small live music events would result in an increase in noise and nuisance complaints from exempt premises.

- Whilst it is acknowledged that there is existing legislation available to control noise from licensed premises, these investigations are typically lengthy and the financial penalties for non-compliance are not often awarded to the greatest value and need to be compared with the sanctions that can be imposed at a licence review hearing which include the revocation of a licence and potential loss of livelihood.
- The implications of the proposal have been discussed with other EP Teams in Kent and the views of all the teams concur with those detailed above.

1.1.2 The Government proposal is to exempt from the provisions of the Licensing Act small live music events in licensed and unlicensed premises only if they comply with the predetermined conditions. Whilst the EPT does not agree with the exemption proposal it would support the inclusion of conditions for all small live music events, if the exemption proposal is introduced. A suggested recommended response to the consultation questionnaire on the proposed predetermined conditions has been prepared (Annex 2).

1.2 Legal Implications

1.2.1 Nil.

1.3 Financial and Value for Money Considerations

1.3.1 Not applicable.

1.4 Risk Assessment

1.4.1 Not applicable.

1.5 Recommendations

1.5.1 Members are requested to endorse the proposed response to the consultation and associated questionnaire.

Background papers:

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Nil

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