



PAPER A

Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	9 FEBRUARY 2015
Title	TO CONSIDER AN OBJECTION NOTICE RECEIVED IN RELATION TO A TEMPORARY EVENT NOTICE UNDER SECTION 105 OF THE LICENSING ACT 2003 FOR LAND AT EASTERN GARDENS, ESPLANADE, RYDE, ISLE OF WIGHT.
Report Author	BILL MURPHY HEAD OF PLANNING AND REGULATORY SERVICES

BACKGROUND

1. Under Section 100 of the Licensing Act 2003, a Temporary Event Notice (TEN) authorises the sale or supply of alcohol, the provision of regulated entertainment or the provision of late night refreshment at premises which are not already authorised by a premises licence or club premises certificate.
2. A Temporary Event Notice is not an application but is a notice that is given by an individual who is known as the relevant premises user.
3. The premises user is required to notify the licensing authority, the police and Environmental Health of such an event. It is only the police and/or Environmental Health who may intervene to prevent such an event taking place, to agree modifications to the arrangements for such an event, or, in the case of licensed premises, to request that conditions existing on a premises licence, also be attached to a TEN.
4. Where the chief officer of police or Regulatory Services Manager is satisfied that allowing the premises to be used in accordance with the TEN would undermine the licensing objectives, he must give an objection notice to the licensing authority and the premises user.
5. The licensing authority must then hold a hearing to consider the objection notice unless all parties agree that a hearing is unnecessary.
6. Mr Michael Jukes has submitted a TEN proposing to sell alcohol and provide regulated entertainment at Eastern Gardens, Esplanade, Ryde for up to 300 people at any one time between 12:00hrs and 20:00hrs each day from 27th to 30th August 2015 (Appendix A).
7. The notice was submitted on 26 January 2015 to the licensing authority, the Police and Environmental Health.

CONSULTATION

8. The notification was served on the police and environmental health as responsible authorities. Under the Licensing Act 2003 they have three working days to submit comments. The three working days expired on 29 January 2015.
9. The Police issued an objection notice on 29 January 2015 (Appendix B). The grounds for objection are due to the lack of detail regarding the proposed activities within the TEN, they cannot be satisfied that the objectives will be upheld and they have been unable to contact the premises user to discuss this further.
10. Police have raised concerns regarding how the capacity will be managed, what security measures will be in place to prevent crime and disorder, what will the policy be regarding glassware to ensure public safety, what staff training will be in place to ensure alcohol is sold responsibly and the policy surrounding admission of children to the premises. Without further information relating to these areas, Police are not satisfied that the objectives will be upheld and therefore have submitted an objection notice.
11. No objection notice has been received from Environmental Health although they do have concerns regarding how the capacity will be managed and will discuss this with the premises user and investigate under separate legislation.

FINANCIAL/BUDGET IMPLICATIONS

12. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

13. If the Police or Environmental Health give an objection notice and all parties cannot agree to a modification, then under section 105(2) of the Licensing Act 2003 a hearing must be held to consider the objection notice.
14. Under section 5 of the Licensing Act 2003 (Hearings) Regulations 2005, this hearing must be held within 7 working days.

National Guidance

15. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this Temporary Event Notice:

Temporary Event Notices –

- 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 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance. 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, (for example, at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

- 7.34 The police and EHA have the right under sections 109(5) and (6) of the 2003 Act to request the premises user 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 Part 8 of the 2003 Act should disorder or noise nuisance be expected or arise.
- 7.35 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 three working days of their receipt of the TEN.
- 7.36 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 where there is an existing premises licence or club premises certificate at the venue or issue a counter notice to prevent the event going ahead. If the police, EHA or both give an objection to a late TEN, the TEN will not be valid.
- 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.

Implications under the Crime and Disorder Act 1998

16. Members are advised that 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 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.

Human Rights

17. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
18. There are three convention rights, which need to be considered in this context:

Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

Article 8 - Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties".

19. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.
20. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2014 – 2017 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	All
Paragraph 5	Approach to Licensing Applications	All
Paragraph 6	Cumulative Effect	N/A
Paragraph 7	Representations, Reviews, and Appeals	N/A
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	N/A

EQUALITY AND DIVERSITY

21. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
22. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

Option 1: To permit the Temporary Event as proposed in the notice

Option 2: To issue a Counter Notice under Section 105(2)

RISK MANAGEMENT

23. With regard to Option 1: Members should consider this Temporary Event Notice (TEN) against the objection notice received. To permit the TEN may not address the concerns that have been raised by the police and therefore undermine the licensing objectives. The police could appeal the decision to allow the event to take place.
24. With regard to Option 2: The Committee may decide that the event would undermine the licensing objectives and should not take place. In this case a Counter Notice must be issued. The premises user could appeal this decision.

EVALUATION

25. The only details provided in the TEN are that the nature of the premises is “an open grassed area” and that the nature of the event is “an entertainment weekend”. It gives no indication of the type of entertainment to be provided or how the premises will be controlled in any way.
26. Police have been unable to consider agreeing to modify the TEN as they have been unable to reach the premises user to discuss this option.
27. Members should be aware that the notes accompanying the prescribed form do not indicate that additional information should be submitted with the notice in relation to security measures, staff training and capacity management etc.
28. It should be noted that there is no provision under the Act to attach conditions to a TEN in order to ensure measures are in place, unless there is already a Premises Licence in place for the location. There is no Premises Licence in place for Eastern Gardens and therefore the Sub-Committee are unable to attach any conditions to this TEN.

29. It should also be taken into consideration that the proposed dates for this event are during the Scooter Ralley Weekend and therefore there will be an influx of people in Ryde during this time.
30. Taking into account all of the above, it is therefore vital to have further details to be satisfied that the objectives will be upheld. Without further details it is recommended that the Sub-Committee issue a Counter Notice to prevent the event taking place.
31. The sub-committee must have regard to all of the representations made and the evidence it hears as well as the national guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
32. The Committee should consider the objection notice and issue a counter notice in accordance with section 105(2) of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005 and with a view to promoting the licensing objectives, which are:
 - a. The Prevention of Crime and Disorder
 - b. The Prevention of Public Nuisance
 - c. Public Safety
 - d. The Protection of Children from Harm

RECOMMENDATION

33. Members should consider the objection notice and any further details that may be received from the premises user and determine whether to permit the event, or whether it is necessary to give the premises user a Counter Notice in accordance with Section 105 (2) of the Licensing Act 2003.

APPENDICES ATTACHED

[Appendix A](#) Temporary Event Notice (TEN)

[Appendix B](#) Objection notice from the police

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2014 – 2019.
<http://www.iwight.com/azservices/documents/1226-Statement-of-Licensing-Policy-2014-2019-Adopted-v1.pdf>

Contact Point: Miss Claire Thomas, Licensing Officer, ☎ 823159 ext 6128
e-mail claire.thomas@iow.gov.uk

BILL MURPHY
Head of Planning and Regulatory Services