



Committee report

Committee	LICENSING SUB COMMITTEE
Date	7 AUGUST 2018
Title	TO CONSIDER AN OBJECTION NOTICE ISSUED IN RESPECT OF A TEMPORARY EVENTS NOTICE UNDER SECTION 105(2)(a) OF THE LICENSING ACT 2003, FOR THE NOODLE POT, 91A ST JAMES STREET, NEWPORT, ISLE OF WIGHT, PO30 1LB
Report Author	WENDY PERERA - HEAD OF PLACE

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 Abdul Miah has submitted two TEN's for Late Night Refreshment at the Noodle Pot on the 11 and 12 August 2018 and 18 & 19 August 2018 from midnight until 05:00 hours. (Appendix A).
7. The notice was submitted on 26 July 2018 to the licensing authority, the Police and Environmental Health.

8. The maximum number of persons proposed to be present on the premises at any one time during the hours when licensable activities will be taking place is 40.

CONSULTATION

9. 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 1 August 2018.
10. The Police issued an Objection Notice on 31 July 2018 (Appendix B). The grounds for objection are as follows:
 - a. In respect of the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance, the police have concerns that a premises staying open to attract trade from people who have been out drinking is likely to cause crime and disorder issues.
 - b. Concerns have been raised regarding the location of the premises. Whilst in close proximity to another licensed premises that benefits from a 5am licence, it does not benefit from the space immediately outside, the lighting or the Council CCTV that the other premises has.
 - c. Police state that The Noodle Pot is set back in a fairly dark area which is not covered adequately by CCTV. They also have concerns that the pavement to the front of the premises does not allow adequate space for any organised queues and this could be a potential ignition point for conflict.
 - d. They also state that there is a loading bay directly outside the premises and after 18:00 hours this reverts to being available for street parking. The police state that again this would inhibit the passage of pedestrians and may lead to the potential for vehicles to be damaged.
11. Photographs showing the area immediately outside the premises can be found at Appendix C.

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.

15. National Guidance

16. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:

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”).

7.3 The TEN must be given to the licensing authority in the form prescribed in regulations made under the 2003 Act. The form requires the user to describe key aspects of the proposed event, including the general nature of the premises and the event, the licensable activities intended to be carried on at the proposed event, including whether they will include any relevant entertainment as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (i.e. displays of nudity designed to sexually stimulate any member of the audience including, but not limited to, lap dancing and pole dancing). Under the 2003 Act ‘premises’ can mean any place. Events authorised under a TEN will therefore not always be in a building with a formal address and can take place, for example, in public parks and plots within larger areas of land. In all cases, the premises user should provide a clear description of the area in which they propose to carry on licensable activities, including whether the premises are, for example, an open field or a beer tent. Local authorities and “relevant persons” (see below) may wish to make enquiries where appropriate to satisfy themselves of the exact location for where a TEN is being given.

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).

7.28 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. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it

considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a “notice (statement of conditions)”) and provide a copy to each relevant party. Alternatively, 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.

7.37 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 for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.

7.38 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The licensing authority can only do so:

- if the police or the EHA have objected to the TEN;
- if that objection has not been withdrawn;
- if there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;
- and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.

17. Each application on its own merits –

1.17 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in any individual case.

18. Hours of trading

10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

19. Public nuisance

- 2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

Implications under the Crime and Disorder Act 1998

20. 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

21. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
22. There is one convention right which needs 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.

23. 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.
24. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2011 – 2014 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	3.1, 3.3
Paragraph 4	Integration of Strategies and Other Legislation	4.2, 4.4, 4.5
Paragraph 5	Approach to Licensing Applications	5.1, 5.2,
Paragraph 6	Cumulative Effect	6.1
Paragraph 7	Representation, Reviews, and Appeals	7.8, 7.9, 7.10
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	N/A

EQUALITY AND DIVERSITY

25. 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).
26. The equality impact assessment looks at how a service promotes equality and diversity to ensure legal compliance and that the services we provide and the decisions that we make meet the needs of our local community.
27. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

28. Option 1 - To permit the Temporary Event
29. Option 2 - To issue a Counter Notice under Section 105 (2)

RISK MANAGEMENT

30. With regard to Option 1: Members should consider these Temporary Event Notices (TEN's) against the representations received. To permit the TEN's may not address the concerns that have been raised by the police and therefore undermine the licensing objectives.

31. With regard to Option 2: The Committee may decide that the events would undermine the licensing objectives and should not take place. In this case a Counter Notice must be issued for each.

EVALUATION

32. It is the view of the police that to allow these TEN's to take place would undermine the multi-agency work that has been undertaken in response to some serious crimes which have occurred in Newport's night time economy. They state that one of the key elements of this work was to encourage the swift dispersal of revellers from the town centre after late night drinking venues close.
33. Mr Miah does not currently hold a premise licence for The Noodle Pot. An application for a premises licence is currently in consultation. The purpose of submitting TEN's is because Mr Miah would like to trade at the weekends during the consultation period.
34. Mr Miah has expressed a wish for parity with another late-night venue in Newport.
35. Whilst the Licensing Department acknowledges the potential for incidents of crime and disorder to occur at late night takeaway venues, we are not aware of any recent incidents of this nature taking place in Newport Town Centre. The police however may be able to provide evidence to the contrary.
36. The Committee should determine the application in accordance with section 52 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
37. In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
38. The Committee must have regard to all of the representations made and the evidence it hears.

RECOMMENDATION

39. Members should consider the objection Notice 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 Notices for 11 & 12 August and 18 & 19 August

[Appendix B](#) - Objection notices from the police

[Appendix C](#) - Photographs of the immediate area outside the premises

BACKGROUND PAPERS

Isle of Wight Council Licensing Authority Statement of Licensing Policy 2014 – 2019

http://www.iwight.com/living_here/environment/environmental_health/images/LICENSINGPOLICY2011-2014.pdf

Contact Point: Sarah MacDonald, Senior Licensing Officer, Licensing Department, Jubilee Stores, Newport, Isle of Wight, PO30 2EH ☎ 01983 823159 ext. 6125
E-mail sarah.macdonald@iow.gov.uk

WENDY PERERA
Head of Place

