

Purpose: For Decision

# Committee report

Committee LICENSING SUB COMMITTEE

Date 22 NOVEMBER 2018

Title TO DETERMINE AN APPLICATION FOR FOUR TEMPORARY

**EVENT NOTICES UNDER SECTION 105(2)(A) OF THE LICENSING** 

ACT 2003, FOR 30 UNION STREET, RYDE, ISLE OF WIGHT,

**PO33 2DT** 

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#### 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 Ryan Burr has submitted four TENs for the licensable activities of the supply of alcohol and late night refreshment at 30 Union Street, Ryde, Isle of Wight, PO33 2DT, between the following dates and times:
  - Friday 23 November 2018 from 18:00 hours until 17:59 hours on Thursday 29 November 2018
  - Friday 30 November 2018 at 18:00 hours until 17:59 on Thursday 6 December 2018

- Friday 7 December 2018 at 18:00 hours until 17:59 on Thursday 13 December 2018
- Friday 14 December 2018 at 18:00 hours until 17:59 hours on Monday 17 December 2018 (Appendix A).
- 7. The notices were submitted on 8 November 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 80.
- 9. At the time of writing this report it was noted that whilst the hours for each of the TENs submitted were compliant with the limits set within the Act, the number of days in total have been exceeded.
- 10. The Act states that the maximum total duration of events authorised by TENs in relation to individual premises is 21 days in a calendar year.
- 11. The first three TENs total 21 days (7 days each) and not six. Therefore, the last TEN submitted from 14 December to 17 December exceeds the limits and must be subject to a counter-notice.

#### **CONSULTATION**

- 12. The notification was served on the Police and Environmental Health as part of Regulatory Services. Under the Licensing Act 2003 they have three working days to submit comments. The three working days expired on 13 November 2018.
- 13. Objection notices have been received from The Police and the Environmental Health.
- 14. The Police issued an Objection Notice on 13 November 2018 (Appendix B). The grounds for objection are as follows:
  - a. In respect of Crime and Disorder Police have concerns that the TENs submitted are in effect a way to circumvent the 28 day consultation period that is required following the submission of a premises licence application. Whilst an application for a premises licence has been made and is in consultation, the proposed TENs would allow the business to trade in one of the busiest night time economy areas on the island, without any conditions being attached.
  - b. Police are concerned that the duration of each TEN spans over several days and would therefore authorise 24 hour sales of alcohol over a 6 day period. The TENs combined would legally allow the premises to operate continually from 23 November 17 December with only three breaks of 24 hours in between. Whilst these breaks mean that the notifications are compliant with the legislation it is the view of the police that to use TENs for this purpose goes against Home Office Guidance which recognises the need for safeguards to the licensing objectives to be put in place by way of conditions attached to premises licences.

- c. Police state that no further information has been offered in respect of how the licensing objectives would be supported and even if there were, any such measures would be purely voluntary as conditions cannot be attached to TENs and would therefore be unenforceable.
- d. The TEN submitter has indicated that it would be their intention to operate in line with the hours and measures set out in their premises licence application. On Fridays and Saturdays this is from 10:00 – 01:00 hours. Police view these operating hours in this location as a high risk for the potential for crime and disorder particularly as the venue and the staff will be untested.
- e. In respect of Public Safety Police have raised concerns that they have received reports that fire safety at the premises may have been compromised during refurbishment works and that there are insufficient fire escapes. Whilst a question over fire safety remains, and until such time as inspections of the premises can take place they feel duty bound to raise this issue as a valid concern.
- f. In respect of the Prevention of Public Nuisance Police state that no measures have been offered to support this objective and even if they had these would be unenforceable as conditions cannot be attached to TENs
- g. In respect of the Protection of Children from Harm Police have concerns that again no measures have been offered to support this objective and having looked at the premises licence application it specifically mentions that children will be admitted to the premises. It is their view that conditioned measures are therefore required in order to ensure child safety.
- h. Overall the police consider that each of the four licensing objectives are at risk of being undermined if the TENs are permitted. They state that rushing to open the premises which must be considered as high risk of crime and disorder, even if only by virtue of its operating hours and location present extreme risks as carefully considered conditions cannot be applied.
- 15. Environmental Health has also objected to each of the TENs submitted on the grounds of public safety. Appendix C.
- 16. They state that due to information provided with regard to concerns over fire safety, including the lack of access to inspect the state of the fire separation between the two building units, they have serious concerns about the fire safety provision. Until such time as evidence has been provided to confirm that the fire safety measures at the premises are satisfactory they object to any TENs taking place.

# FINANCIAL/BUDGET IMPLICATIONS

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

#### LEGAL IMPLICATIONS

- 18. 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.
- 19. Under section 5 of the Licensing Act 2003 (Hearings) Regulations 2005, this hearing must be held within 7 working days.

# 20. National Guidance

- 21. 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.

#### 22. 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.

#### Implications under the Crime and Disorder Act 1998

23. 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**

- 24. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
- 25. 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.

- 26. 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.
- 27. 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
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**

28. 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).

- 29. 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.
- 30. There is no requirement for an equality impact assessment to be carried out.

#### **OPTIONS**

Option 1: To permit one or more of the Temporary Events

Option 2: To issue one or more Counter Notices under Section 105 (2)

#### RISK MANAGEMENT

- 31. With regard to Option 1: Members should consider these Temporary Event Notices (TENs) against the representations received. To permit the TENs may not address the concerns that have been raised by the police and the Housing/Environmental Health Department and may therefore undermine the licensing objectives.
- 32. 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**

- 33. It is the view of the police that all four of the licensing objectives are at risk of being undermined if these temporary events are permitted. They believe that by allowing the premises to open under TENs put the premises at high risk of crime and disorder. Their view is that these risks cannot be mitigated by measures that have been carefully considered through discussion with the operators and responsible authorities as there is insufficient time to do this. In addition safeguards to the objectives cannot be put in place as enforceable conditions cannot be applied.
- 34. At the time of writing this report there are concerns outstanding as to whether or not the safety of customers and potentially those persons living in flats above the premises will be compromised due to inadequate fire safety measures. The Fire Safety Officer intends to visit the premises prior to the hearing, but until such time as confirmation has been received to say whether or not the safety measures within the premises are sufficient public safety concerns remain.
- 35. An application for a premises licence for the venue is currently in consultation. The premises has previously been licensed under the Licensing Act 2003 but at this time no licence exists and therefore no conditions can be attached in order to uphold the licensing objectives.
- 36. National guidance states that "in determining whether the maximum total duration of the periods covered by the TENs at any individual premises has exceeded 21 days, an event beginning before midnight and continuing into the next day would count as two days towards the 21-day limitation."

- 37. If Members decide to permit the first three TENs then a counter-notice must be issued for the fourth as the 21 day maximum limit will otherwise be exceeded.
- 38. 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
- 39. In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
- 40. The Committee must have regard to all of the representations made and the evidence it hears.

#### RECOMMENDATION

41. Members should consider the objection notices and determine whether to permit the events or whether it is necessary to issue the premises user with Counter Notices in accordance with Section 105 (2) of the Licensing Act 2003.

#### APPENDICES ATTACHED

Appendix A Temporary Event Notices x 4 (23 November – 29 November, 30 November – 6 December, 7

December – 13 December & 14 December – 17 December)

Appendix B Objection notices from the police in respect of each TEN submitted

Appendix C Objection notice email from Environmental Health Department

### 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

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