

**LICENSING ACT 2003 SUB-COMMITTEE (A) - FRIDAY, 2 DECEMBER 2016**

**MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (A) HELD IN COUNCIL CHAMBER, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON FRIDAY, 2 DECEMBER 2016 AT 10.00 AM**

Present

Councillor R Williams – Chairperson

RM James

JE Lewis

Apologies for Absence

Officers:

Mark Galvin

Senior Democratic Services Officer - Committees

Andrea Lee

Senior Lawyer

1. APOLOGIES FOR ABSENCE

None

2. DECLARATIONS OF INTEREST

None

3. LICENSING ACT 2003: SECTION 105, TEMPORARY EVENT NOTICES EDEN BAR AND EGO, 33 MARKET STREET, BRIDGEND

The Team Manager – Licensing presented a report, which asked the Sub-Committee to consider two Objection Notices submitted by the South Wales Police in respect of Temporary Event Notices served on the Licensing Authority, referred to as Notice A and Notice B in the report.

The Team Manager – Licensing outlined the report, and advised the Sub-Committee that as far as she was aware no agreement or compromise had taken place in advance of the meeting by the Premises Licence Holder of Eden and the South Wales Police, which would give rise to the South Wales Police withdrawing the two Objection Notices. Both parties in turn agreed that this was the case and therefore the Hearing would have to proceed.

The Team Manager – Licensing added, that other than the Objection Notices to the TEN's attached at Appendix A to the report, the only other document that had been put forward by the Police was a letter dated 1 December 2016, which had been served on the Premises Licence Holder as well as being tabled at the meeting, giving detailed reasons as to why the South Wales Police were objecting to the TEN's. She added that paragraph 4.1 of the report contained details of both the events applied for, as well as the hours that the Premises Licence had applied for on the weekends of 3/4 and 10/11 December 2016.

The Chairperson then asked the Police representative, PC S Rowlatt to present her case, and in particular, the reasons why the Objection Notices to the events had been submitted.

PC Rowlatt then presented the case of the South Wales Police details of which were shown at the attached Appendix to these Minutes.

A Member referred to page 4 of the attached Appendix 1, and the investigation of the Police made on 6 November 2016 at 06:08 when there were only 4 Door Control staff on duty at the premises when there should have been more. She noted that the premises should have not been open to the public at this time and asked PC Rowlatt for clarification upon this.

PC Rowlatt advised that this was the time the entry was subsequently logged at the Police station, whereas the time of the investigation being made had been at 02:30.

The Member also referred to page 5 of Appendix 1, and the maximum number of patrons that should be at the premises at one time, i.e. 350 persons on the ground floor at any one time, and 150 on the first floor. However, it also referred to the fact that any TEN's could only allow for 499 persons to be present at the premises at any one time, including members of staff. She sought clarification upon this.

PC Rowlatt advised that the above information was correct, in that there was a slight difference in the number of patrons that should occupy the premises at one time, with this being a maximum of 499 including staff on TEN occasions, and 500 under the terms of the Premises Licence.

The Member asked if there was a fire escape in the downstairs area of the premises.

PC Rowlatt confirmed that there were a number of fire escapes at the premises. The split of the maximum numbers allowed at the premises as explained above was due to the narrowness of one set of stairs to the first floor, hence a capacity there of 150 persons. She added however, that there were a total of 3 stairways at the premises as well as 2 entrances/exits to the building, with 1 also at the right hand side of the back of the building. The layout in terms of the split in numbers for both the ground floor and the first floor, had been established following a Risk Assessment being undertaken.

As this concluded the case for the Police and any questions, the Chairperson asked the Premises Licence holder to present his case in response to the serving of the Objection Notices to the proposed events from the South Wales Police.

Mr Rasul advised Members, that the premises was recognised as Eden bar and grill, however, the serving of any food at the premises was only licensed up until the hour of 23:00, with any such food having to be fully consumed by patrons by 00:00. Therefore, he could not provide any food after this time period, which he felt would be advantageous if he could, as it would line patrons stomachs whilst they were consuming possible large quantities of alcohol.

The main bar at the premises was situated on the ground floor, whilst the restaurant area was situated on the first floor in that part of the premises which was more a function room/dance area called Ego's.

Mr Rasul wished to point out to Members, that since the premises had opened in 2015, Ego had only been opened 5 times. The applications before Members for TEN's were for functions in the ground floor part of the premises only, and the purpose for applying for these, was to try and attract patrons to the premises leading up to Xmas, as since he

had opened the premises it had never been full to capacity downstairs. Under the terms of his Licence, there should be 6 Door Control personnel to cover both floors. However, if the ground floor of the premises only was open to the public, then it was in order for him to employ 3 Door Control staff, though he always employed 4 on these occasions. He personally did not think that the extra hours of opening he had applied for through the TEN's would necessarily bring in more customers to the premises, as patrons would be out in town having a social evening, regardless if they visited his premises or any other late night establishments in Bridgend town centre. The only times that the ground floor of the premises had been anywhere near full, was during the 6 Nations rugby competition.

The Legal Officer whilst taking into consideration the comments made by Mr Rasul, advised that as the application for the TEN's stood, these applied to both the ground floor and the first floor of the premises as per the wording of the application.

Mr Rasul confirmed that he had applied for TEN's for the month of November and these had not been objected to by the South Wales Police and had turned out to be good nights, free of trouble. He added that he could only apply for a TEN for the premises itself as opposed to either the upstairs or downstairs part of the premises, as the premises was recognised as one ie and not defined by two different areas, for example the ground floor and the first floor. He reiterated that if the number of patrons attending the premises exceeded the maximum number on the ground floor, then he would have to open the first floor and employ more Door Control staff to effectively manage the extra number of patrons there at the same time.

The Legal Officer stated that Mr Rasul could just apply for a TEN for one area of the premises (as opposed to two) by way of a TEN. He could not however do this under the terms of his Premises Licence as the provisions of this applied to the premises as a whole.

Mr Rasul advised that he wished the TEN to apply to both floors of the premises, in the unlikely event, that he would have more than 350 persons capacity on the ground floor. If this happened to transpire, he could then resort to opening the first floor of the premises. He had been successful in applying for TEN's previously, including at his other late night establishment in Neath, and he once more reiterated for the benefit of those present, that he would employ more Door staff should he have to open the first floor of the building due to there being excessive numbers downstairs.

He added that as Licensee at the premises, he was only too aware of the fact that he had to ensure that the safety of the public was not compromised whilst they were in attendance at the premises. He once more also added, that the downstairs area of the premises had never really reached full capacity at any one time, and so he did not envisage the need to open up the first floor of the premises even on weekends leading up to the Christmas period.

Mr Rasul advised that an extra half hour of opening would not set a precedent, in that Sax nightclub under the provisions of its Premises Licence was open until 05:00 at weekend evenings. He was also aware, that representatives of the South Wales Police had been possibly looking at relaxing the no admittance/re-admittance rule at late night establishments, as not to do so, may result in excessive numbers congregating in town during the same time period. Mr Rasul was trying to push for this at his premises for this reason, and was in discussion with Police representatives in relation to this proposal, which would mean if it was agreed, a small variation to his Premises Licence.

In terms of any recent problems at his premises when TEN's were granted, there were two incidents as referred to by the Police in their evidence. However, these had been

reported by himself to the Police on the night they took place, and now he found it ironic, that they were using this against him. These were in relation to a theft and an assault and on both occasions when he had contacted the Police they had sent Officers to his premises to take charge of both incidents.

Mr Rasul further added, that the TEN's applied for would only allow for his business to open for a further half an hour over and above the hours of trading currently. He did not concur with the Police's view, that his premises was not operating quite as it should be, as he was a responsible licensee that operated his premises effectively including contacting the Police when infrequent incidents occurred at the premises that neither he nor his staff could deal with by themselves. There would never due to the current economy, be 500 patrons within Eden/Ego. On a good night, the number of patrons at the ground floor of the premises rarely exceeded 65 on Friday evenings, and this may possibly rise to 150 over the coming Xmas period. He had been refused planning permission to extend his hours of operation and had appealed this to Welsh Government, though unfortunately, the Appeal had been dismissed. Though this could not be taken into consideration under the Licensing Act, he had appealed further to the High Court over this decision.

The Legal Officer intervened at this point, and advised Mr Rasul that until such time that the High Court made a ruling on the above, he was continuing to breach planning law by regularly opening the premises for periods over and above those which exceeded his hours of operation under the Planning Act, and if he continued to do this he would not satisfactorily meet crime and disorder objectives for which he could be prosecuted.

Mr Rasul advised that he had received different legal advice to this. He added that it was his intention to provide a proper restaurant facility at the premises as he had originally intended. He had to firstly however, make more money from his existing business in order to achieve this. He also discouraged trouble at the premises by catering for a more mature clientele, and to this end, the DJ in the ground floor of the premises only played music from the 1980's and 1990's era. It was fact that patrons in their 40's and 50's were less likely to incite acts of crime and anti-social behaviour, than individuals aged in their teens/20's.

A Member asked the Premises Licence holder how many patrons were normally present at the premises on a Saturday evening.

Mr Rasul confirmed that this number was generally around a total of 100 – 125 during the course of those evenings. He felt that an extra half hour of trading would help increase these numbers and assist more in supporting his business.

A Member asked how Mr Rasul would be able to recruit more Door Control staff at short notice, if the number of patrons at his premises increased the number that was permitted there (at any one time)

Mr Rasul responded by stating that he was able to obtain extra door staff if required, from other late night establishments that closed earlier than his, as they were employed by the same company as his usual Door Control staff.

A Member asked if Mr Rasul considered whether the Police were implying that more patrons attend the premises of a weekend than was factually the case.

Mr Rasul felt that there was merit in this, adding that the business was not making much of a profit at all due to the current economic climate.

The Team Manager – Licensing sought clarification from the Eden representatives, that the TEN's applied for were Saturday 3 and 10 December from 02:30 to 04:30, and Sunday 4 and 11 December 2016 from 02:30 to 05:00, as though these were the hours specified on the first TEN application this was not confirmed on the second application.

Mrs Rasul advised that this was the case, ie the timings should be the same on both Notices.

The Team Manager – Licensing also asked if there was an expectation that the premises would be busier in December on the nights the TEN's had been applied for, than they had been in November.

Mr Rasul confirmed that he hoped this would be the case, though expectancy levels were not that high. The maximum number he had ever had in the premises at one time since it had opened had been 200 patrons, but this number had never been exceeded to.

The Team Manager – Licensing asked if any parties had pre-booked for Xmas functions at the premises, bearing in mind it did not strictly provide for the serving of food.

Mr Rasul confirmed that there had been some enquiries, but no bookings. He could provide food for large groups of patrons if they booked, through recruiting outside caterers to provide food.

PC Rowlatt asked Mr Rasul why the times of the TEN were requested to commence from 02:30.

Mr Rasul advised that was his mistake, and that the commencement times of the TEN's should be 03:30.

PC Rowlatt asked if the Conditions that applied to his Public Entertainment Licence would also apply to the TEN's.

Mr Rasul advised that all of the Conditions on his Public Entertainment Licence would apply to the TEN's so applied for.

PC Rowlatt asked if 4 Door Control staff would be employed on the dates that the TEN's had been applied for.

Mr Rasul confirmed that he would definitely have 3 Door Control staff working on these evenings, but would increase these to 4 if numbers in the ground floor of the premises exceeded the number he expected.

PC Rowlatt referred Members to page 4 of her submission where upon a previous Police investigation carried out on 4 November 2016, an evening when a TEN had been in operation at the premises, there had only been 3 Door Control staff on duty at that time, which was the minimum requirement for a premises of this size/nature.

Mr Rasul replied that he had only 3 door staff on duty on the evening stated above, as there were only a total of 50 – 60 persons in the premises at this time.

PC Rowlatt asked Mr Rasul what company he currently hired his Door Control staff from.

Mr Rasul advised that there were two such companies, ie Bridge Security, Bridgend and Titan Security based in Swansea.

PC Rowlatt referred to page 7 of the Police representations and two offences that had taken place at the premises on 20 November 2016. She noted that this was an evening when a TEN was in operation at the premises.

Mr Rasul confirmed that he and his staff had dealt with both incidents, and also done the right and proper thing, by calling the Police so they could investigate the incidents further.

PC Rowlatt whilst appreciating this course of action, advised Members that trouble had occurred when previous TEN's were in operation as recently as last month, and earlier in the debate Mr Rasul had confirmed the contrary to this.

PC Rowlatt sought clarification if there would be sale of alcohol on the 4 and 11 December, ie Saturday night proceeding into Sunday morning between the hours of 4:00 – 5:00 effectively allowing for the consumption of alcohol between these times ie an hour extra than he was permitted to do so under his Public Entertainment Licence.

Mrs Rasul advised that alcohol would be served until 04:30, with a further half hour of drinking-up time.

PC Rowlatt asked if patrons would be allowed admittance/re-admittance to the premises after 02:30 if the TENS were to be granted.

Mrs Rasul advised that this would not be allowed, as all of the Conditions on the Premises Licence would continue to apply whilst the TEN's were in operation as was always the case.

PC Rowlatt noted from Mr Rasul's submission, that he catered for older patrons at the premises.

Mr Rasul confirmed that clientele of a varied age visited the premises, though staff aimed to attract the more older patrons, hence the playing of 80's and 90's music there.

PC Rowlatt whilst accepting this explanation, advised the Sub-Committee that crime reports reflected that younger people were involved in crime and anti-social incidents that took place at the premises.

PC Rowlatt asked the representatives from Eden if they applied Condition 1 of their Premises Licence, ie and challenged patrons from entering the premises if they appeared under age.

Mrs Rasul advised that there weren't that many younger patrons who visited the premises, however, staff did challenge any patrons if by appearance they seemed very young, either at the entrance to the premises or at the main bar.

A Member asked PC Rowlatt if the Police were looking to relax the general Condition attached to Premises Licences of late night establishments, whereby they could allow entry or re-entry to the premises after 02:30.

PC Rowlatt stated that the above was a provision by way of Condition, that was attached to a Premises Licence of all bars, pubs and nightclubs in Bridgend. If this was not strictly by a Licensee then they were in breach of their licence. This Condition was particularly important in respect of late night establishments in premises in this area of Bridgend as it was in the saturation area of the town centre recognised as a cumulative area (in terms of the number of similar type premises there). She explained further, that this Condition was beneficial, in that if one premises closed at 02:30 then patrons leaving

there would go home rather than to another late night establishment that opened longer hours. If patrons were allowed admittance to a premises that opened later, there would be a risk that they would become more intoxicated being allowed in there, particularly if they had been consuming alcohol in other such premises during the course of the same evening. This also resulted in patrons congregating and proceeding from one premises to another into the early hours of the morning of a weekend ie Friday/Saturday and/or Saturday/Sunday.

PC Rowlatt further added, that if the TEN's applied for today were granted, then it would mean that on the evenings in question applied for, the premises would be open later than any other premises in the town centre, and also, all late night food establishments would be closed and it would be difficult for patrons to get transport home.

As there were no further questions at this point in the proceedings, the Chairperson asked both parties to sum-up their cases, commencing with Mr and Mrs Rasul.

Mr Rasul advised that he was applying for TEN's which would allow him to extend his opening hours at Eden on two Fridays/Saturdays and two Saturdays/Sundays in December to seek to obtain extra income in the lead up to Xmas. This would mean, that he would be permitted to open for a further hour of trading for the sale of alcohol on the former days until 04:00 (closing at 04:30) and the latter days until 04:30 (closing at 05:00). He emphasised that the Friday opening hours would go from a Friday into a Saturday, and the Saturday opening hours would go from a Saturday into a Sunday.

He emphasised that if the numbers of patrons on these occasions exceeded 499, then he would open both floors at the premises and employ 6 door staff. That would not happen though he added, as he didn't expect anything near that number visiting the premises even when considering it was the lead up to Xmas. Mr Rasul added that all the Conditions on his Premises Licence currently would apply also in respect of the TEN's and the later opening hours. He assured the Sub-Committee that he had operated under TEN's previously without any significant problems occurring at the premises. On the two occasions that the Police had referred to in their evidence, ie a case of theft and an assault, he stated that he undertook appropriate action for both these incidents by contacting the Police in order for them to resolve these issues, having firstly controlled them within the confines of the premises. As his business was not thriving that greatly, he wished to open for a little bit longer into the evening/next day, in the hope of boosting the business through the generation of increased income from extra patrons visiting the premises. Mrs Rasul added, that within the last 3 months there had only been 2 incidents at the premises as referred to above.

PC Rowlatt in summing-up, advised that incidents of crime and disorder have previously taken place at the premises, and confirmation of this was detailed in the papers before Members where reference was made to 3 incidents taking place recently within the premises. Due to this, she had some level of doubt that the licensing objectives in respect of crime and disorder in particular would be met should the application for TEN's be granted today. She felt that for this reason, and those contained in her submission of evidence attached to the Minutes as an Appendix, the Sub-Committee should consider issuing a Counter Notice in support of the Objection Notice submitted by South Wales Police, thus not allowing the TEN's.

The Chairperson advised all parties present, that the Sub-Committee would retire from the meeting at 12:03pm in order to make a decision on the matter before them, and reconvene at 2.00pm for its decision.

The meeting reconvened at 2:00pm, where the following decision was made.

RESOLVED:

The Sub-Committee considered the applications for Temporary Event Notices in relation to Eden Bar and Ego at 33 Market Street, Bridgend referred to in the Licensing Officers report as Notice A and Notice B.

It has noted that this is currently a running business that operates with a license allowing it to open:

Sunday to Wednesday:	11:30-00:30 – licensable activities
Thursday:	11:30-02:30 – licensable activities
Friday:	11:30-03:30 – licensable activities
Saturday:	11:30-04:30 – licensable activities

The Sub-Committee have also noted the police objections to the application, being that allowing the TEN would undermine the licensing objectives of Crime and Disorder.

The Police have made representations that the applicant was granted a TEN for the weekend of 20<sup>th</sup> November 2016, and during the existence of the TEN there were two recorded incidents inside the premises when two aggressive females were detained for stealing a bag. The Police log stated that the victim of the crime was highly intoxicated and did not see her mobile phone being taken, in addition whilst dealing with this call an alcohol related assault took place at the premises when a male received bruising and swelling to his jaw. The victim is recorded as being intoxicated and scoring 7 out of 10 on the scale of intoxication.

The Sub-Committee noted that the planning and licensing functions of a Local Authority are separate, and accepted that a license could be granted with hours separate to those contained under planning permission laws. However, once the premises is opened and the planning hours have not been extended, then the applicant is potentially committing a criminal offence every time they open beyond the hours permitted by the planning permission.

These premises have been opened for over a year and the applicants by their own admission have stated that the premises regularly open on a Friday and Saturday and trade past 2.30am in breach of the premises planning permission regulations. The Police in their representations stated that they have witnessed the breach of planning permissions, and have now reported the matter for prosecution.

The applicants stated that they have now made an application for a Judicial Review to the High Court in relation to the decision by the Planning Inspectorate to refuse their application for the opening hours to be extended in relation to their planning conditions. Until such time as this goes before the Court and they overturn any decision by the Inspectorate, then the planning condition remains in force and each time the applicants open the premises later than the time stated in the permission, they are potentially committing a criminal offence.

The Sub-Committee have therefore taken into consideration the guidance and the Licensing Objectives under the Licensing Act, and have decided that because of the Licence Holders past history of breaching the planning laws and the two incidences of crime and disorder when the previous TENS were in place, if Members allowed the TENS to go ahead, this would undermine the crime and disorder objectives of the Act and therefore the Sub-Committee agreed to issue a counter notice to the applicant.

The meeting closed at 2:25pm



The meeting closed at 2.15 pm