

MINUTES OF A MEETING OF THE LICENSING ACT 2003 SUB-COMMITTEE (B) HELD IN COUNCIL CHAMBER, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON TUESDAY, 20 DECEMBER 2016 AT 2.00 PM

Present

Councillor DRW Lewis – Chairperson

GW Davies MBE PN John

Officers:

Kate Amos	Trainee Solicitor
Andrea Lee	Senior Lawyer
Andrew Rees	Senior Democratic Services Officer - Committees
Yvonne Witchell	Team Manager Licensing

37. DECLARATIONS OF INTEREST

None.

38. LICENSING ACT 2003: SECTION 105 TEMPORARY EVENT NOTICE EDEN BAR & EGO 33 MARKET STREET BRIDGEND

The Team Manager Licensing reported on an Objection Notice submitted by the South Wales Police in respect of a Temporary Event Notice (TEN) served on the Licensing Authority by Mrs Saima Rasul (the premises user) in respect of a Boxing Day night event to be held at Eden Bar & Ego 33 Market Street, Bridgend on 27 December 2016 for the sale by retail of alcohol and the provision of regulated entertainment from 1200 to 0430 hours. She stated that the premises have the benefit of a premises licence and that the maximum number of people at any one time to be present is 499 persons.

The Team Manager Licensing informed the Sub-Committee that the premises user had served a letter from AgW Architects on all parties advising that an application had been made 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. The Team Manager Licensing advised that no agreement had been reached between the parties and the Objection Notices were to be treated as not having been withdrawn and a hearing was necessary.

The premises user's representative, Mr W Parry, Solicitor commenced his submission by referring to the documents before the Sub-Committee. He stated that the TEN is to refer to both Ego and Eden. Eden has a capacity of 350 persons on the ground floor and Ego a capacity of 150 persons on the first floor. He stated that there are door staff employed at the premises within the entrance and inside the premises and who use clicker devices to control the number of people entering and leaving the premises and monitor the number of people who move from the ground floor to the first floor. The maximum number of people allowed at any one time at the premises is 499 including staff.

The premises user's representative informed the Sub-Committee that the TEN relates to Boxing Day 27 December 2016 from 0000 hours to 0430 hours. He stated that the premises had held a number of TENs this year, some of which had been referred to in the Objection Notice by South Wales Police. He referred to a TEN held at the premises on 28 March 2016 until 0100 hours where there had been no objection from the police which had passed without incident. A further TEN was held on May Day with no objection from the police which again had passed without incident. A TEN was also held

on the Easter Bank Holiday until 0400 hours passing without incident. The premises user's representative referred previous hearings for a TEN at the premises where the police had gone through an incident log, but the premises did not have a history of adverse incidents and the TEN granted. There had also been no history of mis-management or overcrowding at the premises.

The premises user's representative referred to the objection notice from South Wales Police dated 13 December 2016 and for the avoidance of doubt clarified that the TEN was from 0000 – 0430 hours with the cessation of regulated entertainment at 0400 hours with the premises closing at 0430 hours. The premises user's representative informed the Sub-Committee that the objection notice referred to the background to planning, however this Sub-Committee could not consider planning matters. He referred to the letter submitted from the planning consultant which had been served on South Wales Police and that the nature of a TEN is that it is temporary and there would be no planning application made. It was proposed that the premises would open on a Monday as it was a Bank Holiday and that planning consent would not be required due to the temporary nature of the event. He stated that this Sub-Committee needed to consider licensing objectives and the impact of the TEN on the prevention of crime and disorder. The Planning Committee is only concerned with planning law.

The Legal Officer advised the Sub-Committee that the premises user was potentially committing an offence each time the premises opened beyond the hours permitted by the planning permission. The Legal Officer asked the premises user's representative to clarify that consent would not be required for the premises to be open on Boxing Day. The premises user's representative stated that general principles would apply and that the premises' opening beyond the hours permitted by the planning permission was a matter for the Planning Committee. The Legal Officer advised that once the opening times are breached at the premises, then this can be reported by South Wales Police and Licensing Enforcement. The premises user's representative stated that the advice of the planning consultant was that no planning consent would be required to open on Boxing Day for the TEN. The Legal Officer advised that a TEN did not override planning consent for premises. The premises user's representative stated that if there is a breach of planning control, his client would have to take this into consideration. This Sub-Committee's findings were not bound by a planning application and an application against the planning decision had been made for Judicial Review. The Legal Officer informed the Sub-Committee that the Judicial Review proceedings had not yet commenced, the time limit for the serving of those proceedings was 6 weeks. The premises user's representative informed the Sub-Committee that the planning regime is separate to the licensing regime and that a TEN does not relieve the authority of its planning responsibilities.

The premises user's representative referred to the 2 incidents which had taken place at the premises on 20 November 2016, where the staff at the premises had helped South Wales Police. One which involved the theft of a mobile telephone from a female's bag which had been called in by the premises user to South Wales Police. He stated that the theft was recorded on CCTV and that the summary of events by the police in their objection notice to the TEN was not accurate. In the second incident that night, when an assault took place, the door staff retained the suspect who had assaulted the victim and handed him to the police when they arrived at the premises. The premises user's representative stated that the licensing regime and controls have been put in place to deal with anti-social behaviour, whereby CCTV, monitoring of customers, door staff and monitoring of refusals have been in place.

The premises user's representative informed the Sub-Committee that a further incident was recorded on 12 November 2016 at 04.01 hours but this took place on Market Street and the people involved in the altercation did not come from the Eden or Ego, the police

turned up at 0530 hours after the crowd had dispersed. The premises user's representative stated that the incidents referred to by the South Wales Police fall short of a catalogue of incidents emanating from the premises which would warrant the refusal of the TEN.

The premises user's representative referred to a disturbance at the premises on 27 December 2015 where a 999 call was received from a mobile telephone where the police had reported that the club was being turned upside down. The premises user's representative clarified that what had happened was that two brothers were attempting to separate their wives who were fighting. He stated that there was nothing in the objection notice to not allow the TEN to proceed.

The Sub-Committee referred to the letter served by AgW Architects and questioned what the premises user's representative considered to be 'normal circumstances'. The premises user's representative stated that he had consulted AgW Architects on this issue and who had advise him that no planning consent was necessary for a TEN. The existing planning conditions would remain in force and did not override the TEN.

PC Rowlatt asked the premises user's representative whether the architect was aware of the existing planning restrictions on the premises. Mr Rasul stated that AgW Architects had been advising them for a number of years and he had been liaising with a barrister and the Planning Department on the planning restrictions. PC Rowlatt referred to Section 182 of the Guidance which states that planning restrictions cannot be ignored and asked whether the architect was aware of this requirement. Mr Rasul confirmed that the architect is aware of everything in relation to the planning conditions and restrictions on the premises. He stated that the planning restrictions had nothing to do with the TEN to take place on Boxing Day which is on a Monday. He informed the Sub-Committee that planning restrictions were in force at the premises on Fridays and Saturdays. He stated that the premises being open on a Monday for a TEN would not require planning consent as was the case in their other business operations.

PC Rowlatt asked whether the TEN would eradicate the existing planning conditions. Mr Rasul stated that the nature of a TEN is that it is temporary and he had never sought planning consent to go beyond the hours for licensable activities for previous TENs at the premises. If he needed to open later on a permanent basis, he would apply for planning consent. He stated that it was unlikely that enforcement action would be taken as the matter was the subject of a planning appeal. He had sought legal advice in order to do things correctly.

The Legal Officer stated that it was relevant for matters in relation to the planning restrictions to be raised.

The Sub-Committee questioned where in Market Street the incident of 12 November 2016 took place. Mr Rasul clarified that the incident took place on the road between the premises and another premises called Berties, which had been called in to the police by Eden. However the crowd of people causing the incident had dispersed by the time the police had arrived.

PC Rowlatt commenced her submission by stating that the application by the premises user for a TEN was for Boxing night Tuesday 27th December 2016. She stated that the normal licensable hours for the sale of alcohol are until 00.00 hours with a closing time 30 minutes later of 00.30 hours. The TEN sought to extend the existing sale of alcohol hours by 4 and a half hours.

PC Rowlatt commented that the Sub-Committee had been informed by the respondents that the notice is for regulated entertainment, but South Wales Police assume the respondents mean licensable activity will be until 04.00 hours with a 30 minute closing time. However, it was more than likely to be a negative due to the lateness and the fact it's a bank holiday with people having the availability of alcohol all day long and therefore are more likely to be disorderly earlier.

PC Rowlatt stated that South Wales Police have concerns over the scale, location and timing of the event or concerns about public nuisance. The concerns relate to the scale of the proposed event in that 500 would leave the premises all at once in the town centre where no late night food venues are open or any other premises. People leaving the premises would be looking for taxis along with everyone else. PC Rowlatt stated that crime and disorder is likely to increase if this notification is allowed. This is based on the timing, because of the time of year and with nothing else being open with no late night food venues at this time. Taxis, the only mode of transport available, are already over loaded in that there are not enough taxis to facilitate such large numbers all at once and a steady gradual flow is what is required to maintain a safer environment. PC Rowlatt stated that taxi drivers are also entitled to a holiday and this is a public holiday where the supply is further diminished.

PC Rowlatt referred to an incident on 27 December 2015 where there was a disturbance recorded at Eden for Boxing day at 0154 hours, Occurrence 1500475648 which was called in by door staff, via a mobile. She stated that the call was clearly linked to the premises as the text from the door man was quite compelling "PS10 Concern for Safety. Ongoing Fight, Eden Night Club Bridgend – 15 Males turning club upside down. No weapons other than tables etc." On police arrival the troublemakers had gone and security updated the police stating "That a number of males were at the premises causing trouble but left before police attendance. No description of the group or individuals was available." PC Rowlatt stated that the officer did not check CCTV on the night and CCTV was not available when the incident was investigated further as it had already been written over. PC Rowlatt commented that this was a report of disorder inside the premises which took place prior to 0154 hours. She stated there was therefore an increased risk of even further crime likely to occur again due to such late hours that the premises now wants to remain open until.

PC Rowlatt also referred to evidence of crime when previous notifications were given, occurrence 1600448806 took place on 20 November 2016 which was the last notification that police did not object to. An assault and a theft are both linked. The respondent called in the first call of theft. Whilst officers were there the second call came in, occurrence 1600448751 on 20 November 2016 at 02.01 hours of theft & handling. However, whilst officers were on scene they were diverted to another call, one of assault, Occurrence 1600448806 at 02.50 hours in reported of violence against the person. Crimed as 8/1 'Assault with injury no intent'. A further incident was also recorded.

PC Rowlatt stated that there was evidence of further crimes taking place under planning should this notice go ahead and there had been a breach of planning and an enforcement notice in August 2016, with the next stage in the process being prosecution.

PC Rowlatt referred to Section 182 of the Licensing Act 2003 which states that "a TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required". PC Rowlatt stated that the only documentation that South Wales Police has received from the

respondent is an architect's letter. The letter is misguided in that there are already planning restrictions on the premises. She was glad that the premises user has expanded on how the letter has come about. The architect's letter referred to normal circumstances which means when a premises that does not have planning permission. PC Rowlatt stated that this is not a normal premises as it already has planning restrictions. Eden bar already has planning permission, only to remain open until midnight and that the letter from the architect is incorrect. She stated that the premises user should have asked whether the premises could open with a TEN when there are planning restrictions. PC Rowlatt stated that if the letter from the architect was intended to inform the Sub-Committee that the respondent can ignore his existing requirements then it is wrong. PC Rowlatt informed the Sub-Committee that Section 182 of the Home Office guidance tell you that planning cannot be ignored and that the point 3.6 of the Council's Statement of Licensing Policy states that nothing in that guidance should be taken that any other law can be overridden. PC Rowlatt stated that South Wales Police understands the licensing and planning regimes are different but allowing this notice to take place will put the respondent in the position of committing offences in relation to planning. She stated that South Wales Police are aware that breaches happen regularly and that breaches have been witnessed by several officers and a case is being prepared. The list for December states that 5 officers have witnessed the following breaches.

PS 4986 Sullivan witnessed a breach at 03.25 hours on 3rd Dec 2016

PC 5497 Freeth witnessed a breach at 03.33 hours on 3rd Dec 2016

PC 5465 Thomas witnessed a breach at 02.40 hours on 4th Dec 2016

PC 5365 Richards witnessed a breach at 03.28 hours on 11th Dec 2016

PC 4347 Wheeler witnessed a breach at 03.45 hours on 11th Dec 2016

PC Rowlatt informed the Sub-Committee that the above breaches support the prosecution for the breach of conditions of the planning permission. Although the regimes are separate PC Rowlatt stated that the Sub-Committee cannot consent to this unlawful activity, when there is evidence that breaches occur. PC Rowlatt stated that at some point overlaps occur hence why guidance is and has been issued. She also stated that to make an informed decision the Sub-Committee needed to be made aware of such matters. If the TEN was allowed to take place it meant that consent was being allowed for the respondent to commit offences. To issue this notice with a caveat advising the respondent that he could not breach planning was negligence as evidence showed the respondent does breach and will continue to breach and sends out a mixed message.

The premises user informed the Sub-Committee that he had met the police to extend the licensable hours to 0330 hours on Fridays and 0430 hours on Saturdays and had asked about Bank Holidays, to which he had been advised by the police to submit applications for TENs. Mr Rasul stated that he did not plan to open the premises on Mondays which was the reason for the application of the TEN. He confirmed that a dispute did take place at the premises amongst members of the same family and that he asked the doormen to call the incident in to the police. He stated that he did not intend applying for a licence for Mondays, and future Bank Holidays would be the subject of TENs. He did not have planning consent to open on Mondays at his other premises. PC Rowlatt confirmed that a meeting took place with Mr Rasul wherein he was advised that

applications could be made for TENs, but this situation had now changed due to breaches of planning law at the premises.

The Sub-Committee questioned the South Wales Police as to when they had become aware of the planning restrictions in force on the premises. PC Rowlatt confirmed that South Wales Police had always been aware of the planning restrictions on the premises, but had not been aware of the operational practices of the Planning Department. She stated that the police had tried to support the premises but could not allow a TEN to take place when there were planning restrictions in place. She informed the Sub-Committee that the Planning Department had served breach of conditions notices on 28 September 2016 and 7 November 2016. The police had become aware that a served had been served on the premises user pending prosecution. PC Rowlatt stated that South Wales Police could not support the TEN as it would not promote the crime and disorder licensing objective.

The Chairperson invited both parties to sum up.

The premises user's representative in summing stated that the planning regime is one thing and the licensing regime is something else. There was nothing that the Sub-Committee could conclude that granting the TEN would impact on the crime and disorder licensing objective and that the TEN should go ahead.

PC Rowlatt in summing up stated that South Wales Police submit that to approve this event will increase crime and disorder and public safety both at the premises and within the area where the premises is situated. The event will not promote the crime prevention objective due to the timing of it and the scale at this time of year. There is further evidence that the effect is likely to be negative, based on past experiences. PC Rowlatt stated that granting the TEN with conditions transposed from the existing premises licence will not reduce further offences from taking place. South Wales Police therefore requested that a Counter Notice be issued which will promote the licensing objectives and not add to the existing problems

RESOLVED: That the Sub-Committee has considered the application for a Temporary Event Notice in relation to Eden Bar and Ego at 33 Market Street, Bridgend.

The Sub-Committee has have noted that this is currently a running business that operates with a license allowing it 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

Mr Parry for the applicant has made representations to the Sub-Committee that there have been a number of TENs granted for these premises and there is no history of problems which relate to the previous events.

The Sub-Committee has also noted the police objections to this 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 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 states 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 was recorded as being intoxicated and scoring 7 out of 10 on the scale of intoxication.

The Police also made representations that a TEN was granted on boxing night last year when there was a disturbance at the premises at 1.54am when it was reported that 15 males were turning the club upside down.

The Police have also addressed the issue with the applicant continually breaching his planning conditions by opening after the hours allowed by the planning permission in respect of the premises. The Police have stated that the Planning Department have now served a condition notice on the premises and Officers have since that notice took effect officers witnessed 5 breaches of the same.

Mr Parry has made representations to the Sub-Committee that Planning and Licensing are separate issues and the Sub-Committee should not take the planning into consideration.

The Sub-Committee note that the planning and licensing functions of a local authority are separate and accept that a license can be granted with hours separate to those contained in planning permission. 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.

The premises have been opened for over a year and the applicants have regularly applied for TENs which extend beyond the times allowed beyond their planning permission. The Police in their representations have stated that they have witnessed a number of breaches in relation to the condition notice and that the matter has now been reported for prosecution.

The Applicants have 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 Police have stated that to allow this premise to be open until 4.30am this will have a serious impact on the crime and disorder objectives as 499 people converging onto the Town Centre at this time in the morning when there are no late night food premises open and very few taxi's will cause problems in the town centre.

The Sub-Committee therefore has taken into consideration the guidance, together with Section 182 of the Licensing Act 2003 and the Licensing Objectives under the Licensing Act and has decided that because of the Licence Holder's past history of breaching the planning laws and the three incidences of crime and disorder when

LICENSING ACT 2003 SUB-COMMITTEE (B) - TUESDAY, 20 DECEMBER 2016

the previous TENs were in place if the TEN was allowed to go ahead this would undermine the crime and disorder objectives of the Act and therefore resolve to give a counter notice to the applicant.

The meeting closed at 4.45 pm