

LICENSING AND REGULATION COMMITTEE

14 January 2004

APPLICATION FOR A VARIATION OF PERMITTED HOURS OF A PUBLIC ENTERTAINMENT LICENCE – GUILDHALL TAVERN, COLEBROOK STREET, WINCHESTER

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Fred Masters Tel No: 01962 848443

RECENT REFERENCES: None

EXECUTIVE SUMMARY:

This report is to consider an application to extend the permitted hours until 1am on Monday evenings into Tuesday morning, in respect of the public entertainment licence in force for the Guildhall Tavern, Colebrook Street, Winchester. The applicant, Mr Michael Newbury, has held the public entertainment licence since 11 June 2003.

At present entertainment is permitted daily at these premises during the following times –

Mondays, Tuesdays and Wednesdays between 11am and 12 midnight, Thursdays between 11am and 1am the next day, Fridays between 11am and 2am the next day, Saturdays between 11am and 1am the next day and Sundays between 2.30pm and 11pm.

The Police have been consulted and have concerns that should this variation be granted there may be a significant increase in crime and disorder in the area with resource implications (Appendix 1).

The Director of Health and Housing has received very few complaints regarding the Guildhall Tavern but is concerned that any extension of hours to the existing hours for these premises may increase the potential for noise disturbance caused by the movement of persons leaving the premises.

No other representations have been received concerning this application.

The existing permitted hours are similar to other premises where a public entertainment licence is in force in Winchester City Centre. No public house in Winchester closes later than 12 midnight on Mondays. (Appendix 2)

The licence was last renewed without objection so as to be in force from 9 August 2003 until 8 August 2004.

RECOMMENDATIONS:

- (1) That taking into account the comments of the Police and the Director of Health and Housing, and the effect on crime and disorder and the potential problems with noise nuisance in the area if the application were to be granted, the variation be not granted and that the permitted hours of entertainment remain as existing.

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DETAIL:

1 Details of Applications

1.1 This application is to consider the variation of the permitted hours of entertainment for a public entertainment licence in force in respect of the Guildhall Tavern, Colebrook Street, Winchester which was last renewed in August this year and is valid from 9 August 2003 until 8 August 2004.

1.2 The applicant is Mr Michael Newbury who has been the resident manager for these premises since 11 June 2003.

1.3 This application seeks to vary the permitted hours of entertainment **to become**

Mondays from 11am to 1am the next day.

The **existing** permitted hours of entertainment for these premises are –

Mondays from 11 am to 12 midnight

Tuesdays from 11 am to 12 midnight

Wednesdays from 11 am to 12 midnight

Thursdays from 11 am to 1 am Fridays

Fridays from 11am to 2am Saturdays

Saturdays from 11am to 1am Sundays and

Sundays from 2.30 pm to 10.30 pm

2 Background.

2.1 In order for the Guildhall Tavern to open after 11 pm (the end of permitted hours under the Licensing Act 1964), a special hours certificate, in accordance with Section 77 of the Licensing Act 1964, has been granted by the Justices. The premises may then be used for the sale and supply of alcohol during the hours permitted under the entertainment licence.

2.2 At present 12 midnight is the latest time that public entertainment is permitted on Monday evenings, for all public houses in Winchester where there is a Special Hours

Exemption Certificate in force. The latest permitted hours of entertainment for all public houses in Winchester is set out as Appendix 2.

3 Notice and Consultations

- 3.1 A Notice of this Application was posted, visible from outside the Guildhall Tavern, for 28 consecutive days from 29 November 2003 but no representations have been received.
- 3.2 Winchester Police have been consulted and have made the following comments. The police recommend that no changes be made to the existing public entertainment licence in force for the Guildhall Tavern. Concerns are stated that, should this variation be granted, there will be a significant increase in crime and disorder in the area which would have considerable resource implications for the police. It is understood that a police officer will be attending the Licensing and Regulation Committee and will be available to respond to any questions concerning the police response. The Police Report is attached as Appendix 1.
- 3.3 Ward Members have been notified of this application.
- 3.4 The Director of Health and Housing has been consulted. Reference is made to the increased potential for nuisance from persons leaving these premises late on Monday evenings and into the early hours of Tuesday mornings. It is considered that any extension of that may well generate complaints.

4 Issues for Consideration

- 4.1 **Should these premises have a later end time on Mondays for public entertainment than other public houses in Winchester?** Public houses with Special Hours Exemption Certificates in Winchester City Centre close at 12 midnight on Mondays to Wednesdays with closing times up to 1 am on Thursday evenings, 2 am on Friday evenings and within the policy guidelines no later than 1am on Saturday evenings and 11 pm on Sunday evenings (Appendix 2). This application is to extend the hours on Monday evenings until 1am on Tuesdays, and is a variation to the existing situation. However, applications should be considered on their own merits, and the fact that no other premises have hours extending to 1.00am on Monday evenings should not in itself lead to a refusal of this application. There may be other reasons why the application should not be granted, and these are considered below.
- 4.2 **Are there any reasons why this application to extend the permitted hours of entertainment should not be granted?** The police have concerns that should this variation be granted there will be a significant increase in crime and disorder in the area. (Paragraph 4.3 below and Appendix 1). The Director of Health and Housing considers that any later closing time on Monday evenings has a potential to increase noise and other nuisance which would be unacceptable to residents caused by persons leaving the premises in the early hours of Tuesday mornings. No objections have been received in response to this application.

The case of *Lidster - v - Owen* (1982) ("the Bournemouth case") confirms that in reaching licensing decisions, authorities are entitled to take into account the potential for disorder outside premises, as well as internal factors. In that case, the Court held that an unacceptable degree of public disorder in the area surrounding premises, principally caused by the number of persons leaving those premises and other

premises in the vicinity at 1.00am, could be taken into account when deciding to grant or refuse a licence. The Court accepted that the premises themselves were well run, but decided that despite this, the justices could take the external factors into account.

In the case of the Guildhall Tavern there are clear concerns by both the police and Environmental Health that unacceptable levels of disorder and disturbance to neighbours in the vicinity will occur if the application is granted. In the light of the Lidster case, this is a factor which should be taken into account in determining this application.

Members will be aware that the Licensing Act 2003 has now been passed, although as yet there is no clear date for the Act to come into force. Final Guidance and Regulations are yet to be laid before Parliament. If and when the Act is brought into effect, existing permitted hours will be abolished, and hours will be set for individual premises, taking into account representations by the Police and local residents, and the operating plan put forward by the applicant.

Until the Act is in force, the draft guidance which has been issued has no effect, and this application should be considered in the light of existing statutory provisions and case law.

- 4.3 **If this Licence is varied as requested would it have any effect on Crime and Disorder in the area?** The police have concerns (as referred to in paragraph 4.2 above) that there may be a significant increase in crime and disorder in the area if the application is granted. The police would have considerable resource implications if they had to police the area outside the premises after midnight on Mondays. Although applications should be considered on their own merits, such resource implications would be increased, should there be further applications for variation of licences on Monday evenings. If the Police cannot provide additional resources on Mondays, granting of this application could have an adverse effect on crime and disorder in the area (Appendix1).
- 4.4 **Are the premises in a satisfactory condition, so that an extension of hours will not give rise to nuisance from noise emanating from within the premises?** The premises are suitable. The Director of Health and Housing is satisfied with the arrangements which have been put in place and it is therefore considered that the premises are suitable providing there is compliance with the conditions of the Licence.
- 4.5 **Are there any human rights issues which are relevant to the decision?** It is considered that Articles 6 (right to a fair trial) 8 (right to respect for private and family life) and Article 1 of the First Protocol (right to peaceable enjoyment of possessions) may be relevant. As there is a right of appeal to the Magistrates' Court, it is considered that there would be no infringement of Article 6. Article 8 is relevant, insofar as the nearby residents could claim that this right would be infringed by disturbance from customers. This should be balanced against the applicant's right to use of his premises under Article 1 of the First Protocol. Interference with these rights is permitted, where this interference is lawful, necessary in a democratic society, and proportionate. Likewise, the residents may argue that their rights under Article 1 of the First Protocol would be infringed. If the recommended conditions are imposed,

there should be no interference with any convention rights. To the extent that any interference may occur, it would be justifiable in a democratic society, and proportionate.

- 4.6 **Are there any further relevant issues that may mean that the licence should not be varied?** Other public houses may wish to apply for additional permitted hours on Mondays and other days should this variation be granted. However, this application should be considered on its own merits.

The City Council has adopted a policy guideline for applications for entertainment on Saturday evenings. This provides that:-

“Each application to be considered on its merits but with a guideline maximum of 1am and in considering each application: - (i) regard be had as to the likely impact of potential or actual disturbance to nearby residential properties; (ii) regard be had to the potential or actual impact of disturbance to residents in adjacent residential areas where streets are likely to be used as a means of pedestrian access to the licensed premises and (iii) the views of the Police upon the impact upon their available staffing resources.”.

There is no adopted policy guideline for Monday evenings. However, Appendix 2 sets out the current closing times during the week for various premises in Winchester. Although the guideline relates to applications on Saturday nights, the factors which are to be taken into account are relevant to consideration of this application.

OTHER CONSIDERATIONS:

CORPORATE STRATEGY (RELEVANCE TO):

The licensing function affects the objectives of promotion of a thriving local economy, and promoting a healthier, safer, and more caring community.

RESOURCE IMPLICATIONS:

None.

BACKGROUND DOCUMENTS:

Application to vary the Permitted Hours in accordance with a Public Entertainment Licence in respect of the Guildhall Tavern, Winchester.

APPENDICES:

1. Police Report.
2. List of Public Houses in Winchester (where a Special Hours Exemption Certificate is in force showing the latest permitted time for public entertainment.
3. Map showing location of the Guildhall Tavern, Winchester.