

LICENSING AND REGULATION COMMITTEE

23 March 2004

APPLICATION FOR THE TRANSFER AND RENEWAL OF A PUBLIC ENTERTAINMENT LICENCE FOR THE ORIGINAL PORTHOUSE, UPPER BROOK STREET, WINCHESTER

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Fred Masters Tel No: 01962 848443

RECENT REFERENCES:

1. LR 89 – 8 October 2003 – Application for the Renewal of a Public Entertainment Licence for The Original Porthouse, Upper Brook Street, Winchester.

EXECUTIVE SUMMARY:

The application to renew the public entertainment licence in respect of The Original Porthouse, Winchester was last considered by this Committee on 8 October 2003. It was resolved to grant the renewal for 6 months and the licence will expire on 3 April 2004.

The applications, subjects of this report, are for the transfer and renewal of the licence at present in force for these premises which are located in Upper Brook Street, Winchester. The applicants for both the transfer and renewal are the new area manager Mr Mark Armstrong Sutherland and the residential manager Ms Carmen Rose Ellis who has been at the premises since September 2002. There is no application to vary the existing terms and conditions of this licence.

A notice of the intention to renew and transfer this Licence was posted at the premises from 26 February 2004. Both the Ward Members and all of the residents who contacted the Council in October 2003 have been notified of these applications. One letter from a resident making representations has been received. (Appendix 1).

The Police have been consulted and a police officer will be attending the Committee meeting to report on the current situation at these premises.

The Director of Health and Housing has received no complaints relating to noise disturbance since the licence was last renewed in October 2003, although it is emphasised that the applicants should be reminded of the need to keep all windows on the outside of the premises locked shut whilst the premises are in use for the purposes of public entertainment.

The existing permitted hours of public entertainment for the Original Porthouse are from 11am to 12 midnight on Mondays to Wednesdays, 11am to 1am on Thursdays, 11am to 2am Fridays, 11am to 1am Saturdays and 12 noon to 11pm Sundays. This application does not seek any change to these permitted hours.

RECOMMENDATIONS:

- 1 That the licence be transferred to Carmen Rose Ellis and Mark Armstrong Sutherland.
- 2 That the licence be renewed for one year, in compliance with the “Standard Conditions” and the following “Additional Conditions” for these premises:-
 - (i) That the hours during which the premises may be used for the purposes of this licence shall be as follows:

Mondays to Wednesdays inclusive from 11am to 12 midnight
Thursdays from 11 am to 1 am the next day following
Fridays from 11 am to 2 am the next day following
Saturdays from 11 am to 1 am the next day following
Sundays from 12 noon to 11pm
 - (ii) The maximum number of persons permitted to be admitted to the premises, whilst in use for the purposes of this licence, shall be as follows:

Lower Bar	– 100
Intermediate Bar	– 75
Dance Area	– 60
Upper Bar	– 75
Total for whole premises	– 310
 - (iii) All windows on the outside of the premises must be kept locked shut at all times, whilst the premises are in use for the purposes of this licence.
 - (iv) A closed circuit television system shall be maintained to assist in the control of customers, both in the premises and in Upper Brook Street.
 - (v) That when more than 20 persons are queuing at any one time the applicant should ensure that at least 2 qualified door staff manage the exit/entrance door.
- 3 That the licensees be reminded of the need to take all possible steps to reduce any noise to residents caused by persons at or in the vicinity of The Original Porthouse.
- 4 That the licensees be reminded of the need take all possible steps and give clear instructions to the door security staff that persons who appear drunk or are attempting to bring alcohol into, or remove bottles and glasses from the premises, are either not admitted or prevented from removing the bottles and glasses.
- 5 That the licensees be reminded of the need to continue to take steps to keep the area clean, outside The Original Porthouse.

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Report of the City Secretary and Solicitor

DETAIL:

1 Applications

- 1.1 This application relates to The Original Porthouse, Upper Brook Street, Winchester for the transfer and renewal of the public entertainment licence in its existing terms and conditions. The applicants are Mr Mark Armstrong Sutherland the new area manager and Ms Carmen Rose Ellis the existing resident licensee.
- 1.2 The transfer is a request for the new area manager Mr Sutherland to be included on the licence replacing the previous area manager. Ms Ellis is to remain on the licence as existing.

Mr Sutherland has worked in the licensing trade for the past 15 years and has been an area manager for Scottish and Newcastle Group and more recently the Spirit Group for the past 4 years. He has been responsible for a number of public houses, including a number of premises where a public entertainment licence is in force.

Ms Ellis has jointly held the public entertainment licence for The Original Porthouse since August 2002 having previously worked in the licensing trade for 12 years, including other premises where a public entertainment licence has been in force. She has held a liquor licence for premises in Cornwall, first as a relief manager and then as the licensee of a public house in Penzance before moving to The Original Porthouse in Winchester in 2002.

1.3 The renewal application is to renew the licence in its existing terms and conditions. (See Paragraph 2.2 below.)

1.4 This public entertainment licence was last renewed, after consideration by this Committee, on 8 October 2003 (Report LR 89) when it was renewed for six months only. A report was requested from the Police, the Committee having noted with concern reports of anti-social behaviour and damage in the area of The Original Porthouse (see paragraph 3.4 below).

2 Existing Licences and Conditions

- 2.1 These premises also have the benefit of a Special Hours Certificate issued by the Licensing Justices in accordance with the Licensing Act 1964. This Certificate permits the sale of intoxicants after the usual closing time of 11pm on Mondays to Saturdays daily providing entertainment and refreshments are provided. In order to meet the requirement of the Special Hours Certificate for entertainment to be provided, a Public Entertainment Licence (granted by this Council) must be in force. There is a restriction on the hours when entertainment may be provided at The Porthouse, as set out in the existing Public Entertainment Licence.
- 2.2 The Licence was renewed, after consideration of this Committee on 8 October 2003, and permits entertainment for the hours set out in paragraph 1.3 above, subject to compliance with this Council's "Standard Conditions", and with the following "Additional Conditions" :-

- i) That the hours during which the premises may be used for the purposes of this licence shall be as follows:
- Mondays to Wednesdays inclusive from 11am to 12 midnight
 Thursdays from 11am to 1am the next day following
 Fridays from 11am to 2am the next day following
 Saturdays from 11am to 1am the next day following
 Sundays from 12 noon to 11pm
- ii) That the maximum number of persons permitted to be admitted to the premises whilst in use for the purposes of this licence, shall be as follows:
- | | |
|--------------------------|-----|
| Lower Bar | 100 |
| Intermediate Bar | 75 |
| Dance Area | 60 |
| Upper Bar | 75 |
| Total for whole premises | 310 |
- iii) That the toilet windows in both the Ladies and Gents toilets, adjacent to the Intermediate Bar, must be kept locked shut at all times, whilst the premises are in use for the purposes of this licence.
- iv) That a closed circuit television system is maintained to assist in control, both in the premises and Upper Brook Street, Winchester.
- v) That when more than 20 persons are congregating on leaving the premises the applicant should ensure that at least 2 qualified door staff manage their dispersal so as to minimise any nuisance.

The licensees were also reminded of the following matters

- a) the need to take all possible steps to reduce any noise to residents caused by persons at or in the vicinity of The Original Porthouse,
- b) the need to take all possible steps and give clear instructions to the door security staff that persons who appear drunk or are attempting to bring alcohol into, or remove bottles and glasses from the premises, are either not admitted or prevented from removing the bottles and glasses and
- c) the need to continue to take steps to keep the area clean, outside The Original Porthouse.

3 Representations and Consultations

- 3.1 A Notice of Intention to renew the Licence was posted visible from outside the premises for 28 days, from 26 February 2004. In addition to this Notice seventeen residents who have previously made representations concerning The Original Porthouse, living in Upper Brook Street and Middle Brook Street, have been notified of this application.
- 3.2 In response the consultations with residents who have previously made representations one letter has been received from Mr Weller. He expresses concern about late night drinking and its consequences including injury and damage to property. (Appendix 1).
- 3.4 The Police have been consulted. At the time of publication of this report there is no police report available but it is understood that a police officer will be available at the Committee to answer any questions concerning these premises.

3.5 The Director of Health and Housing has been consulted. There are no complaints relating to noise disturbance recorded since the licence was last renewed in October 2003. It is recommended that the applicants are reminded of the need to keep all windows, on the outside of the building, locked shut whilst the premises are in use for the purposes of entertainment.

4 Other Information

4.1 The door security staff at the premises are registered with this Council in compliance with the approved scheme of registration for security staff at places of public entertainment.

4.2 Previously the licensees of these premises have arranged meetings with local residents to discuss and resolve problems however there has not been a meeting with residents since 26 June 2003. Mr Sutherland and Ms Ellis hope to resume these meetings on a six monthly basis shortly.

4.3 The Closed Circuit Television system is installed and maintained at these premises.

4.4 The Crime and Disorder Act 1998 sets out that it shall be the duty of a local authority to exercise its various 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.

4.5 Paragraph 5(l) of Schedule 1 of the Local Government (Miscellaneous Provisions) Act 1982 refers to the length of time a Public Entertainment Licence may remain in force which is normally for one year. It may be issued for shorter periods should the Council think fit.

5 Issues for Consideration.

5.1 **Are the applicants suitable persons to remain the licensees?** The applicants are considered to be suitable. Both Mr Sutherland the area manager and Ms Ellis, the resident licensee appear to be suitable persons to hold a public entertainment licence. Mr Sutherland has worked in the licensing trade for the past 15 years and has been an area manager for a number of public houses in the South West for the past 4 years. Ms Ellis has held the public entertainment licence for the Original Porthouse since August 2002.

5.2 **Are the premises suitable for licensing for public entertainment, considering public safety, noise, proximity to residential property and other relevant issues?** Providing there is compliance with all the "Additional Conditions" set out in the Recommendation, the premises are considered to be suitable.

5.3 **Are the hours being sought acceptable or should alternative hours be specified?** There is no application to vary the permitted hours of entertainment which have been in force since January 2003. The hours requested and as existing at the Original Porthouse are as granted to a number of premises with Special Hours Exemption Certificates in Winchester City Centre. The closing time are a closing time of 12 midnight on Mondays to Wednesdays, to 1 am on Thursday evenings, 2 am on Friday evenings and (within the policy guidelines) no later than 1 am on Saturday evenings and 11 pm on Sunday evenings. Members will need to consider whether to permit the hours to remain as existing or to have an earlier end time than those existing. An Appendix to this report sets out late closing times for premises in Winchester. (Appendix 2).

- 5.3 **If renewed should the Licence be renewed for the maximum time of one year or for a shorter period?** It is considered that the licence should be granted for a period of one year. The most recent licence was granted for six months and no complaints have been received by the Council and the Police have no comments to make concerning the conduct of these premises during this period. The applicants hope to shortly resume regular liaison meetings with nearby residents to discuss problems arising from the use of the Original Porthouse for late night entertainment. This would be easier to manage during a period of stability with the licence.
- 5.4 **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 peaceful 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.
- 5.5 **Are there any further relevant issues which may mean that the licence should not be granted, or should it only be granted subject to further conditions?** A letter from a resident, Mr Weller, expresses concerns about the consequences of late night drinking. The public entertainment licence granted by the Council permits the provision of entertainment and in conjunction with the "Special Hours Exemption Certificate" granted by the Justices permits the sale of alcohol after the end of the usual permitted time of 11pm.

OTHER CONSIDERATIONS:

6 CORPORATE STRATEGY (RELEVANCE TO):

- 6.1 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 for the Transfer and Renewal of a Public Entertainment Licence for the Original Porthouse, Winchester and letter making representations in Appendix 1.

APPENDICES:

1. Letter making Representations.
2. List of Premises in Winchester with Late Closing Times.
4. Map showing the location of The Original Porthouse