

LICENSING AND REGULATION COMMITTEE

8 July 2004

APPLICATION FOR THE RENEWAL, TRANSFER AND VARIATION OF A PUBLIC ENTERTAINMENT LICENCE – MOLOKO BAR, THE SQUARE, WINCHESTER

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: John Myall Tel No: 01962 848188

RECENT REFERENCES:

LR 88 – Application for a Variation of Permitted Hours of a Public Entertainment Licence – Moloko Bar, The Square, Winchester. 6 November 2002.

EXECUTIVE SUMMARY:

This report is to consider an application by Gillian Heath to transfer a Public Entertainment Licence in force for the Moloko Bar, The Square, Winchester, from the existing licensees (Jonathan Turpin and David Heath), to renew the licence and to vary the conditions relating to the maximum number of persons allowed on the premises.

The existing permitted hours of entertainment 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 from 11 am to 2 am, Saturdays from 11 am to 1 am and Sundays from 12 noon to 11 pm.

The Police have been consulted and object to the renewal of the licence. They have provided evidence that the premises are poorly run, and that the applicant is not a suitable person to hold a Public Entertainment Licence. The evidence of their objection is shown in Appendix 1 (A-F)

The Big Security Company Limited which supply some Door Supervisors has supplied information that the maximum capacity has been exceeded on occasions. This is detailed at Appendix 2 (A&B).

The Director of Health and Housing has been consulted and has no adverse comments concerning the application. However the Director emphasises the necessity of ensuring that both sets of doors at the front of the premises are kept shut as far as possible whilst music is being played and that one set of doors is kept shut while people are entering and leaving

the premises. The consultation response also advises that the fire escape door at the side of the building must be kept clear of any vehicles.

The Minsters, St Swithun Street & Symonds Street and St Thomas Street Residents' Associations have all been consulted. Responses from The Minsters Residents' Association, and residents and the warden of Morley College are shown at Appendix 3. (A-E)

#### RECOMMENDATIONS:

1. That the application to renew, transfer and vary the Public Entertainment licence in respect of the Moloko Bar, Winchester be refused, on the basis that the applicant is not a suitable person, and the management of the premises is inadequate.
2. In the event of the application being granted, the licence should be granted for six months (to allow the premises to be monitored) and include the following conditions: -
  - (i) That the hours during which the premises may be used for the purposes of this Licence shall be as follows:-

Public entertainment may be provided under this Licence during the hours specified in the schedule hereto any day except Christmas Day and Good Friday.

Mondays to Saturdays inclusive 11.00 am to 11.00 pm.

Sundays 11.00 am to 10.30 pm.
  - (ii) The number of persons permitted to be in the whole premises whilst in use for the purposes of this Licence shall not exceed 250. The maximum number of persons in the Upstairs Bar shall not exceed 120 at any time (or 200 at any one time provided that improvements to the first floor fire escape have been completed to the written satisfaction of the City Secretary and Solicitor in consultation with the Head of Building Control and the Hampshire Fire and Rescue Service).
  - (iii) A written plan of evacuation of the premises in the event of an emergency shall be maintained. All staff shall be made aware of the plan, which should include the role of each individual member of staff in the event of an emergency evacuation. All staff should be trained in implementation of the plan.
  - (iv) All doors and windows that are capable of being opened directly to the outside of the premises shall not be kept open, wedged open, or maintained open by a mechanical or other device whilst the premises are in use for the purposes of this Licence. Both sets of doors at the front of the premises shall be kept shut as far as possible whilst music is being played and one set of doors shall be kept shut while people are entering and leaving the premises.

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DETAIL:

1 Details of Application

- 1.1 This application is to consider an application by Mrs Gillian Heath to renew, transfer and vary the Public entertainment licence at present in force for the Moloko Bar, The Square, Winchester. The present licensees are Jonathan Turpin and David Heath. The application to transfer the licence is to add Gillian Heath to the licence, in substitution for Jonathan Turpin and David Heath. The application is also to vary the licence by increasing the permitted number of persons allowed on the premises from 250 to 330.
- 1.2 The Licence at present in force has been granted for compliance with the standard conditions and regulations approved by Winchester City Council and 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 11.00 am to 12.00 midnight*
- Thursdays from 11.00 am to 1.00 am the next day following*
- Fridays from 11.00 am to 2.00 am the next day following*
- Saturdays from 11.00 am to 1.00 am the next day following*
- Sundays from 12.00 noon to 11.00 pm*
- (ii) *The maximum number of persons permitted to be in the whole premises whilst in use for the purposes of this Licence shall not exceed 250. The maximum number of persons in the Upstairs Bar shall not exceed 200 at any time.*
- (iii) *A written plan of evacuation of the premises in the event of an emergency shall be maintained. All staff shall be made aware of the plan, which should include the role of each individual member of staff in the event of an emergency evacuation. The staff should be trained in the implementation of the plan.*
- (iv) *That all doors and windows that are capable of being opened directly to the outside of the premises shall not be kept open, wedged open, or maintained open by a mechanical or other device whilst the premises are in use for the purposes of this Licence.*

- 1.3 In respect of additional condition (ii) above, this was reviewed by Hampshire Fire and Rescue Service in liaison with the Head of Building Control. In the event of the renewal of this licence it is recommended that this condition should be amended to be "Whilst the premises are in use for the purposes of public entertainment the maximum number of persons permitted to be in the premises shall not exceed 120 on the first floor and 130 on the ground floor." This was communicated to the management of the premises in a letter from HFRS dated 1 April 2004.
- 1.4 A variation to the conditions is sought. The applicants seek to increase the capacity of persons on the premises from 250 to 330, (130 on the ground floor and 200 on the first floor). This variation would be subject to the completion of the improvements to the fire escape, to the written satisfaction of the Head of Building Control and the Hampshire Fire and Rescue Service, as mentioned in recommendation 2 (ii) above. The existing permitted hours of entertainment were last varied to be as shown in paragraph 1 (i) above after consideration by this Committee on 6 November 2002 (LR 68 refers).

## 2 Consultations, Publicity and Responses

- 2.1 A notice of the application to renew the Licence in its current form was posted, visible from the outside of the Moloko Bar, for 28 days from 19 March 2004. Two further notices showing the proposed change of licensee and increased capacity were posted, visible from the outside of the premises, for 28 days from 11 May 2004, and from 7 June 2004 respectively.
- 2.2 The Minsters, St Swithun Street and St Thomas Street Residents' Associations have been notified of this application along with the Warden and Chairman of Morley College. Ward Members have also been notified of this application. The Minsters Residents' Association has responded with concerns over late night drinking in the area. They also have concerns about the problems of the "Drink all you can" policy, but they do acknowledge that the soundproofing at the premises appears to be efficient. (Appendix 3 A&B). The representations from Morley College state the staff and residents are concerned by the level of noise from patrons leaving the premises, incidents of violence and complaints of persons who urinate and vomit in and around the College gardens. (Appendix 3C,D&E)
- 2.3 Winchester Police have been consulted and object to the application on the grounds that the premises are poorly run and that the applicant is not a suitable person to hold a Public Entertainment Licence (PEL). The part owner of the premises, David Heath, has held the PEL with Jonathan Turpin. Mr Heath has been a controlling influence in the running of the premises and there have been reports of him overruling decisions of the door security personnel regarding the entry of certain persons. As a co-owner he has been reported for summons for allowing underage drinking on the premises. Jonathan Turpin has been reported for summons for six counts of selling intoxicating liquor to persons under the age of 18 years, and for an offence of Common Assault. Both of these cases are still pending. He has also been served with a Revocation Notice for his Justices Licence. It is understood from the Police that although these cases are progressing, none have yet been decided by the Courts.
- 2.4 The Big Security Company Limited, which is responsible for some door supervision at the premises, has provided information to the Council on the operation of the premises. The Regional Operations Manager for the Company has stated that the maximum capacity for the premises has been exceeded. (Appendix 2 A&B).

- 2.5 The Director of Health and Housing has been consulted and has no adverse comments to make concerning these premises.

### 3 Other Information

- 3.1 Paragraph 5 (i) 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 see fit.

- 3.2 The Crime and Disorder Act 1998 places a duty on the Council to exercise its various functions with due regard to the likely effect of the exercise of those functions, to all that it reasonably can to prevent crime and disorder in its area.

### 4 Issues for Consideration

- 4.1 **Has the applicant shown herself to be a suitable person to manage premises where a public entertainment licence is in force?** Jonathan Turpin has managed these premises since February 2000 and David Heath has been joint Public Entertainment Licensee with Mr Turpin since 7 August 2002. Mr Heath has not held the Justices Licence for the premises. The Police evidence, supported by the report from the Security Company, appears to indicate that the licensee is not a suitable person to manage these premises for the purposes of a PEL. Mrs Heath has been involved in the management of the premises for some 18 months and is aware of the problems that have arisen. Mr Heath has been a major influence in the running of the premises and it is understood that he will still be involved with the premises, albeit not a licensee, and therefore could continue to have a controlling influence on its running. The Police have concerns about Mrs Heath's ability to act independently to Mr Heath. The Police objected to Mrs Heath's application for a Justices Licence, although the Court granted this. (Appendices 1 & 2)

- 4.2 **Are the premises suitable for licensing for public entertainment, considering public safety, noise, proximity to residential property and other relevant issues?** The premises are considered suitable providing the maximum capacity is reduced to be 120 on the first floor and 130 on the ground floor until any re-assessment is carried out following approved alterations to improve the means of escape. There should also be compliance with the conditions of the licence including the requirement that, whilst music is being played, both sets of doors at the front of the premises are kept closed at all times. When persons are entering and leaving, one set of doors should be kept shut. There are concerns that the means of escape on the first floor is not adequate for the capacity sought, and therefore it is considered that this should be reduced to be no more than 120 on the first floor and 130 on the ground floor until any approved works in compliance with building regulations are completed, when the matter could be reviewed.

- 4.3 **Are there any issues relating to Crime and Disorder which should be taken into account?** The police have concerns regarding the management of these premises and door security. This is supported by evidence from the security company, and the representations from Morley College residents (Appendices 1 A&B, 2 A&B, 3 A-E). There is evidence that the existing licensees have allowed the numbers of persons in the premises to exceed the licence limitations, and also have overruled the door staff and allowed in persons who have been initially refused entry. There is also evidence

of anti-social behaviour caused by customers of the premises, to which excessive alcohol consumption appears to be a contributing factor. It is considered that restricting the hours as set out in 4.4 below would deal with this latter issue, but the concerns over excessive numbers and overruling door staff could only be overcome if the existing licensees no longer had any involvement in the premises.

- 4.4 **Are the hours being sought acceptable or should alternative hours be specified or should there be no change to existing hours?** The grant of a PEL allows the licensees to provide entertainment. In this case the “entertainment” is recorded music which could be provided during normal permitted hours under the Justices Licence. It also enables the licensee to obtain a Special Hours Certificate for the sale and supply of intoxicating liquor. This sale should be ancillary to the entertainment, but in this case appears to be a means to provide late night drinking. In view of the Government concerns on “Binge Drinking”, Members may wish to consider whether as an alternative to refusing to grant the renewal of the licence, that the permitted hours of entertainment should be reduced to coincide with the usual closing time of 11 pm Mondays to Saturdays, and 10.30 pm on Sundays. The late hours public entertainment licence permits the premises to close later and this has an effect on Crime and Disorder in the area. The residents are concerned about the nuisance caused by persons leaving the premises late at night. The existing permitted hours of entertainment (paragraph 1.2 (i) above) are similar to those in force for other premises in the centre of Winchester but the Moloko Bar is the only premises with a late hours public entertainment licence in The Square. (Appendix 5)
- 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 her 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.

#### OTHER CONSIDERATIONS:

##### 5 CORPORATE STRATEGY (RELEVANCE TO):

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

##### 6 RESOURCE IMPLICATIONS:

- 6.1 None.

#### BACKGROUND DOCUMENTS:

- 7 Application for a variation of hours of a Public entertainment Licence in respect of the Moloko Bar, The Square, Winchester.

APPENDICES:

- 1A Police Report
- 1B Police Report (2)
- 1C Police Licensed Premises Visits Register
- 1D Statement of Jonathan Patchell
- 1E Statement of Adam Broomfield
- 1F Statement of Alan Dare
- 2A Report of the Big Security Company Limited
- 2B Report of the Big Security Company Limited (2)
- 3A Letter from Minsters Residents' Association
- 3B Letter from Minsters Residents' Association (2)
- 3C Letter from Warden of Morley College
- 3D Email from The Church of England Pensions Board
- 3E Letter from Mrs P Merchant, Morley College
- 4 Report of Hampshire Fire and Rescue Service
- 5 List of premises closing after 11 pm weekdays and 10.30 pm Sundays
- 6 Map showing the location of the Moloko Bar, The Square, Winchester