

LICENSING SUB-COMMITTEE

22 September 2005

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

REPORT OF THE CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

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

LR 106 – Application to Renew, Transfer and Vary the Licensees and Maximum Permitted Capacity for the Public Entertainment Licence – Moloko Bar, The Square, Winchester. 8 July 2004.

LR112 - Application to Renew, Transfer and Vary the Licensees and Maximum Permitted Capacity for the Public Entertainment Licence – Moloko Bar, The Square, Winchester. 5 November 2004.

EXECUTIVE SUMMARY:

The Licensing and Regulation Committee has previously considered an application by Gillian Heath and James Sawyer to transfer a Public Entertainment Licence currently 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 application was refused on 5 November 2004. The Committee felt that it had seen no compelling evidence from the Applicants that indicated a material change in the way the premises were managed. It had also considered the crime and disorder issues relating to underage drinking, and other incidents indicative of unsatisfactory management. In view of the refusal, the transfer and variation applications were not dealt with at that time.

The applicants then appealed to the Magistrates' Court. However, the premises have since been sold to Margaret Collymore and Charles Collymore.

This report deals with an application from the Collymores to transfer the licence into their names, and also seeks authority from the Sub-Committee to make submissions to the Magistrates' Court to deal with the appeal by consent.

RECOMMENDATIONS:

1. That in respect of the application to transfer the Public Entertainment licence for the Moloko Bar, Winchester to Margaret Allison Collymore and Charles Alexir Collymore:-
 - (a) the application be accepted notwithstanding the fact that less than 28 days notice was given;
 - (b) the application be granted.

2. That the City Secretary and Solicitor be authorised to make submissions to the Magistrates' Court in terms that the appeal be allowed, and the public entertainment licence be renewed and varied so as to include the standard conditions and the following additional conditions: -
 - (i) 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.

Monday to Wednesday	1100 to 0000.
Thursday	1100 to 0100
Friday	1100 to 0200
Saturday	1100 to 0100
Sunday	1200 to 2300
 - (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 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 Introduction

- 1.1 At its meeting of 5 November 2004, the Licensing and Regulation Committee considered an application by Gillian Heath and James Sawyer for the transfer, renewal and variation of the public entertainment licence in force in respect of the Moloko Bar, The Square, Winchester. At the time, the licence was held by Jonathan Turpin and David Heath.
- 1.2 Objections to the application to renew were made by the Police, along with the Minsters, St. Swithuns Street and St. Thomas Street Residents' Associations, and the Warden and Chairman of Morley College. The Police were concerned at the level of incidents of disturbances, underage drinking, and other managerial shortfalls which were alleged to have taken place at the premises.
- 1.3 The application was refused, primarily on the basis of the Police's concerns and evidence which they produced. The Committee felt that it had seen no compelling evidence from the Applicants that indicated a material change in the way the premises were managed. It had also considered the crime and disorder issues relating to underage drinking, and other incidents indicative of unsatisfactory management. In view of the refusal, the transfer and variation applications were not dealt with at that time.
- 1.4 Following the refusal of the application to renew and transfer the public entertainment licence in November 2004, the then applicants (Gillian Heath and James Sawyer) appealed to the Magistrates' Court. In the meantime, under the terms of the legislation, the premises were lawfully able to continue to trade, and have done so to date.
- 1.5 Dates were set for the hearing of the appeal, but in the meantime, the applicants placed the premises on the market. Negotiations took place with potential buyers, and officers agreed to adjourn the appeal process to allow the sale process to continue. This was on the basis that the case which the Council would be putting to the Court was based on the alleged management shortcomings at the premises, and it would be preferable for these to be resolved by a change in management following a sale, rather than pursuing an appeal (where there was a possibility that the Council might be unsuccessful).
- 1.6 The business has now been acquired by Margaret Collymore and Charles Collymore. So far as can be ascertained, the previous owners no longer have any interest in the operation of the premises.
- 1.7 The appeal is currently due to be heard on 12 and 13 October 2005.

2 Current Application to Transfer the Public Entertainment Licence

- 2.1 Margaret Collymore and Charles Collymore have applied for the transfer of the public entertainment licence. The police have been consulted, and have indicated that they have no objection to the transfer of the Licence. The Licensing and Registration Manager has also had discussions with them, and is satisfied that they are suitable persons to hold the public entertainment licence.
- 2.2 Schedule 1 of the Local Government (Miscellaneous Provisions) Act 1982 provides that 28 days' notice should be given to the local authority, although it does further provide that the authority can accept shorter notice. There is no obligation to advertise the application.
- 2.3 All bodies and persons who made representations in respect of the original application have been notified of the application to transfer, and informed that the current application will be considered at this meeting. Any representations received will be put before the Sub-Committee.

3 Impact of Licensing Act 2003

- 3.1 As Members will be aware, the Licensing Act 2003 will come into full effect on 24 November 2005. The appeal date (12/13 October) is six weeks before this date. An application to convert the Public Entertainment Licence to a Premises Licence under the Licensing Act 2003 has been made, and will be granted under delegated powers (there being no Police objections, the application will have to be granted).
- 3.2 After 24 November 2005, it will be possible for residents and local businesses (as well as Responsible Authorities) to apply for a review of the Premises Licence. An application for a review can be for any reason, provided it is based on one or more of the Licensing Objectives. Noise complaints could form the basis of an application for a review, as they fall within the "Prevention of Public Nuisance" licensing objective.

4 Basis of Appeal

- 4.1 The basis of Members' refusal of the renewal application was the management of the premises, rather than noise complaints. The Director of Communities had no adverse comments to make in respect of the original application to renew the licence.
- 4.2 Given the Police's current views on the operation of the premises following the sale of the premises and the change in management, the Council would not be able to present a credible case at the appeal on the basis of poor management. The Police would not be able to supply new evidence to update that which led to the refusal, and it is unlikely that the Council would be able to persuade the Court to dismiss the appeal and refuse the renewal application on the basis of the original evidence which is now largely over a year old, and in any case related to a different management regime.
- 4.3 Concern has been expressed by local residents about the noise levels emitted from the premises. There is very little time to prepare a case based on a new "ground" which has not been previously considered in detail by either officers or Members. Although noise could theoretically form the basis of the Council's case at the appeal, it would be impossible to prepare a sufficiently strong case on this basis at this late stage. There are also concerns about the resource implications in terms of officer

time which preparing an appeal would require. Officers do not therefore consider that the appeal could be defended by advancing a case based on these noise complaints.

5 Possible Courses of Action

Appeal Contested and Allowed

- 5.1 The Public Entertainment Licence remains in force pending the outcome of the appeal. If the appeal is allowed, it would be renewed, and could then continue until 24 November, when it would cease to have effect and be superseded by the new Premises Licence.

Appeal Contested and Dismissed

- 5.2 If the Council did put forward a case at the appeal, and if it were to succeed, leading to the dismissal of the appeal, it would not be possible to provide entertainment and the hours would revert to the standard permitted hours. This is because the Premises Licence was granted as a result of a conversion process. If an existing licence (i.e. a public entertainment licence) is revoked, the elements of the Premises Licence which flowed from the existing licence are withdrawn from the Premises Licence. However, for the reasons set out above, it is considered that it would very impossible and impracticable to prepare a case which would be sufficiently robust to succeed. Moreover, if the Council lost the appeal, it would have to pay both its own and the appellant's costs, which could be substantial. Officers would strongly advise against this option.

Appeal Adjourned by Agreement

- 5.3 If the appeal was adjourned to a date after 24 November, the Public Entertainment Licence would still remain in force pending the appeal. As the adjournment date would be after 24 November, the appeal could be withdrawn by the appellant after that date, as it would not be necessary (given the new Premises Licence coming into effect on 24 November).

Appeal Withdrawn

- 5.4 If the appeal is withdrawn, the Council's original decision would stand, and therefore the Public Entertainment Licence would be deemed to be revoked. The effect would be the same as would occur if the appeal was dismissed. For this reason, the appellants have given an undertaking to the current owners of the premises not to withdraw the appeal.

Appeal Allowed by Consent

- 5.5 The preferred option would be Council to make submissions to the Court, agreeing to the appeal being allowed by consent. This would mean that the public entertainment licence would be renewed, and could then continue until 24 November, when it would cease to have effect and be superseded by the new Premises Licence.

6 Variation Application

- 6.1 The original application considered in 2004 included an application to vary the public entertainment licence, by increasing the maximum 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 Head of Building Control and the Hampshire Fire and Rescue Service, as mentioned in recommendation 2 (ii) above.

7 Recommended Action

- 7.1 As set out above, it is not considered that there is adequate evidence to produce a sufficiently robust case to put forward at the appeal. Continuing to oppose the appeal is unlikely to be successful, and is more likely to result in the Council being ordered to pay significant costs.
- 7.2 Officers take the view that the most appropriate route would be to deal with the appeal by consent, and agree the application to transfer the public entertainment licence to the new owners. Residents who feel that noise issues exist would then be able to apply for a formal review of the Premises Licence under the Licensing Act 2004. Such an application could be made after 24 November, and would allow a proper view of the issues to be taken, including an assessment of any noise complaints by the Director of Communities. This would be more effective than the Council deciding to oppose the appeal on noise grounds and being unable to produce a sufficiently strong case to be successful and avoid costs.

OTHER CONSIDERATIONS:

8 CORPORATE STRATEGY (RELEVANCE TO):

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

9 RESOURCE IMPLICATIONS:

- 9.1 If the Council decided to oppose the appeal and was unsuccessful, the Court would normally order it to pay the appellants' legal costs. It would also have to pay its own legal costs. These costs are likely to be substantial.
- 9.2 In addition, officer time to prepare the appeal would be required. Given the current pressures which are being experienced on dealing with applications under the Licensing Act 2003, it is not considered that adequate resources could be made available to deal with the appeal, other than by consent as set out in the recommendation.

BACKGROUND DOCUMENTS:

- 10 Application for the transfer of a Public entertainment Licence in respect of the Moloko Bar, The Square, Winchester.

APPENDICES:

None