

LICENSING AND REGULATION COMMITTEE

2 July 2003

APPLICATION FOR THE RENEWAL OF A PUBLIC ENTERTAINMENT LICENCE IN  
RESPECT OF THE WHITE SWAN, HYDE STREET, WINCHESTER.

REPORT OF CITY SECRETARY AND SOLICITOR

Contact Officer: Fred Masters Tel No: 01962 848218

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report is to consider an application by Mr Ian Reay and Mrs Stephanie Reay for the renewal of a public entertainment licence in force in respect of The White Swan public house, Hyde Street, Winchester. The application is for the renewal of the licence, as existing, to be permitted between 6pm and 11pm Mondays to Saturdays.

A Notice was posted at the premises for 28 consecutive days from 11 April 2003, which has resulted in 4 letters being received from residents of Marston Gate, making representations concerning this application. In addition, a letter has been received on behalf of the Managing Agents of the Marston Gate Development concerning the use of the White Swan. The residents' concerns include noise nuisance from the premises, the use of the beer garden and persons entering and leaving the public house via the rear door.

The Director of Health and Housing has received a complaint of loud music from these premises this year but the complainant has since advised that the situation has improved. There are no other adverse comments although it is recommended that if the licence is renewed, the doors and windows are kept shut whilst the premises are in use for the purposes of entertainment.

The Police have no objections to the application. Sergeant Fisher of Winchester Police has checked the police licensing files but no issues of concern have been revealed.

## RECOMMENDATIONS:

- 1 That the licence be renewed for compliance with the Standard Conditions and Regulations of Winchester City Council and to include the following Additional Conditions:-
  - (i) The premises may be used for the purposes of this licence during the following times –  
  
- Mondays to Saturdays inclusive from 6.00pm to 11.00pm
  - (ii) The maximum number of persons permitted to be on the premises whilst in use for the purposes of this licence shall not exceed 100 persons.
  - (iii) 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 be maintained open by an electrical, mechanical or other device whilst the premises are in use for the purposes of this Licence.
  - (iv) The gate leading from the area outside the Bar to Hyde Street, Winchester, must be unlocked at all times, whilst the premises are in use for the purposes of this Licence.
  - (v) The Licensees or other person nominated by them shall be on duty at all times whilst the premises are in use for the purposes of this Licence to receive and respond to any complaints of noise or other nuisance received from any person.
- 2 That the licensees be reminded of the need to continue to take all possible steps to minimise any nuisance to residents caused by persons leaving the premises and, except in the case of an emergency, customers should be encouraged to enter and leave the premises by the door in Hyde Street.
- 3 That the licensees be reminded that only the inside bars of the White Swan are licensed for the purposes of public entertainment and no public entertainment may take place in garden.

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##### DETAIL:

#### 1 Application

- 1.1 This application is for the renewal of an existing public entertainment in respect of the White Swan public house, Hyde Street, Winchester, by the resident licensees Mr Ian Reay and Mrs Stephanie Reay.
- 1.2 There is no request to vary the existing permitted hours of entertainment, which are from 6.00pm to 11.00pm on Mondays to Saturdays inclusive.
- 1.3 The applicants, Mr and Mrs Reay, have been in the licensing trade for the past 5 years. They have previously managed another public house in Winchester, before moving to the White Swan 18 months ago.
- 1.4 The White Swan has been a public house for many years and has had the benefit of a public entertainment licence, for the hours shown at paragraph 1.2. above, since 1997. The area licensed for public entertainment relates only to the inside bars of the premises and does not include the garden.

#### 2 Representations

- 2.1 A Notice was posted, visible from outside the premises, for 28 days from 11 April 2003.
- 2.2 Four letters making representations have been received from residents of Marston Gate, concerning this application. The letters from residents include their concerns about noise from the premises, the use of the beer garden, the doors at the rear of the premises being left open and persons entering and leaving the public house via the rear door. (Appendices 1A, 1B, 1C and 1D.)
- 2.3 A letter has also been received on behalf of the Managing Agents of the Marston Gate Development. This was first received in November 2002, followed by a request in May 2003 that it is included in the representations to this application. The letter contains various allegations concerning the conduct of the users of the White Swan to the detriment of the residents of the Development. The allegations include illegal parking, vandalism, litter, public urination and persons traversing private land to gain access to the rear of the premises. (Appendix 2).

#### 3 Consultations.

- 3.1 Winchester Police have been consulted. Sergeant Fisher has responded that the police have no objections to this application as a check of the police licensing files have revealed no issues of concern. It is further reported that the police records

have been examined with particular regard to the allegations in the Managing Agents' letter, but they do not reflect that there is a problem in the vicinity of the White Swan.

- 3.2 Hampshire Fire and Rescue have been consulted and have no additional comments concerning the requirements for fire safety for the licence at present in force for these premises.
- 3.3 The Director of Health and Housing has been consulted and reports that the Environmental Protection Section had received a complaint regarding loud music from the premises earlier this year. However, the complainant later advised the situation had improved and the case was closed. It is recommended that all doors and windows on the rear elevation are kept shut whilst functions are under way and that entertainment ends at 11pm. There are no adverse comments to make concerning this application.

Reference is made to the letter making representations from Mr Moss (Appendix 1A). No comment can be made regarding the noise readings referred to as the details of the type of the meter used, when it was last calibrated, and the conditions under which and where the readings were taken, are not known.

The World Health Organisation's "Guidelines for Community Noise" is a document on which a great deal of noise policy world-wide has been developed. However the figures quoted in the letter refer to "a good night's sleep" the hours being defined as during the nighttime period of 11pm to 7am.

It is agreed that Planning Policy Guidance (PPG) 24 "Planning and Noise" paragraph 6 says that the Secretary of State considers housing inter alia should be regarded as noise sensitive development.

Annex 2 paragraphs 5 and 6 refer to nighttime (11pm to 7am) exposure to noise and is again based on World Health Organisation standards. Current noise legislation and policy guidance in relation to noise refers to nighttime as being 11pm to 7am.

- 3.4 The Ward members of this Council have been notified of this application.

#### 4 Other Information

- 4.1 The White Swan, Winchester is a public house where a full on licence is in force. Even without the benefit of a public entertainment licence certain entertainment is permitted during normal licensing hours, by way of television or radio or recorded music or by a maximum of two live performers. Entertainment by three or more persons, dancing or karaoke would not be permitted without the entertainment licence remaining in force.
- 4.2 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 on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
- 4.3 Paragraph 5(i) of Schedule 1 to 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 a shorter period should the Council think fit.

5 Issues for Consideration.

- 5.1 **Are the applicants suitable persons to whom the licence may be transferred?** It is considered that they are suitable.
- 5.2 **Are the premises suitable to be used for public entertainment, given their physical condition and location, and considering public safety, noise, proximity to residential property and other relevant issues?** It is considered that, providing there is compliance with the “Additional Conditions” set out in the Recommendation, the premises are suitable. Only the inside bars of the premises are licensed for the purposes of public entertainment and the garden is not included.
- 5.3 **Are the hours of entertainment being sought acceptable? If the hours are not acceptable, should the application be refused or should alternative hours be specified?** The hours being sought are acceptable providing entertainment ends promptly at 11pm. The applicants have indicated that, usually, the premises are only used for the purpose of public entertainment on 2 occasions a month.
- 5.4 **If granted would this Licence have any effect on Crime and Disorder in the area?** The hours of entertainment requested end at 11pm, which is the normal closing time for a public house. The Police have no evidence that this licence has an effect on Crime and Disorder in the area. The Police have no objections to the renewal of this licence.
- 5.5 **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. It is considered that as the renewal of this licence would have little effect to change the use of these premises, any interference with the residents’ rights is proportionate and the renewal of the licence would not be contrary to the provisions of the Human Rights Act 1998.
- 5.7 **Are there any further relevant issues which may mean that the licence should not be granted?** The complaint from residents concerning the use of private land to gain access to the White Swan at the rear of the premises would not be affected by the renewal of this licence.

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.

7 RESOURCE IMPLICATIONS:

7.1 None.

BACKGROUND DOCUMENTS:

Application for the renewal of a Public Entertainment Licence in respect of the White Swan public house, Hyde Street, Winchester, and representations received (Appendices 1 and 2).

APPENDICES:

- 1A – 1D Letters of representation from residents (4)
- 2 Letter on behalf of Managing Agents for the Marston Gate Development.
- 3 Map showing the location of The White Swan, Hyde Street, Winchester.

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