

LICENSING AND REGULATION COMMITTEE

5 November 2003

APPLICATION FOR THE GRANT OF A PUBLIC ENTERTAINMENT LICENCE IN  
RESPECT OF MEAD END PUBLIC HOUSE, DENMEAD.

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report is to consider an application by Mr Joseph Arnott Nicol and Mrs Yvonne Margaret Nicol for the grant of a public entertainment licence in respect of The Mead End public house, Mead End Road, Denmead. The application is for entertainment to be permitted between 12 midday and 11.30pm Mondays to Sundays inclusive on no more than 5 occasions in any one month.

A Notice was first posted at the premises for 28 consecutive days from 1 August 2003 (amended early in September and displayed for a further 28 days). This has resulted in six (6) letters making representations being received from the residents of Three Acres (5) and Hilda Gardens (1). The residents have concerns about noise nuisance both from the premises and by persons leaving the premises late at night. The Parish Council of Denmead raise no objection to the application.

The Police have no specific grounds to object to this licence being granted although there is a record that the police have been contacted concerning these premises on nine occasions, in addition to routine visits, since January 2002.

The Director of Health and Housing has been consulted and recommends that the number of occasions when the premises should be used for the purposes of this licence should be restricted to an end time of no later than 11pm and on no more than five occasions in a month with doors and windows being kept shut.

## RECOMMENDATIONS:

- 1 That the Licence be granted subject to the applicants giving a written undertaking to the Council that no entertainment of any description shall take place after 11pm in any part of the premises, unless authorised by the Council in accordance with the Local Government (Miscellaneous Provisions) Act 1982 or by the Licensing Justices under Section 70 of the Licensing Act 1964.
- 2 Subject to 1) above that the Licence be granted for compliance with the Standard Conditions and Regulations of Winchester City Council and to include the following Additional Conditions:-
  - (i) The premises, described as the inside bars and function room of The Mead End Public House, Denmead may be used for the purposes of this licence during the following times –
    - Mondays to Saturdays inclusive from 12.00 midday to 11.00pm
    - Sundays from 12 midday to 10.30pm.
  - (ii) The premises may only be used for the purposes of this licence on not more than five occasions in any one calendar month.
  - (iii) The City Secretary and Solicitor shall be notified at least seven days in advance of the dates that it shall be intended to use the premises for the purposes of this licence.
  - (iv) All doors and windows that are capable of being opened directly to the outside of any part of the premises being used for the purposes of entertainment, shall not be kept open, wedged open, or be maintained open by an electrical, mechanical or other device.
  - (v) 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 in the Function Room, 60 persons in the Lounge Bar and 60 persons in the Bar.
  - (vi) 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.
- 3 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.
- 4 That the licensees be reminded that only the inside bars and function room of The Mead End are licensed for the purposes of public entertainment and no public entertainment may take place outside the building.

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DETAIL:

1 Application

1.1 This application is for the grant of a public entertainment in respect of The Mead End public house, Mead End Road, Denmead and is made by the resident licensees and owners of the premises Mr Joseph Arnott Nicol and Mrs Yvonne Margaret Nicol. The grant of the licence is for public entertainment to be permitted at the premises on not more than five occasions a month during normal licensing hours for the premises. The applicants have circulated a letter to the residents of Three Acres, Denmead clarifying their application. (Appendix 1).

1.2 Mr and Mrs Nicol have been the holders of the Justices licence for these premises since March 2002 after becoming the owners of this public house. They were not in the licensing trade prior to this time but have attended the appropriate British Innkeepers Institute courses. They have not previously been the holders of a public entertainment licence but they would appear to be suitable persons to whom such a licence could be granted.

1.3 The Mead End is a public house which has the benefit of a certificate under Section 68 of the Licensing Act 1964 ("Supper Hour" certificate) but has not previously had the benefit of a public entertainment licence. Section 68 permits the extension of normal permitted hours for the purpose of the sale of alcohol to persons taking table meals in part of the premises set aside for this purpose (i.e. a separate restaurant area), provided the consumption of alcohol is ancillary to the meal. The normal licensing hours for the premises are from 11am to 11pm, but with a "Supper Hour" certificate, an additional hour is added to the end of normal licensing hours (i.e. until 12.00midnight).

1.4 However, such a certificate does not in itself permit entertainment. If public entertainment is provided, it must either be provided under the benefit of a public entertainment licence, or it must be within the "two in the bar" exemption set out in Section 182 of the 1964 Act. Section 182 allows entertainment by way of music or singing (but not both) either by recorded sound or up to two live performers. Dancing, entertainment which is provided by a combination of recorded sound and live singing (e.g. karaoke), or entertainment by three or more performers, is not permitted under this exemption. Section 182 does not restrict the entertainment provided under this exemption to permitted hours, and therefore no public entertainment licence is required for these premises if the entertainment falls wholly within the Section 182 exemption.

2 Representations

2.1 A Notice is required to be posted, visible from outside the premises, for a minimum period of twenty-eight days. A Notice was posted at the premises from 1 August 2003, and this was amended in early September. It was still displayed on 9 October 2003.

2.2 Six letters making representations have been received from residents. Five letters are from residents living in Three Acres and one from residents living in Hilda Gardens. The residents of Three Acres are particularly concerned about both the noise and inappropriate behaviour of persons leaving these premises at closing times. The residents of Hilda Gardens have particular concerns about noise caused by late entertainment in the function room. (Appendices 2A – 2F).

### 3 Consultations.

3.1 The Parish Council of Denmead has been consulted but has raised no objection to the application. (Appendix 3).

3.2 The Ward members of this Council have been notified of this application.

3.3 The Police at Waterlooville have been consulted and have indicated that they have no specific objections to the grant of this Licence. Other than routine visits there is a record of the police being called to the premises on nine occasions between 6 January 2002 and 14 October 2003. The Police will be unable to attend the Committee meeting however Inspector Lovett has indicated that a written report will be available at the meeting.

3.4 The Chief Building Control Surveyor has been consulted and in consultation with Hampshire Fire and Rescue Service has assessed the maximum number of persons (public) that may be in the premises whilst in use for the purposes of public entertainment as not exceeding 100 persons in the Function Room, 60 persons in the Lounge Bar and 60 persons in the Bar.

3.5 The Director of Health and Housing has been consulted and confirms that no complaints relating to these premises have been received since March 2002. It is recommended that all doors and windows at the premises are kept shut whilst entertainment is taking place and that the premises should be used for this purpose on no more than five occasions a month. Any increase in the number of occasions of use for entertainment, or any entertainment after 11pm, is not recommended.

### 4 Other Information

4.1 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.

4.2 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 granted?** 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, including the requirement and undertaking that there is no entertainment after 11pm that the premises are suitable. However, for any later entertainment the Director of Health and Housing would recommend that a full acoustic survey is carried out with any recommended works being completed before any extension of hours could be considered. It is proposed that only the inside bars and function room are to be licensed for the purposes of public entertainment and the licence, if granted, would not include any entertainment outside the building.

- 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. It may be considered that the premises should be used for the purposes of public entertainment on no more than five occasions a month.
- 5.4 **If granted would this Licence have any effect on Crime and Disorder in the area?** Although residents of Three Acres report disorder in the area on occasions at closing time, providing the hours of entertainment end at 11pm there should be no additional adverse effect on crime and disorder in the area. The Police have no specific objections to the grant 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 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.
- 5.7 **Are there any further relevant issues which may mean that the licence should not be granted?** There are no other relevant issues.

#### 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 grant of a Public Entertainment Licence in respect of the Mead End Public House, Denmead, applicants circulation to residents in Appendix 1 and letters of representation in Appendices 2A - 2F.

APPENDICES:

- 1 Applicants' letter circulated to residents.
- 2A – 2F Letters of representation from residents (6)
- 3 Letter from the Parish Council of Denmead.
- 4 Plan of Bar, Restaurant and Function Room - Mead End Public House, Denmead.
- 5 Map showing the location of The Mead End Public House, Denmead.

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