

LICENSING AND REGULATION COMMITTEE

5 NOVEMBER 2004

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

REPORT OF 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.

EXECUTIVE SUMMARY:

At its meeting of 8 July 2004, the Committee was due to hear an application for the transfer, renewal and variation of the public entertainment licence in force in respect of the Moloko Bar, The Square, Winchester. The hearing was adjourned following an application by the applicants' solicitors, to allow pending criminal proceedings to be dealt with.

This report is a revised version of the original report (LR 106) which was before the Committee on 8 July 2004. It sets out details of the 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 existing permitted hours of entertainment are:-

Mondays to 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 management arrangements are such that it is not appropriate for the premises to be granted a Public Entertainment Licence. The evidence of their objection is shown in Appendix 1 (A-E)

The Big Security Company Limited who supply some Door Supervisors has supplied information that the maximum capacity has been exceeded on occasions. This is detailed at Appendix 2 (A&B). However, letters were later supplied withdrawing these allegations. This is detailed at Appendix 2 (D&E)

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 management arrangements of the premises are unsatisfactory and non-compliance with any licence conditions is likely.
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 12.00 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 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.

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

DETAIL:

1 Introduction

- 1.1 At its meeting of 8 July 2004, the Committee was due to hear an application for the transfer, renewal and variation of the public entertainment licence in force in respect of the Moloko Bar, The Square, Winchester. The hearing was adjourned following an application by the applicants' solicitors, to allow pending criminal proceedings to be dealt with.
- 1.2 The criminal proceedings have now been dealt with, and details are set out in paragraph 3.3 below. However, at the time of the adjournment, it was expected that proceedings instituted in the Magistrates' Court by the Police to revoke the liquor licence were to be heard in October 2004. It is understood that the revocation application will be considered on 3 November, although this may only be a preliminary hearing, and a further hearing may be necessary. The issues of the revocation on this application are considered in paragraph 4.3 below.
- 1.3 This report is a revised version of the original report (LR 106) which was before the Committee on 8 July 2004, updated in the light of the outcome of the criminal proceedings and other updated information. It also deals with the amendment of the application (the application now seeks the transfer of the licence to Gillian Heath and James Sawyer, rather than to Gillian Heath only).

2 Details of Application

- 2.1 This application is to consider an application by Mrs Gillian Heath and James Sawyer 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 original application sought to transfer the licence to Gillian Heath, in substitution for Jonathan Turpin and David Heath. However, Mr Turpin has recently left the company, and the application has therefore been revised to seek the transfer of the licence to Mrs. Heath and Mr. Sawyer. The application is also to vary the licence by increasing the permitted number of persons allowed on the premises from 250 to 330.
- 2.2 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.*

2.3 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.

2.4 A variation to the conditions is sought. The applicants seek to increase 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. The existing permitted hours of entertainment were last varied to be as shown in paragraph 2.2 (i) above after consideration by this Committee on 6 November 2002 (LR 68 refers).

3 Consultations, Publicity and Responses

3.1 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. Three 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, from 7 June 2004 and 6 October 2004 respectively.

3.2 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)

- 3.3 Winchester Police have been consulted and object to the application on the grounds that the premises are poorly run. Their full response is detailed at Appendix 1A to 1C. Appendix 1D is an updated copy of the Police Licensed Premises Register giving details of Police visits and information received. The Police refer to observations on the premises carried out on 13 February 2004 which showed 335 persons on the premises, exceeding the permitted number of 250 persons. It was estimated that there were 275 persons in the upstairs bar and a ground floor fire exit was blocked by a motor vehicle. The Police detail certain incidents and the register at Appendix 1D gives the full list of visits to the premises and information recorded for the premises. Appendix 1B gives the Police view on the suitability of Gillian Heath and their concerns about her ability to act independently to her husband and co-owner David Heath. The part owner of the premises, David Heath, is currently the joint holder of 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. Jonathan Turpin was convicted at Basingstoke Magistrate's Court of six counts of selling intoxicating liquor to persons under the age of 18 years.. He and Mrs Heath have also been served with a Revocation Notices for the Justices Licence. It is understood from the Police that the matter is to be heard on 3 November 2004, although a further adjournment may be required to allow the Magistrates' Court to deal with the hearing in full. Mr Turpin has recently left the company and is no longer named on the Justice's Licence for the premises.
- 3.4 Appendix 1F is a statement from Adam Broomfield, a former Assistant Manager of the premises. This statement makes various allegations; however it was later withdrawn by letter on 1 July 2004 (Appendices 1G & 1H). He wrote a further letter to Sergeant French on 30 July 2004 re-iterating his withdrawal. However, as set out in the letter from the Police in Appendix 1C, Mr. Broomfield has now made a further statement confirming that his original statement was true, and that he had not been pressurised into making his original statement. This statement is attached at Appendix 1J.
- 3.5 A further statement by a former employee, Thomas Clifford, supplied by the Police (Appendix 1K) gives details of the running of the premises during the period up to February 2002.
- 3.6 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). However, in letters dated 2 July 2004, the company has withdrawn this allegation citing faulty counting equipment (Appendices 2D-2E).
- 3.7 The Director of Health and Housing has been consulted and has no adverse comments to make concerning these premises.

4 Other Information

- 4.1 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.

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, to all that it reasonably can to prevent crime and disorder in its area.

5 Issues for Consideration

5.1 **Have the applicants shown themselves to be suitable persons to manage premises where a public entertainment licence is in force?** Jonathan Turpin managed these premises from February 2000 and David Heath has been joint Public Entertainment Licensee with Mr Turpin since 7 August 2002. Mr Turpin has recently left the company. Mr Heath has not held the Justices Licence for the premises. The Police evidence, supported by the report from the Big Security Company, appears to indicate that the premises have not been properly managed for the purposes of a PEL. Mrs Heath has been involved in the management of the premises for some 21 months and is aware of the problems that have arisen. Mr Sawyer is a recent addition to the Justices Licence. 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. (Appendix 1B)

5.2 **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.

5.3 **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, as well as the level of drink-related crime involving customers from the premises. This is supported by evidence from the security company, (since withdrawn) and the representations from Morley College, Residents and The Minsters Resident's Association. (Appendices 1, & 3). There is information that the licensees 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 had been initially refused entry (owing to the fact they were unable to convince the doorstaff that they were over 18 years of age). There is also evidence of anti-social behaviour and crime 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 may deal with this latter issue, but the concerns over excessive numbers and overruling door staff could only be overcome if the existing owners no longer had any involvement in the management and running of the premises, whether or not they hold the licence.

The Police are pursuing proceedings for the revocation of the justices' licence, although the outcome of these proceedings is unlikely to be known before the hearing of these applications. However, it is considered that the Committee can

properly consider these current applications without reference to the revocation proceedings, and decide the applications concerning the public entertainment licence on the evidence before it.

- 5.4 **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 2.2 (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)
- 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 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:

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:

- 8 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 Report (3)
- 1D Police Licensed Premises Visits Register (August 2002 – October 2004)
- 1E Statement of Jonathan Patchell
- 1F Statement of Adam Broomfield 19 April 2004
- 1G Letter from Adam Broomfield to Mr Myall 1 July 2004
- 1H Letter from Adam Broomfield to Sergeant French 1 July 2004
- 1I Letter from Adam Broomfield to Sergeant French 30 July 2004
- 1J Statement from Adam Broomfield 4 September 2004
- 1K Statement of Alan Dare
- 1L Statement of Thomas Clifford
- 2A Report of the Big Security Company Limited (1)
- 2B Report of the Big Security Company Limited (2)
- 2C Letter from Big Security Company Limited
- 2D Letter from Big Security Company Limited (Ben Toomer)
- 2E Letter from Big Security Company Limited (Sean McCarthy)
- 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
- 3F Letter from University College Winchester
- 3G Letter from Mr Still
- 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