



Notification of decision - Licensing Sub committee - 5 March 2018

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14 March 2018

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	WARD	DECISION	OFFICER CONTACT
		Licensing Sub-committee Decision Meeting - 5 March	lisa.gallacher@portsmouthcc.gov.uk
2		<p>Licensing Act 2003 - Application for grant of a premises licence - Elegance, 149 Albert Road, Southsea, PO4 0JW</p> <p>DECISIONS:</p> <p>In the Matter of the Licensing Act 2003: Application for grant of a premise licence - Elegance, 149 Albert Road, Southsea PO4 0JW.</p> <p>The Committee has carefully considered the application before it for the grant of a premise licence and has also considered the representations made in relation to this application, both made orally and in writing. The Committee has also heard the comments of the applicant's leading counsel and further notes the fact that in addition a number of petitions have been submitted together with a number of written objections running from page 39 of the bundle to page 232.</p> <p>The Committee have considered the relevant sections of the Portsmouth City Council Licensing Policy.</p> <p>The Committee look to all the Responsible Authorities but mainly the Police for guidance and assistance in determining the effect of a licensing activity in terms of all the licensing objectives, but principally in terms of the Police, prevention of crime and disorder- the Committee should but are not obliged to accept all reasonable and proportionate representations made by the police. The fact that no representations have been made is of significance</p>	Nickii Humphreys Licensing Manager 023 9283 4604

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		<p>and the Committee give appropriate weight to that fact. A similar view is given to the fact that none of the other Responsible Authorities have made any representation.</p> <p>The above having been said the Committee is engaged by reason of the number of objections correctly received in having to consider the current application. The Committee was impressed by the number and thoughtfulness of the representations and able to conclude that the majority of comments pertained to the licensing objectives of:</p> <ul style="list-style-type: none"> • Prevention of crime and disorder. • Prevention of public nuisance. • Protection of children from harm. • Public safety. <p>being allegedly engaged. Having looked at the comments there is no evidence to link any incidents to the premises and that the mere "likelihood" of such incidents occurring in the future is not such as to enable the application to be rejected. The Committee also note that parking concerns cannot be taken into consideration in determining this application. Additionally there is no evidence to suggest that the applicants' have materially failed to promote any of the relevant licensing objectives indeed the operating schedule shows a high level of consideration to the necessary steps being taken to promote on a continuing basis all of the licensing objectives.</p> <p>In considering the application for a grant of a premise licence the Committee is mindful of the following facts as having been established upon a balance of probability and further that they have been specifically taken to the relevant parts of the Statutory Guidance under sec182 of the Licensing Act 2003.</p> <ol style="list-style-type: none"> 1. The premise will trade from the first floor of the venue with a capacity limited to 100 patrons. It is clear that the applicant has extensive and relevant experience within the 	

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		<p>licensing trade having run a number of establishments without difficulty.</p> <p>2. The premise is not in an area of special policy or cumulative impact and there is no evidence the application sought would be inconsistent with the Licensing Act 2003, the statutory guidance or the applicable policy considerations.</p> <p>3. The premise previously held a club premises certificate which permitted alcohol sales and regulated entertainment, music and dance and the playing of recorded music until 23:59 Sunday to Thursday and until 01:00 Friday and Saturday.</p> <p>In addition and having considered the Statutory Guidance (section 182 of the Licensing Act) the Committee is also aware that any Responsible Authority and indeed any other person may ask this Committee to review the licence because of any matter arising at the premises in connection with any of the licensing objectives. This is a key protection and is set out at paragraph 11.1 of the policy.</p> <p>However, whilst a review can be initiated it is clear that having established a number of facts one of the common threads running through the objections is relevant to the operating schedule timing in that it is such that a closing time of 04.00 would be potentially a problem in that the following was considered by the Committee as having a material bearing:</p> <ul style="list-style-type: none"> • The premise is situated in a densely residential area and persons are living in close vicinity to the premise. • The risk of persons living above shops and businesses in Albert Road experiencing public nuisance is a particular concern. <p>On the basis of the above the Committee would be prepared to grant a premise licence with</p>	

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		<p>amendments to the operating schedule and hours of licensable activity as follows:</p> <ol style="list-style-type: none"> 1. that all licensable activity will commence at 21:00 and terminate 30 minutes before terminal hour which will be 00:30 on Sundays and 03:00 Monday to Saturday; 2. that prominent and clear notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premise and the area quietly and such notices are drawn to the attention of the public when exiting; 3. that the entrance and exit of the premise is kept clear and free from litter or debris left by the public; 4. In the event that a smoking area is established outside the premises, the use of the smoking area ceases one hour before terminal hour. <p>The Committee can find no reason to decline the licence application as sought with the conditions proffered and the enhanced conditions above being proportionate and consistent with respect to the promotion of the relevant licensing objectives. The premises licence is therefore granted subject to those conditions.</p> <p>There is a right of appeal to the Magistrates Court.</p>	
3		<p>Local Government (Miscellaneous Provisions) Act 1982 - Licensing of Sex Establishments - Sexual Entertainment Venue - Application for the grant of a licence - Elegance, 149 Albert Road, Southsea, PO4 0JW</p> <p>DECISION:</p> <p>In the Matter of the Local Government (Miscellaneous Provisions) Act 1982</p>	<p>Nickii Humphreys Licensing Manager 023 9283 4604</p>

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		<p>Licensing of Sex Establishments- Sexual Entertainment Venue. Application for the grant of a licence-Mr Jaspal Singh Ojla - Elegance 149 Albert Road Southsea PO4 0JW.</p> <p>The Committee have considered all written material placed before them along with the submissions made by leading counsel retained by the applicant together with all comments made by the Licensing Authority and the individual objectors to the application. The Committee has looked at the specific objections from page 317 of the bundle to page 415.</p> <p>Portsmouth City Council adopted Schedule 3 of the LG (MP) 1982 as amended by the Policing and Crime Act 2009 so that as an Authority, PCC could regulate Sexual Entertainment Venues- this decision was made by PCC on the 22nd of March 2011.</p> <p>Portsmouth City Council following consultation between 1st March 2012 and 12th April 2012 adopted the Sex Establishment Licensing Policy in October 2012.</p> <p>This Committee is asked to determine the application 23 January 2018.</p> <p>Each application should be decided upon its own merit and subject to the individual circumstances of the case.</p> <p>The application is limited to the upstairs of the relevant premise. Details of the application have been advertised and the appropriate responses sought from: the Chief Officer of Police, Chief Fire Officer along with other consultees as stated at page 241 of the bundle. No objections have been raised by these agencies.</p> <p>The Committee is aware that the applicant holds 2 SEV licences, one at Surrey Street and the other being at Granada Road Southsea .The current application is for a new licence at the above premise, that said the applicant concedes that he will surrender his current licence at Granada Road- this offer being contingent upon success of the current application.</p> <p>The Act sets out the basis for refusal of an application based upon either mandatory grounds being engaged or discretionary grounds.</p> <p>It is common ground and clear that the application cannot be rejected upon engagement of any of the</p>	

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		<p>applicable mandatory grounds.</p> <p>The Committee is therefore engaged in considering the application upon merit having due regard to the following:</p> <ul style="list-style-type: none"> • The discretionary statutory grounds for refusal. • The Portsmouth City Council SEV policy. • The Statutory Guidance. • The Human Rights Act 1998. <p>The Committee is engaged in considering whether there is any discretionary basis to refuse the application. The Committee is required to consider the current PCC policy paying regard to paragraph 7.3 to 7.17. Having considered all the written evidence and the objections from those attending today the Committee make the following observations using the policy guidance:</p> <ul style="list-style-type: none"> • Unsuitability of the applicant- looking at 7.3 to 7.6 of the policy: <ul style="list-style-type: none"> ○ The Committee could not find that there were any grounds upon which the suitability of the applicant could be questioned. It is clear and having regard to the fact that none of the responsible authorities have made representation that the premises owned by the applicant are run on a professional basis and have been successfully trading for a number of years. • Unsuitable manager of the business or other beneficiary- looking at 7.7 of the policy: <ul style="list-style-type: none"> ○ The Committee accepts the representations made by the applicant and the evidence which suggests and maintains that the applicant is the primary decision maker in his businesses and as such the Committee is satisfied that he will be fully engaged. • Number of sex establishments- looking at 7.8 to 7.10a of the policy: 	

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		<ul style="list-style-type: none"> ○ The Committee recognise the position with respect to its own policy being that as a preliminary conclusion that there is no place within the City of Portsmouth of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex establishment- the effect being that nil is the starting position. The Committee recognise the force of this position. In addition the Committee specifically looked at 7.9, Portsmouth's Local Strategic Partnership vision for the city. ○ Whilst the above was a stated position in 2012 the Committee are also aware that no policy will ever be considered as an absolute and there may be occasions where the Licensing Committee may depart from the policy having regard to the unique characteristics of any one particular application. The Committee are therefore engaged in considering whether the facts warrant an exception to the policy. ○ It is clear that that since the applicant began trading he has essentially run the only two remaining currently active SEV premises within Portsmouth and that the numerical number of licences have for the last 7 years remained as 2 in number. The Committee are of the view that the effect of the current application is such that it can at least consider the application as being one that is unique in that it amounts to the same operator moving the licence to an alternative premise, with no overall increase in numbers of establishments. ○ Whilst the above is stated, the majority of the Committee were not satisfied that there were any unique circumstances to justify rebutting a preliminary position of refusal. The fact that the applicant and current owner seeks to move his operation from one premises to another within a geographical perimeter of one half a mile of itself is not unique, it is merely the exercise of a business consideration as against the desire to operate on a more efficient and potentially profitable basis. ○ Whilst it could be said that the grant to the 	

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	<p>applicant with his concomitant surrender of Granada Road premises amounts to no overall increase in the number of sex establishments, the Committee again fall back to the policy which is clearly drafted on the basis that the preliminary position for the grant of a new SEV premises would start with a presumption of refusal.</p> <ul style="list-style-type: none"> ○ Further the Committee were mindful at paragraph 7.10a of its policy that the basis upon which the presumption to refuse would not apply were specifically prescribed to renewals, transfers or variations of existing licences. The Committee had it in mind therefore that as the current application did not fall within that remit the correct starting point was 7.10. The Committee do not accept the submissions by leading counsel for the applicant that this is a case about maintaining the status quo, quite the contrary, the policy as drawn clearly considers two distinct positions at the time it was promulgated, the first position being the existence of SEVs at that point in time and the second being the position with respect to future applications. The Committee were of the view that the numerical starting point is that Portsmouth's written policy is not to have any SEVs and that the inclusion of 7.10a was for the purpose of managing the limited number of clubs in existence at the point in time when the policy was adopted. ○ The Committee were further of the view, having particular regard to para 2.2 and 2.3 of the policy, that the basic starting point is that this is a fresh application and the particulars are not unique as stated above. ○ The Committee further considered the planning inspector's decision dated 29 November 2016 and accept at paragraph 11 the findings of the inspector that the grant of a change of use would have a limited effect and would be unlikely to sufficiently affect the viability and vitality of the district centre as a whole. This stated the Committee again fall back to considering its own policy and in particular matters pertaining to character and relevant locality, having taken into 	

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		<p>account the nature and content of the representations by deponents and the consistency and relevancy of all comments made. Whilst considering and giving great weight to the Planning Inspector's decision, the Committee felt able to use their own experience and knowledge of the area to look at the application in the context of reality, which is the current application is for the grant of a new SEV.</p> <ul style="list-style-type: none"> • Character of the relevant locality- (looking at 7.11 of the policy in that the Committee will take into account the relevant factors and such other factors as may be considered relevant in the individual circumstances of the case). <ul style="list-style-type: none"> ○ The Committee heard very articulate representations made by a number of interested persons. What can be gathered from those representations is that whilst the proposed location is within an area of night time economy, there is a heavy existence of family residential premises including but not limited to persons living above their own business premises who are clearly engaged within being part of a local community in the wider sense. The Committee were of the view that in allowing the application there would be an impact upon the general character of the area to the extent that to disregard the representations would not be logical. Additionally it is clear that there are within the premises area local schools, educational facilities and premises that would be affected in an impactful sense should the grant be permitted. ○ The Committee also took the view that the current applicant has a maintained premises (Elegance, Granada Road) that is such as to be a sufficient provider for this form of activity within the PO4 locality. The fact that the applicant's particular business model meant it would be preferable to him to relocate to the Albert Road premises was not something that impressed the Committee. ○ Additionally whilst gender equality issues were considered, it was not such that the Committee 	

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		<p>are of the view that women would be deterred from using the area comfortably or at all. Additionally they do not accept that the existence of the club would of itself give rise to fear of crime. This was a conclusion reached upon considering the current existence over a number of years of the Elegance establishment at the end of Granada Road. In addition the Committee having considered all the deputations cannot reasonably ascribe a link to either the existing Elegance establishment or proposed Elegance establishment as to issues pertaining to gender equality and/or crime as stated above. The evidence that was led was anecdotal and not based upon direct testament.</p> <ul style="list-style-type: none"> ○ Additionally the Committee are not swayed by any references to the usage of the premises from a morality point of view, the Committee accepting that the applicant is a highly competent and credible business operator who has run premises successfully over a number of years. ○ The Committee did consider the general locality of the premises in Albert Road, accepting that a number of traders and businesses have actively participated in regenerating the area, so that the grant of the application for a premises seeking to provide SEV facilities would not be consistent with the promotion of para 7.11 of the policy. ○ Additionally the Committee were not convinced that there was a level of genuine demand given that demand had been satisfied by the Granada Road premises and could still be should its current owner seek to invest in that premises. The alternative position is such that if the Granada Road premises is unable to trade the current sufficiency of need within the location has obviously lessened to the point where it could reasonably be construed as being nil. The clear position is that this is a fresh application made by a perfectly competent owner/manager for a grant 	

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	<p>which must be looked at within the context of the existing policy.</p> <ul style="list-style-type: none"> ○ As stated, the Committee were of the view that the current application, a fresh application, is not a transfer, it is a stand-alone application to be looked upon in terms of its own circumstances and facts and that to conflate it with the fictional idea of a transfer is not logical or consistent with the policy as currently framed. ● Use of premises in the vicinity/layout character or condition looking at 7.12 to 7.17 of the policy ○ In relation to these grounds the key considerations are detailed above but that said the Committee were of the view that the normal position was refusal given that the premises is located within the vicinity of a number of schools and places of worship all within the PO4 area together with facilities used by the young, elderly and disadvantaged. It was not unreasonable for the Committee to consider those facts when balancing consideration of the application. ○ The Committee considered the expert evidence of the applicant's expert, Mr Studd, whose qualifications could not be in any way criticised. Whilst it is clear that Mr Studd has visited a premises (Surrey Street) and that he can give good evidence as to the applicant's ability to run a premises, the Committee could not find that his evidence was supportive beyond the applicant's competency of the establishment of an SEV in the Albert Road location. Indeed, Mr Studd in his own evidence at paragraph 9 eludes to the fact that within a short proximity to the proposed location there is a junior school, a Methodist church, a Salvation Army hall and St Swithun's church. Whilst he does not directly say, it is clear from his report that Albert Road is a highly diversified area in terms of activity, usage and premises occupancy and whilst he can say that an SEV within his experience can often co-locate and co-exist within these areas, in the context of the current PCC policy when balanced with the level and consistency of objectors, his 	

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		<p>evidence does not persuade the Committee that there would be a limited impact should the licence be granted.</p> <ul style="list-style-type: none"> ○ The Committee was drawn to the paragraphs 7.11 to particularly 7.14 of the policy in that it is clear from the evidence that the Committee heard that there are many sensitive issues applicable to a potential relocation of the premises to an Albert Road location. The Committee were particularly impressed by the number of individual members of the public making representations who occupied premises within a very short distance of the proposed premises and the fact that the general Albert Road area does have a palpable sense of "community" that is an individual circumstance of this case. ○ The Committee has also weighed into the mix the fact that the applicant has attempted to provide extensive conditions to assuage concern and that they are also aware that none of the responsible authorities have made representations. The Committee felt that maintaining the current policy was justified and that as set out above the application is not unique in characteristic. ○ The Committee were also of the view that they were not prepared to set aside their policy irrespective of the conditions offered by the applicant and the fact that the license is renewable on a 12 month basis or that a shorter period of licensable activity would be appropriate. ○ In essence the Committee were of the view that in terms of the current application for the grant of a new licence they were entitled to maintain their own policy at paragraph 7.10 in that there is no place within the city of Portsmouth of which it could be said that it was situated in a locality in which it would be appropriate to licence a sex 	

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		<p>establishment. The Committee distinguished between licences that existed pre-policy and the intention post-promulgation of the policy which is to presume that future applications would be refused.</p> <p>The Committee is reminded that the Human Rights Act applies to this application (Art 10 - Right to freedom of expression is engaged along with Art 1 Protocol 1 - protection of property).The Committee has been advised that the Act (LGMP as amended by the Policing and Crime Act 2009) is subject to Human Rights Act compatibility.</p> <p>Given the comments made by a number of the deponents, the Committee have attempted to consider equality issues and the applicant's human rights as part of this decision making process and has balanced the rights of the applicant as against those of the community as a whole.</p> <p>The Committee have further addressed their minds to the Public Sector Equality Duty contained within the Equality Act 2010 and note that this does not impose a positive duty to eliminate unlawful discrimination, harassment and victimisation but rather requires that decisions which may have a negative impact on equality are taken after due consideration of any such negative impact and the ways in which such impact may be mitigated.</p> <p>Whilst the Committee have considered all the evidence and objections they are of the view that given the above comments and consideration of the policy and all other relevant matters that the objections and policy considerations, when balanced as against the positives of the application, are such as to justify the refusal of the application.</p> <p>By majority decision, the Committee will accordingly refuse to grant the application.</p>	