

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Monday, 5 March 2018 at 9.30 am in the Council Chamber, Portsmouth Guildhall

Present

Councillors Lee Mason (in the Chair)
David Fuller
Colin Galloway

22. Appointment of Chair

Councillor Lee Mason was appointed chair of this hearing.

23. Declarations of Members' Interests

No interests were declared.

24. Licensing Act 2003 - Application for grant of a premises licence - Elegance, 149 Albert Road, Southsea, PO4 0JW

The Licensing Sub-committee hearing procedure was followed.

Present:

Peter Baulf, Legal Advisor
Tracy Blair, Legal Advisor
Nickii Humphreys, Licensing Manager
Derek Stone, Principal Licensing Officer
Mr Paul Ojla, Applicant
Mr Philip Kolvin, QC, Barrister for the Applicant
Mr Jon Wallsgrove, Solicitor for the Applicant.
Mr Adrian Studd, Independent Licensing Consultant on behalf of the Applicant.

Interested parties making deputations

Ms C Storey
Cllr Lee Hunt
Ms C Dacke
Cllr Suzy Horton
Ms H Reed
Cllr S Pitt
Ms C Davies
Ms M Bonner-Janes
Mr M Mitchell
Mr Andrew Pearce
Mr Richard Adair

The Chair welcomed everyone to the meeting and asked everyone present to introduce themselves.

The Principal Licensing Officer introduced the report.

There were no questions from members to the Principal Licensing Officer.

There were no questions from the applicant to the Principal Licensing Officer.

In response to questions from the interested parties, the Principal Licensing Officer advised the following:

- He did not think he was in a position to answer the question as to whether this premises opening until 04:00 would not prevent an increased risk of crime and disorder in the area. He added that there are many venues open in Albert Road until that time in the morning that do not attract incidents of crime and disorder.
- There are no other premises in Albert Road that are open until 04:00. He believed the latest was 02:00 or 03:00.
- Currently the only premises with a late night licence in Albert Road was the Gin and Olive which was open until 02:30. There was only one shop in Albert Road with a late night licence.
- He was not aware that the licensing policy seeks to move people away from licenced premises quickly after hours so they are not in residential areas at night, and said he would need to double check the policy. Venues will operate in accordance with conditions and the behaviour of individuals after dispersal is down to the individuals.
- He confirmed that there are residential properties around Albert Road. He was unaware that Central Southsea is the most densely populated ward in Portsmouth.

Mr Kolvin, QC was then invited to present the applicant's case. He reminded members that they had received an additional bundle of information which was sent to them the previous week.

Mr Kolvin wished to start with making four preliminary general remarks about the application:

- (1) Scope - if the premises licence is granted the operation will be highly regulated and subject to 14 conditions on the premises licence which have been previously agreed by the police and other responsible authorities.
- (2) It would also be subject to the mandatory licensing conditions.
- (3) It would also be subject to the 61 conditions on SEV licences set out on page 306 which reflects Portsmouth's thorough code to ensure the premises operates discreetly and without harm
- (4) It would also be subject to the 4 planning conditions set out on page 43 of the applicant's bundle.

The Committee would further be entitled to impose further conditions to ensure this happens without harm. None of the above has been referred to by any of the objectors but he felt this is integral to the application. He also pointed out that no statutory body has objected to the application.

Mr Kolvin went on to say that today's decisions are not made in perpetuity. The maximum period for a SEV licence is 12 months. He felt that if the licence was granted it would take up to three months to set everything up. In one year's time the committee would meet again to see whether there has been any impact as feared by the objectors or if there have been none. The committee will have some discretion to grant or refuse the licence. The Court of Appeal has confirmed that the SEV licencing regime is an annual regime therefore any grant given is probationary and not perpetual.

Mr Kolvin explained his client is taking three risks with submitting these applications:

- 1) He would be subject to a Licensing Act Review if he does not comply with the conditions.
- 2) When the licence comes back for annual renewals the committee will take a fresh look to see if there has been a detrimental impact to the community.
- 3) There is also a risk that in three years' time the planning department decide not to renew the planning permission.

All of these points will help to concentrate mind to ensure there is no impact.

There have been no objections from the statutory bodies. This also links to the evidence of Mr Studd which is included in the applicant bundle.

There are five facts that need to be taken into account that would justify the probationary licence:

- (1) Experience from the applicants other venues in Portsmouth who have traded for a combined total of 23 years.
- (2) The responsible authorities have not objected.
- (3) Mr Studd's expert evidence.
- (4) The views of the Planning Inspectorate which are material.
- (5) Conditions to which these licences would be subject to.

Mr Ojla is a business person with a number of businesses in the south and has over 40 years' experience. He has two SEV licences; one on Granada Road held from 2000-2016 and also one in Surrey Street which he has held since 2011. Mr Ojla's intention is to surrender the licence at Granada Road if the licence at Albert Road is granted. In practical purposes this is a transfer of licence. There would therefore be no overall increase in the number of SEVs in the PO4 postcode. If the SEV on the Granada Road site is surrendered the applicant will look to turn this into residential accommodation to be more in

keeping with the area. The proposal for 149 Albert Road is for the ground floor to be developed for retail use with the first floor operating as a SEV. Above the door would be a sign saying 'Elegance' which would need to be approved by Portsmouth City Council. The SEV would be for night time use only and the impact on the locality at night will be negligible.

Mr Kolvin then referred to the Licensing Act 2003. The conditions would be those listed on page 28 of the agenda papers. The conditions provide for:

- (1) Full CCTV coverage, including the private dance areas.
- (2) Staff training.
- (3) Pub Watch attendance.
- (4) Membership of the Business Crime Reduction Partnership.
- (5) Deployment of Security Industry Authority door staff who will be equipped with body cameras worn by all security staff.
- (6) Venue policies to be agreed by the police.
- (7) No entry for the final hour of activity.

Mr Kolvin referred to page 5 of the bundle and drew attention to paragraph 4 that said there are no representations received from responsible authorities and conditions have been agreed for crime and disorder and reduction of children from harm. It is the view of the responsible authorities that these agreed conditions should be adequate to meet the licensing objectives. He reminded members that the responsible authorities include the licensing authority. He added that Mr Ojla's other venues have traded for years without harm.

Mr Kolvin referred to page 48 of the applicant's bundle giving the views of the environmental health officer which had been expressed to the planning committee whilst considering the planning application. They were of the view that as the interior will be acoustically treated so there will be no noise breakout and noise in the street is unlikely to be experienced. The applicant has two similar venues licenced until 04:00 - Wiggle and Elegance on Granada Road and Mr Kolvin said he had completed a search and found no noise complaints had been reported to the environmental health officer for either venue. Some objectors expressed fears of drunk, rowdy behaviour and an increase in sexual assaults for people in the area, however this has not been the case. Sexual entertainment venues are not high capacity or high consumption venues, alcohol prices are high, the music is low level and the clientele is older than in bars and clubs. There will be no mass exodus at the end of the night. The maximum capacity of the venue is 100. Mr Kolvin said he would now test this against Mr Studd's experience who is an expert in this field.

Mr Adrian Studd (Expert Witness on behalf of the applicant)

Mr Kolvin questioned Mr Studd and began by confirming with him the information in his written statement within the applicant's bundle, with regard

to his work history and relevant experience. Mr Studd confirmed this was all correct. Mr Studd was now an independent licensing consultant who is independent and values neutrality. He visited the Albert Road area and gave his description in paragraph 11 of his statement.

In response to questions from Mr Kolvin, Mr Studd said the following:

- From his experience and all the research has been conducted in reality SEVs operate very discretely and people leave the area very rapidly.
- Following his research carried out in London and other areas, he was unable to find any connection between SEV premises and incidents of serious sexual assaults.
- SEVs trade very differently both on entry and exit compared to nightclubs. SEV customers arrive and expect to go straight inside the venue. With exiting this is over a much more gradual period. The last admission would be 03:00. There would therefore be no impact.
- Alcohol prices are very high within SEVs so alcohol consumption is lower. This creates a much more relaxed atmosphere as people are not as intoxicated.
- Most people passing by a SEV are unaware of the entertainment taking place inside. They are very discreet by regulation with the SEV taking place on the first floor with only minimal signage.
- With regard to his visit to Wiggle reported on page 19 onwards of his statement, he said he found the premises very discrete and the SEV was on the first floor. It was very relaxed, controlled environment with door supervisors and he felt the venue was very well managed. He spoke to some of the dancers who were very complimentary to how the club is run compared to others they have worked in. They were very quick to point out that they are not sex workers just entertainers.

Mr Kolvin thanked Mr Studd and summarised by asking members to take into account:

- (1) The comprehensive set of conditions proposed.
- (2) The views of the responsible authorities.
- (3) The experience of Mr Ojla and the lack of harm at his other venues.
- (4) The expert evidence of Mr Studd.

In light of all the above he felt that the premises licence application should be granted without risk of harm.

Members' Questions

In response to questions the following points were clarified:

- Mr Studd said that he does not represent clients, they will engage him to carry out research and give his expert view in a report. His views

would be the same as when he was a police officer. He will say what his findings are then report them.

- Mr Kolvin said that it frequently occurs that SEVs are near to venues that young people visit and gave an example of a SEV in Leicester Square that was next to family restaurants. He said there is an outside door supervisor and there is no crossover of clientele. Dancers do not stand outside the venue. When asked about queues, Mr Kolvin said there would never be a queue outside a SEV. Mr Studd confirmed this and said that people visiting SEVs expect to be admitted with no queueing. Often there is a door in and a small lobby area where they will wait.
- Mr Kolvin said that Mr Ojla would be managing the venue in the first instance to ensure the venue is compliant. After time Mr Ojla may apply to have a new DPS but this will be scrutinised by the police and the licensing authority.

Questions from interested parties:

In response to questions the following points were clarified:

- With reference to the case in Bristol, police pointed to the fact that within a radius of two lap dancing clubs, there had been a number of sexual assaults in the last year. In the applicants case he had one venue operating for 6 years and one for 16 years with no evidence that the SEVs are linked to sexual assaults. When the police attended the hearing last week in Bristol, the sub-committee asked if there was any evidence of any link between SEVs and sexual assaults and they said there were no evidence whatsoever. The police confirmed it was more an issue with nightclubs. As a result both licences were renewed by the committee.
- There is one house at the back of the premises and the applicant is not disputing the fact that this is a densely residential area. This was not made in the applicant's submission however the clients operation will not adversely impact the residential area. Before making the application the applicant devised a set of conditions and discussed these with the responsible authorities and then the application was submitted.
- The trading and licensing hours as set out in tab 10 of the bundle shows there are a number of premises trading until 02:00 and 04:00. If members were dissatisfied with the conditions proposed, they are entitled to add further conditions, for example a formal dispersal policy, however customers will not be leaving on mass.
- Drunken behaviour in SEVs is not common.
- Mr Ojla wants to open until 04:00 to meet demand when it arises and experience has shown demand for SEVs takes place late at night. He also wants to do it in a way that does not cause harm locally.

- Mr Kolvin said he was not personally aware of the crime statistics for Hampshire or that public order offences in Hampshire had doubled. He understood this area is not a crime hotspot as mentioned in the planning inspector's decision. He added that if the police considered it an issue they would have made a representation on the application.
- A map of the other licenced venues along Albert Road and their opening times was included in the applicant's bundle. He said that a number of premises were licenced until 03:00.
- With reference to the comment that queueing had been witnessed in the vicinity of Wiggle and sexual harassment of women from the people waiting to go in, Mr Kolvin said this was not their experience. Staff are not sent out to tout for business and there is no leafleting. With regard to queuing there would only be three or four people whilst they are waiting for space in the small lobby area. Mr Studd reiterated that queueing is not something that is seen outside of SEV premises. Mr Kolvin added that he was sorry to hear of the sexual harassment and asked if this was reported to the police. The interested person said she had reported this to the police and also the licensing authority however the police chose to do nothing. Mr Ojla added that he had handed the police the CCTV footage but they had chosen not to do anything as it was nothing to do with the club.
- In response to a question, Mr Ojla confirmed that he operated SEV premises in Bournemouth and Southampton and has never received any complaints.
- Mr Studd explained that he has visited Wiggle and posed as a customer. This meant he paid for all dances and drinks to give the impression of being a customer. The primary purpose of his visit is to ensure the venue is complying with all regulations. This allows him to provide an accurate assessment and is as described in his report.
- With regard to only 5 people at a time being allowed outside to smoke, Mr Kolvin said 5 people is a maximum. This would be a small barriered area immediately outside the front door which will be supervised by a SIA operative. It was felt that this would not cause an issue for other users of Albert Road. The applicant would need to apply for an amenity on the highway licence in order to put out a barrier. There would be a receptacle for cigarettes and a condition could be added that any debris must be swept each night.
- The existing terminal hour for Wiggle is 05:00 and Elegance is 03:00 to be emptied by 03:30. The applicant is asking for a later terminal hour for Elegance in Albert Road but it was felt that this will not have a detrimental impact.
- There were no Temporary Event Notices (TEN) at Elegance in the last year as it has been closed. There were approximately 12 TENs over the last year at Wiggle asking for an additional hour to 06:00. This has created no issues.

- With regard to people queuing outside, in theory there might momentarily be up to 10 people, if there were five people smoking and five people waiting to enter.
- Mr Studd explained that SEV premises typically trade alongside every style of premises either on the first floor or basement so they are unobtrusive.
- Mr Studd explained that he had stood in many outside smoking areas outside SEV premises and had therefore heard the types of conversations which could be repulsive sometimes. He felt though that this was no different to outside a nightclub and was normally less of an issue as the people are not drunk or hyped up.
- Mr Kolvin agreed that his comment earlier about the licence being a 'technical transfer' was incorrect as there is nothing in licensing law to say a licence can be moved from one premises to another.
- Planning permission was granted on appeal for a period of three years.
- Reference was made to a systematic review conducted in 2012 looking at 1,536 separate pieces of evidence. The conclusion was that sex establishments linked to widespread violence, abuse and even murder. Mr Kolvin said he would need to see this study as this was new evidence that he was unaware of. Mr Studd said in his experience as a police officer, he had seen no link between SEV premises and sexual assaults and if this was the case he would expect the police to have objected.
- Reference was made to an incident in Greater Manchester and one in Somerset in 2017 of serious violent crimes including a murder and as a result lap dancing clubs were closed down. Mr Kolvin said Mr Wallsgrove the applicant's solicitor is a local solicitor and Mr Ojla is a local businessman, therefore they are both aware of the area and the relevant issues. Mr Studd visited Albert Road on 18 January 2018. His report was based on working with these type of premises.
- Reference was made to an article in the Bristol Post was probably in relation to a venue called the Lounge at 30 in 2012 when the city council adopted the new regime and officers went in as they were not complying with their conditions so was closed down. In Manchester, there is a club called Silks and there was violence occurring and the door staff were not stopping this and this was taken to review and Mr Kolvin thought they were suspended for review.
- Mr Studd had visited the area on one occasion on Thursday 18 January 2018. His report is based on his experience in working with these types of premises and his visit was to familiarise himself with the area. He would not say he knows the area well.
- With reference to the comment of one of the representations made about receiving a handbill promoting Wiggle, Mr Kolvin said that his

client does not charge £35 entry and does not send out handbills. There is no intention to introduce handbills as they get dropped.

- The applicant will need a tables and chairs licence on the pavement for the smoking area. With regard to litter a receptacle will be used to use for discarded cigarettes.
- The applicant was still in negotiation as to the retail unit that would occupy the ground floor but this would not be of a sexual nature.
- The licensing consultant would not canvass homes to notify them of the application as this is not their role.
- Mr Kolvin said he would discuss with his client whether he would be willing to reduce the opening hours slightly but typically these venues open late into the evening.
- The cost to get into the venue would be £10 after midnight and £5 before midnight. There is a licence condition to prevent any entry for the last hour of trade.

[the committee had a 15 minute adjournment]

Mr Kolvin said that during the adjournment he had asked Mr Ojla about the licensing hours and he maintains his application for 04:00. If the Licensing Sub Committee thinks it is proportionate to pull these back it might be to 03:00 and 03:30 close.

The Chair then invited the interested parties to make their representations. As some had to leave the meeting early, the chair allowed those people to make representations on both the premises and SEV licence applications.

Representations from the interested parties were then heard and their main points are summarised below:

Ms C Storey (to both premises and SEV reps)

- **Premises licence** - She objects on the grounds of prevention of crime and disorder. Realise police have not objected but this does not mean it will not impact the area. Crime is at a level that worries residents.
- Additional premises serving alcohol operating late at night will increase the likelihood of antisocial behaviour in the surrounding area.
- Also object on the grounds of public safety. Will be an increase in the likelihood of criminal acts.
- Gender equality issues. Already heard women to say they will avoid the area and people will not wish to walk past the club and women will fear intimidation and harassment.
- There will be an increase of noise particularly after 23:00.

- Increase in traffic including deliveries. There are already issues of illegal parking in the area.
- **SEV licence** - objects on discretionary grounds. Number of sex establishments is equal to or exceeds the number that the local authority deemed appropriate for the locality.
- The acceptable number of sex establishments following the public consultation was deemed to be nil.
- Also object on the grounds of public safety. Portsmouth already has a problem with the exploitation of young people across the city.
- There are a number of homeless people on Albert Road, some of whom are vulnerable individuals and women. She asked that the impact to these individuals also be considered.
- Clear from the public response that this is not wanted. Important to consider the voice of the public.
- Society is now recognising the harm of objectifying women.

Councillor Lee Hunt (ward councillor)

- Already seen an admission from the applicant that there is an issue around public nuisance as they have offered to reduce the hours of operation back to 03:00 for the end of alcohol sales and 03:30 for close. There will still be issues though between 02:00 and 03:30 hours and residents are entitled to a good night's sleep.
- Albert Road is a pleasant shopping area with a number of independents shops, cafes etc. It has local shops serving local people. Albert Road traders have worked with PCC to improve the area. The Kings Theatre has had significant investment from PCC.
- The Wedgewood Rooms which is next door, has events for teenagers and this must be taken into account.
- This application if allowed will undermine the character of the area.
- The close proximity of residents to the site needs to be taken into consideration. People are living to the side, 30-40 metres away across the road and there are many flats above shops. There are also multiple family dwellings nearby.
- Portsmouth is one of the most densely populated areas outside of London.
- Public order offences have doubled in the last year and there are not enough police officers.
- Residents would accept 02:00 for the end of licensing activity and a terminal hour of 02:30.

Ms Charlie Dacke

- Objects on all four licensing grounds. The proposed opening hours until 04:00 are inappropriate when there will be minors using the premises next door.
- It is rubbish to think that people will not know what is going on in the premises. She regularly sees children walking past the club in Granada Road picking leaflets up off the floor.
- Issues with police resourcing, clubs have been concentrated in Guildhall Walk area to help with this. The police or anyone cannot predict the future. There will be a perceived threat of crime and women will not feel safe in this area.
- There is evidence of SEVs being linked to an increase in sexual assaults.
- These clubs are notorious for sending women out to tout for business.

Councillor Suzy Horton (ward councillor)

- Objects on two grounds, public nuisance and crime and disorder.
- Character is irrelevant and transfer of licence to this club is also irrelevant.
- The applicant's proposal to decrease the hours of operation to 03:00 rather than 02:00 as put forward by residents indicates that this is not a viable business case.
- This is a residential area with people living above shops and there are many residential roads nearby.
- Cannot use crime and disorder in a blanket way as a reason to refuse however if police are not around in these areas it is a crucial factor.

Ms Hilary Read then spoke whose points included:

- Two SEV applications for Elegance in Granada Road and Wiggle in Surrey Street were considered at a separate hearing on 19 February. At the last minute the committee agreed to hear both applications as one which was incorrect and the people making deputations pointed this out at the meeting.
- The SEV application is not accompanied by an EIA.
- Queried whether the Licensing Committee members have received EIA training.
- Human Rights Act 1998 applies to these matters committee must be applied.
- Concerned whether the local authority has the capacity to monitor the conditions put forward.

- The staff handbook claims that only five people let outside to smoke at one time. Concerns raised about how this will be monitored as there is a bus stop nearby and the public should not feel threatened to use it. In response to one of the points raised, the Committee confirmed to Ms Read that they had all received training prior to the meeting on the SEV policy. Councillors have also received training on the Human Rights Act and the Equality Act. Councillor Fuller added that he had sat on the meeting of 19 February where the SEV licences for Elegance (Granada Road) and Wiggle were considered and he said the meeting was run properly and disagreed with Ms Read's comment.

Councillor Steve Pitt (ward councillor)

- Acknowledged the comments of all the people attending today and will address both the premises licence and SEV as he needed to leave.
- The proposed opening time of 21:00 will coincide with the Wedgewood Rooms many all age events which means any age e.g. college students may be mixing with clientele.
- In 2017 there were 30 youth shows and an additional three aimed at young children. In 2017 there were 27 occasions where the Wedgewood Rooms opened until 04:00. This application is for the premises to open until 04:00 365 days a year which will be a material change in the character of Albert Road.
- The Wedgewood Rooms undoubtedly has young people in there on a regular basis and has an extensive policy on protection of children from harm.
- The premises licence application is odd as all it states that all licensing activity will end at 04:00, however unsure how someone could purchase a late night refreshment at 03:59 and leave the premises by 04:00.
- Surrey Street has the highest level of crime in the city which happens to be where another SEV is situated.
- The applicant's solicitor reference to transferring the licence from Granada Road to Albert Road is wrong as no such thing exists in licensing law. This is a new application for a new premises.
- Asked the committee to consider the impact of people outside the premises smoking. He suggested that the smoking area ceases to be used 1 hour before terminal hour after 02:00 as this will add to public nuisance in the area.
- Also suggested that if the application is granted that a condition is added so that the barriers for the smoking area do not contain any branding.
- Asked the committee to give due weight to the petition which included 475 signatures of local and business owners. Also two other petitions one containing 608 signatures and one for 240.
- Proposed that during Sunday - Thursday the terminal hour is 02:00 and for other licensable activities cease at 01:30, and Friday and Saturday the terminal hour is 03:00 with other licensable activities ceasing at 02:30. To extend beyond that will change the character of Albert Road.

- With the SEV licence he had concerns that the venue closest to it is the Wedgewood Rooms. Some will pre load before attending.
- Have to consider every application on its merits. No suggestion that this will not be a well-run premises.
- SEV policy is very clear - zero quota.
- The policy refers to character, gender equality, regeneration, tourism and trade - going to see a material increase in trade.
- Also refers to the use of other premises in the city e.g. dwelling, places of worship, schools, youth clubs, and community centre. People will say the premises will be operating late in the evening so it will not affect these, but he felt this was extremely relevant as when the policy was written and schools etc. were added the committee would have realised that schools are only open during the day.

Mrs Davies

- Object to the SEV on discretionary grounds.
- Albert Road is a busy and lively street and there are fears that many businesses will leave. This will affect people's livelihoods.
- 7.9 of the council's SEV policy states no sex establishments.
- She currently feels safe leaving Albert Road late at night on her own however would not if this application is granted.
- Referenced a report in 2003 by Camden lap dancing club where reports of rape increased by 15%. This is a home office endorsed report.
- The Wedgewood Rooms are proud of their all age policy that brings in families. They would not want the people leaving their venue to meet people arriving or leaving the SEV.
- Pleased to see in the clubs code of conduct that clients must not make lewd comments or harass its staff and if they do they will be asked to leave. This however means that they will be thrown out onto the street fuelled with alcohol and sexually charged and also angry.
- This application will not make Portsmouth an attractive, sustainable city or make people want to live here.
- The Wedgewood Rooms offers a diverse programme and has a fantastic reputation but allowing this application would create serious concerns about attending future events.
- Life House is nearby where vulnerable residents with mental health issues come for a safe space. They serve evening meals on a Thursday evening when the club would be open.

Mrs Bonner-Janes (making objection to both premises and SEV now as needed to leave early)

- She lives 3 minutes' walk away from the site and works as a children and families social worker and has seen consequences of child protection issues first hand.

- Objects on the grounds of crime and disorder, public safety and the protection of children from harm.
- Known the applicant for many years and believe his intentions are honourable.
- Impossible to regulate.
- Will see an increase in rape culture outside of working hours and an increase in criminal activity. This is in the heart of the community and men are more likely to attend on their way home after leaving pubs.

Mr Mitchell (making objection to both premises and SEV now as needed to leave early)

- The premises licence application will change the character of Albert Road and will make other premises apply to extend their opening hours.
- It is disingenuous to claim that there is no relationship between the number of licenced premises until 04:00 and an increase in crime and disorder.
- Not querying the applicant's ability to run the premises.
- The location is near to other pubs so the majority of people attending the SEV will have consumed alcohol.
- With regard to the SEV application he raised concerns with the site being close to two schools and said the committee must consider their policy.
- The Wedgewood Rooms are very well managed in dealing with underage children at their all age events.
- Horrified that children will potentially be walking to school along Albert Road and see the SEV.

Andrew Pearce

- Owns a well-respected business next to the proposed application site. This application will be disrespectful to the area.
- He offers late night appointments to brides and if this application is approved he will need to amend his business hours as his staff have said they will not work in the evenings anymore. Many of his clients have said that the SEV next door if approved would have had an impact on whether they chose to buy from him. Why should he have to amend his business hours?
- Signage next to shop would affect business.
- His lease is up in 18 months but why should he feel pressurised to move premises.
- The application would create an increase in street litter.
- Late night activities will increase.
- Security issues, who will be responsible for any damages to shops? Traders have been told they are not allowed to put cameras up outside shops.

- The use of drugs will increase - there is already an issue at the back of the store. Behind his store is private land and have been major issues with fly tipping.
- Parking will increase and there are already issues.
- Will be detrimental to existing businesses.

Mr Adair

- Opposed to plans a local resident. Albert Road has developed into a popular area.
- Increase in noise with men shouting in street. A good night's sleep is a right not a privilege
- The Council has a duty to protect. This is a densely populated area that backs onto Harold Road and is this proposal is unacceptable.
- This would alter the character of the area and be a nuisance to families living in the area.

Members Questions to Interested Parties

In response to questions the following matters were clarified:

- All along Albert Road the premises alcohol sales end at 02:00 with the terminal hour being 02:30. The licence needs to be fair, reasonable and proportionate.
- Councillor Hunt said there are 12,000 on the electoral roll and 16,500 on the census in Central Southsea ward.

The applicant had included a printout of opening hours of all shops, restaurants and bars on Albert Road which suggested that there were several that are open until 03:00. Councillor Hunt said that these are all late night restaurants and he has been into all and they are all horrified about this application.

Summing Up

Interested Parties

Councillor Hunt

He said he had listened carefully and noted the applicants offer to reduce the terminal hour from 04:00 to 03:00. If you look at the locality it is recognised that there are no pubs open until 04:00. Monday to Wednesday some pubs do not open. If the licence is granted until 04:00, it will be bringing more people into the area that otherwise would not be there. He urged the committee to observe their SEV policy.

Ms Dacke

The application will impact all four of the licensing objectives and she has been a victim of sexual harassment outside of another SEV in the city which has been reported to the responsible authorities.

Councillor Horton

The premises licence application is aimed at drinkers and getting them into the area between 02:00 and 04:00, which will have a material impact on the character of the area.

Ms Read

Asked about the clarity of the process. In response Mrs Humphreys advised that the notice of hearing is sent to all representees. There is specific reference in the premises licence as to how deputations will be heard and this gives a link to the council's website detailing how the committee will work and the process that will be followed.

Councillor Pitt

When he made his request to make a deputation today and asked whether he needed to explain his reasons and the evidence he will be giving, and was specifically told no. This was the last day for representations to be submitted and therefore the last day any information could be submitted. He confirmed this with the licensing department. He asked the committee to not set a precedent for a venue in this area that is not serving food. This is not a restaurant and asked that the opening hours at the very least be kept in line with the Wedgewood Rooms. In response to the process query, Mrs Humphreys said she would remind staff about the process and provision that representees can expand on their written deputation but not introduce new information at the committee meeting. She apologised if there had been any confusion.

Ms Davies

No further comments

Ms Bonner-Janes

This application will not benefit the area, reduce crime nor improve the reputation of the area.

Mr Mitchell

Wished to emphasise the point that the majority of other premises that are open until 03:00 are restaurants serving food.

Mr Pearce

Businesses all south of Albert Road are eatery establishments whereas the north of Albert Road is mainly residential.

Mr Adair

Was a police officer in Hampshire Constabulary for 37 years and know that the force has lost 1,000 police officers so are very stretched. After 03:00 there are 8 police officers to cover the city.

Applicant Summing up

Mr Kolvin said that there had been some crossover between the representations made as some of the representees needed to leave. The Licensing Act hearing to hear the evidence on impact on the licensing objectives.

He made 4 key points:

- (1) There has been very limited comment on the proposed conditions;
- (2) The views of responsible authorities based on their experience with regulating the night time economy. They raised no objection to application.
- (3) Mr Ojla's reputation in relation to his experience - only one person has made reference to this.
- (4) The evidence of Mr Studd. His evidence shows that a SEV does not cause any environmental harm. There has been a suggestion made that criminal activity takes place as a result of SEV however each area will be covered by CCTV. The LA is entitled to visit at any time and dip sample the CCTV.

With reference to the comments made in the representations about the impact of a SEV opening next to the Wedgewood Rooms when they hold their all age events, Mr Kolvin said this would have more weight if the Wedgewood Rooms had made a representation. If the committee shared these concerns they could add a condition about restricting the use of handbills and staff touting for business outside the premises dressed inappropriately.

It has been suggested that most of the late opening venues are restaurants. If planning to open a bar/nightclub would expect there to be a representation from the police. The way to ensure is to impose a condition that only operate in accordance with SEV licence and hope that would resolve the issue.

With regard to concerns about the outside smoking area, the committee could add a condition that the smoking area is to be agreed by the licensing authority and also be a supervised all times with SIA and CCTV. It could also add a condition that barriers are not to be branded.

Regarding concerns about litter, a condition could be added that all litter must be cleared outside the premises at the end of each night.

Regarding concerns about dispersal from the venue the committee could add a condition about a formal dispersal policy. The applicant has tried to compromise and offered an earlier terminal hour. It is hoped that this will be taken in good spirit.

The Chair advised that this ended the premises licence application and a short adjournment for lunch would be taken at 2:15pm. The SEV application would then be considered after lunch.

Members met on a separate date for their deliberations and came to the following decision:

DECISION:

In the Matter of the Licensing Act 2003:

Application for grant of a premise licence - Elegance, 149 Albert Road, Southsea PO4 0JW.

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.

The Committee have considered the relevant sections of the Portsmouth City Council Licensing Policy.

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 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.

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:

- Prevention of crime and disorder.**

- Prevention of public nuisance.**
- Protection of children from harm.**
- Public safety.**

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.

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.

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 licensing trade having run a number of establishments without difficulty.
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.
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.

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.

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:

- 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.

On the basis of the above the Committee would be prepared to grant a premise licence with amendments to the operating schedule and hours of licensable activity as follows:

- 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.**

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.

There is a right of appeal to the Magistrates Court.

25. 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

The Licensing Sub-committee hearing procedure was followed.

Present:

Peter Baulf, Legal Advisor
Tracy Blair, Legal Advisor
Nickii Humphreys, Licensing Manager
Derek Stone, Licensing Officer
Mr Paul Ojla, Applicant
Mr Philip Kolvin, QC for the Applicant

Mr Jon Wallsgrove, Solicitor for the Applicant.
Mr Adrian Studd, expert witness on behalf of the Applicant.

Interested parties making deputations

Ms C Storey
Cllr Lee Hunt
Ms C Dacke
Cllr Suzy Horton
Ms H Reed
Cllr S Pitt
Ms C Davies
Ms M Bonner-Janes
Mr M Mitchell
Mr Andrew Pearce
Mr Richard Adair

The Licensing Manager introduced the report.

There were no questions from members to the Licensing Manager.

There were no questions from the applicant to the Licensing Manager.

In response to questions from the interested parties, the Licensing Manager advised the following:

- With regard to paragraph 2.2 of the policy, officers cannot give information and will refer applicants to the policy.
- The application was received in January 2018 and the current policy applies.

Applicant's case

Mr Kolvin said that he had previously made some preliminary submissions and said they would apply to both applications. Mr Studd spoke earlier as a witness so he will not call Mr Studd again.

He explained that if the licence is granted Mr Ojla's intention is to surrender the licence at Granada Road. Any SEV licence will be granted for a maximum period of one year. SEVs were formerly operated as members clubs and their status in licensing regulation was not clear. They did not need planning permission. When the Licensing Act was introduced they were treated as regular entertainment and in 2009 Parliament looked at the issues and there was considerable debate. Parliament decided that sexual entertainment was a lawful activity and permitted authorities to regulate it. The transformation of the treatment for SEVs has been salutary as council's have been free to adopt standard conditions. Where venues exist they must do so without impact to the environment.

Previously SEVs used to be 'seedy' shop fronts however now there is never a view of the inside from outside which reduced the environmental impact. The applicant has offered the standard 61 conditions and gives assurance that if permitted to operate he must do lawfully and respectfully. However, if he is

not as good as his word he will find himself in difficulties in 12 months' time when it comes back to committee to review performance. The committee has broad discretion to add more conditions that think proportionate to meet any further concerns.

The context of grounds of refusal presumption is to grant there needs to be a specific reason to refuse. None of the mandatory grounds for refusal are relevant as confirmed by the Licensing Manager.

With regards to the discretionary grounds:

- (1) *The suitability of Mr Ojla* - Mr Ojla is a highly experienced businessman in the city and a personal licence holder who has run two compliant SEVS in the city for many years. There are no grounds to suggest he is unsuitable to be the holder of a SEV.
- (2) *Managed by someone else* - There is no such person, Mr Ojla will be taking full responsibility of the running of the club.
- (3) *Number of SEVs* - the policy expresses the preliminary conclusion that no locality in Portsmouth is suitable for a sex establishment' (paragraph 11.6) however this is only a preliminary conclusion and the Licensing Committee may depart from this. The presumption to refuse does not apply to the existing licence. This application if granted will go hand in hand with the surrender of the Granada Road licence. Overall consequence is that there will be no more licences in the city, or in postcode PO4.

If this licence can be granted without harm then that is a reason why the preliminary conclusion should not apply. If the licensing system prevents something from happening that can happen without harm then it fails.

- (4) *Character of locality and use of premises in the vicinity.*

The question is whether there will be an unacceptable impact on the character of the locality or on the neighbouring uses. He asked the committee to look at one of the groups of conditions which govern impact on page 307 of the agenda papers, these mirror the local authority standard conditions. Condition 11 - that external doors closed at all times other than when entering/exiting the premises. Will be a retail premises and on the left hand side will be a door to the SEV.

Condition 12 - inner entrance lobby

Condition 13 - no access to other premises.

Condition 14 - no part of the licence premises should be visible to persons outside the premises.

Condition 15 - no external advertising word/signs/displays illuminations permitted unless previously approved by the council.

Condition 16 - external fabric to ensure frontage is discreet and is appropriate to the locality. This means that the colour and lighting of premises must be approved by council to ensure that it fades into the background. The

applicants intention is to respect that and simply have the word 'Elegance' above the door as shown on page 12 of the applicants bundle.

With regard to impact there will be no impact during the day. There will be a shop open during the day. The venue only operates in the night time economy which is presumably why the schools nearby have not objected. No statutory authorities have objected nor have the Wedgewood Rooms. No regeneration or tourism bodies have objected and no child protection agencies have objected to say that children would be of aim. The views of Responsible Authorities are strongly corroborated by Mr Studd.

With regard to the issue of impact on the character of the area, the committee have already received independent scrutiny following its referral to the planning inspectorate one year ago after the planning committee refused the application. The report that came to the planning committee is set out in the applicant bundle at page 46. In the planning officer's report they listed the main issues and also pointed out that the Wedgewood Rooms are immediately adjacent to the site. Page 48 views gives the views of various authorities including the Environmental Health Officer. He drew attention to the representations. 63 representations made and a petition of 580 signatures and an online petition of 622 signatures. Objections included the proximity to religious buildings, schools, parks, cultural, increase in antisocial behaviour etc. The planning officer felt however that this was an appropriate town centre use and would not give rise to harm to the character of the area. Traffic levels unlikely to be significantly greater so no objection on planning grounds. The planning authority decided to refuse this which led to an appeal. The Planning Inspector had to consider the same considerations and he drew attention to her report at tab 5. There were no highway or amenity issues which was the view of authority represented to inspector. The inspector considered some of the local objections - safety of women and children and concluded that the presence of venue may deter some from using that part of Albert Road but due to first floor location and only operating at night, it would not deter from the character of the area.

With regard to fear being a factor, the inspector said this was capable as being a consideration but must be some evidence of this. Reference made to research showing links to lapdancing venues and increase in noise were noted. The inspector concluded no conclusive evidence to refuse the application. Concerns about noise and disturbance as were the highways concerns were discounted by the Planning Inspectorate. There was limited factual evidence to refuse.

The planning decision will turn largely on the inspector's decision on the assessment on the character of the area.

Also in the applicant bundle was a case 'Dransfield' - he drew attention to page 93. Arguments raised in that appeal are similar to this appeal.

Mr Kolvin went on to say that it is important to recall that the effect of this application is that rather than a licence at Granada Road there will be a

licence at Albert Road, 0.5miles away. It is not a new licence altogether. In terms of proximity to schools etc. there is not a great deal of difference between the two venues.

In summary, in relation to character, use

- 1) The venue trades only at night;
- 2) The venue will only operate on the first floor of the premises;
- 3) Exterior impact is negligible
- 4) Nothing outside proclaiming its use as a SEV;
- 5) No evidence their customers will impact negatively on the locality;
- 6) No objections from statutory bodies;
- 7) Issues of character and vicinity have already were looked at carefully by the Planning Inspectorate, entitled to give great weight to this;
- 8) Supported by independent expert Mr Studd;
- 9) The venue will operate without harm
- 10)Replacement of licences one for one, one half mile apart.

With regard to the layout, character and condition of the premises this is listed in the bundle. The applicant intends to produce a high specification venue with decent lighting as agreed by responsible authorities. Nothing in the plan to suggest this will not be a well-designed venue.

The committee had no questions for the applicant's solicitor.

In response to questions from interested parties the following points were clarified:

- Sometimes there is a view about how bad something will be before it happens but when it is there turns out no impact at all. If the bridal shop customers have appointments before 21:00 they will not see the SEV open and they will see nothing. If they have appointments after 21:00 they will see a uniform SIA person stood outside so doubt will notice anything. If they do the matter is subject to reappraisal by licensing and planning committees. The dislike of a SEV is not a grounds for refusal.
- They have already given evidence about the content and the Council is entitled to conduct a public consultation which it did and published it views. The policy sets out a guideline and in this case the policy sets out a preliminary conclusion subject to the individual merits of individual case.
- The public sector equality duty does not fall on applicants but on the local authority to perform the duty and that is what the inspector did in this case. The planning inspector weighed up all the relevant factors and therefore performed that duty. She was of the view that it was not

harmful to the protected characteristics but instead planning conditions were imposed. These included signage, hours of operation and period of use. The Human Rights Act would carry through into decision of Parliament made in 2009. He was not sure what human rights would be in play here and could not think of a case where it would affect the article 8 rights. When the courts have looked at human rights in terms of planning and licensing. As long as the authority is satisfied it has applied a fair balance between the applicant and objectors they have met that duty.

- With regard to the detail included about Dransfield, Mr Kolvin said that if the High Court Judge pronounces law it is the law until a court of a higher jurisdiction says have found it wrong. Dransfield pointed out that when a planning inspector has made a decision their view is given great weight.

Representations to the SEV licence

Councillor Hunt whose main points included:

- Mr Kolvin has put great weight on the fact that the police and other statutory bodies have not objected to the application. However all the statutory bodies were consulted on the SEV policy and assume they did not put in an objection.
- Paragraph 2.2 of the policy states that each application is considered on its individual merits but Mr Kolvin said this is not the case. Even if minded to put policy to one side have to look at the locality and advice of policy at 7.11.
- The council has a good SEV policy in place which the committee should adhere to. If this application is allowed it will open the floodgates for other applications.

Mr Charlie Dacke

- This is a new application for a SEV for Albert Road, the policy does not allow for a transfer. The application must be considered on its own merits.
- The council's SEV policy is solid and will stand up in court. The policy refers to a zero cap policy for SEVs in the city and does not make reference to maintaining the status quo.
- There are solid discretionary grounds for refusing the application.
- Albert road has worked hard to become a quirky night time destination and this application will create a 'no go' zone for many women.
- The submitted report from the expert consultant reviewed the scene on one night only. The consultant does not live in the area.
- It is not true that the police never received any complaints. Reports have been made to police and ward councillors regarding inappropriate parking and graffiti.

- The number of objectors to these applications must be taken into account.

Councillor Horton

- There is a grey area around morality and safety. Lot of issues of personal safety.
- It is her understanding that existing venues in the city owned by the applicant is not relevant.
- Planning Committee members are told that licensing issues are not relevant so this must apply the other way around.
- The Planning Committee did reject the application. The Planning Inspector visited the area on a Monday night. No logic that those reasons that were put forward for planning cannot be used for licensing.
- The proposed opening time of 04:00 does not reflect other venues in the area.
- Even with soundproofing there will be an unacceptable level of activity which will be more disturbing than people leaving pubs.

Ms Hilary Read

- Completely support the planning committee decision and weight should be given to this. The planning inspector mentioned this is a town centre site but this is not accurate as it is a local shopping centre.
- Other concern is that the licence for Elegance in Granada Road cannot be transferred. This is a new application.
- If approve the application this will drive a coach and horses through the existing policy and set a dangerous precedent.

Ms Davies

- There is a causal link between lap dancing clubs and violence towards women. This is based on a home office endorsed report in Camden.
- Men will leave venue and walk down backstreets there will be no one to protect people on their way home.

Mr Adair had nothing further to add to his earlier representation.

Mrs Bonner-Janes, Mr Mitchell, Mr Pearce, Ms Storey and Councillor Pitt all had made their comments to the SEV application in their earlier representation.

Summing up

The interested parties had nothing further to add.

Mr Kolvin as the legal representative for the applicant, made reference to the highly articulate representations from those objecting today. The presumption in this case is grant and it is an evidence based hearing about the relevant harm that are covered by the legislation and not based on fear. The committee have heard in great detail the concerns if the application is approved and incidents occur however this has not happened in Mr Ojla's 23 years' experience in running SEVs. Mr Studd has said this is not even a suggestion. On one side there are the well-articulated fears of residents but the other side have evidence from the venues run by Mr Ojla, along with the views of expert bodies, evidence of Mr Studd and the views of the planning inspector. The evidence very clearly favours grant and the maximum period this can be granted for is 12 months. The committee are entitled to grant for a shorter period and when come back to committee will have all evidence to ascertain whether the licence should be renewed. Mr Ojla has an operable licence and can open again but Mr Ojla would rather move the licence to a recognised night time economy area. If he had not mentioned this in his statement he would have been seen as greedy as would have three SEV licences.

The population figures for PO4 in the applicants submissions, suggest that 2.5% of the population of PO4 have taken the time to object. However this is not a numbers game, the committee need to assess the quality of the evidence, rather than the fears. The key point is what will the impact of this venue be trading at night, with all the conditions in place. Unless the committee are satisfied that with all conditions in place there is unacceptable impact the application should be granted.

The Chair thanked all those present for their time. He advised that the committee would now adjourn and would meet in the next few days to deliberate. The decisions would be finalised within 5 working days for the premises licence and within 7 working days for the SEV licence.

The decisions would be emailed out by the licensing department to all interested parties.

DECISION:

**In the Matter of the Local Government (Miscellaneous Provisions) Act 1982
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.**

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.

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.

Portsmouth City Council following consultation between 1st March 2012 and 12th April 2012 adopted the Sex Establishment Licensing Policy in October 2012.

This Committee is asked to determine the application 23 January 2018.

Each application should be decided upon its own merit and subject to the individual circumstances of the case.

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.

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.

The Act sets out the basis for refusal of an application based upon either mandatory grounds being engaged or discretionary grounds. It is common ground and clear that the application cannot be rejected upon engagement of any of the applicable mandatory grounds.

The Committee is therefore engaged in considering the application upon merit having due regard to the following:

- The discretionary statutory grounds for refusal.
- The Portsmouth City Council SEV policy.
- The Statutory Guidance.
- The Human Rights Act 1998.

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:

- Unsuitability of the applicant- looking at 7.3 to 7.6 of the policy:
 - 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:**
 - **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:**
 - **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 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.**

- **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 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.

- **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).**
 - **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 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.

- 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 which must be looked at within the context of the existing policy.
- 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 alludes 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 evidence does not persuade the Committee that there would be a limited impact should the licence be granted.**
- 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 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.**

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.

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.

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.

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.

By majority decision, the Committee will accordingly refuse to grant the application.

The meeting concluded at 4.05 pm.

Councillor Lee Mason
Chair