

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Monday, 10 June 2019 at 10.00 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor Claire Udy (in the Chair)

Councillors Jason Fazackarley
Lee Mason

26. Appointment of Chair

Councillor Claire Udy was appointed to chair this meeting.

After the introductions had been made she explained the request to vary the order of agenda items so that the confidential matter (personal licence) was held in exempt session before public consideration of the item relating to the application for renewal of the SEV licence.

27. Declarations of Members' Interests

There were no declarations of members' interests.

28. Local Government (Miscellaneous Provisions) Act 1982 - Licensing of Sex Establishments - Sexual Entertainment Venue - Application for the renewal of a licence – Wellhot Ltd - Elegance 1 Granada Road Southsea PO4 0RD

Introductions were made - Mr Ojla, the applicant, was present and represented by his solicitor Mr Wallsgrove.

Before commencing Mrs Blair as legal adviser to the sub committee checked that the panel members had seen or discussed a recent newspaper article; neither Councillor Mason nor Councillor Fazackarley had read the article. Councillor Udy had read it but had not discussed it and did not remember its contents and would come to a decision based on the merits of the case as presented.

Mrs Blair reported that there had been a number of late objections since the article (in the week prior to this meeting) and referred to case law allowing discretion to consider those received outside of the prescribed time limits (Belfast case¹), should the panel wish to look at these with the applicant also being given time to consider. The Licensing Manager offered to give a

¹ House of Lords Decision in 2007 - Belfast City Council v Miss Behavin' Ltd

summary of the late objections, if required. It was reported that the statutory 28 days for representation had ended on 9th March 2019.

The panel agreed to receive an oral outline summary from the Licensing Manager Mrs Humphreys and confirmed that they had not seen the actual late representations but that these had been shared (anonymised) with the applicant whose solicitor confirmed they would not need an adjournment and Mr Wallsgrove did not believe they contained any new information but were very late, prompted by the newspaper article.

The Licensing Manager summarised the grounds covered in the late objections:

- Reference was made to the suitability of the area
- Exposure to young people and impact on families
- Safety
- The venue had not been in operation
- The Council's policy of nil sex establishments
- This was in a residential area
- Allegations of prostitution, drug use and pornography
- Sexual objectification of women

The sub committee members all agreed that these grounds were already covered in the earlier representations that formed part of the report and that these new ones had been submitted very late, therefore they did not wish to read the late objections in full. This meant that there would not be a deputation made by one of the late objectors who was present at the hearing as her objection had not been received in time.

The Licensing Manager then presented her report, and she explained that this is an annual application for renewal. There had been no representations from other council departments. The 5 objectors (appendix F) had the right to remain anonymous but she could confirm that these are from residents in close proximity. Mrs Humphreys went through the possible grounds for refusal (see paragraph 9); the statutory grounds did not apply for this application and for the discretionary grounds (see paragraph 10) there was no evidence for the first 2 grounds for refusal, and this was for an existing SEV premises so the question of the character of the locality was most relevant for the panel's considerations.

The panel asked to see an internal plan showing the layout to the rear of the property (this was made available to them for their deliberations).

There were no questions from the applicant.

Mr Wallsgrove then presented the applicant's case. He stated that all of the procedural requirements had been complied with and the statutory grounds for refusal did not apply. Regarding discretionary grounds, the suitability of the applicant had previously been determined by the Licensing Committee in February 2018. There had not been changes in management at the

premises. Regarding a "nil policy" there were already 2 in existence, run by Mr Ojla.

Turning to the objections and suitability of the area, Mr Wallsgrove believed that the 5 objections were very similar in content to those submitted the previous year, which had been dealt with and the allegations regarding links to criminal behaviour were untrue and unproven. This was a well run premises run by an experienced operator. The premises had not been completely closed during the time that a premises at Albert Road had been considered, but when that was refused the applicant had decided to open the Granada Road venue on a permanent basis. Addressing the issue of locality the circumstances had not changed since the approval was given in 2018. The police had not objected to the renewal and this was a well-regulated business. The views of local residents related to wider issues that should be directed at national government.

Questions were then asked by the committee members; it was confirmed that the applicant had received SEV licences since 2000. Regarding the more recent history Mr Wallsgrove confirmed that whilst the premises had been operational in 2016, there had been sporadic opening during 2017/18 when the intention had been to move to Albert Road, and the infrequent use was permissible.

There were no questions from the Licensing Manager.

A panel member asked if the objectors had been made aware of the committee meeting; the Licensing Manager confirmed that they had been notified and given the opportunity to attend and address the committee.

The Licensing Manager was given the opportunity to sum up; she had nothing further to add as the focus should be on the appropriateness of the location.

Mr Wallsgrove summed up on behalf of the applicant who stressed that circumstances had not changed since the previous application and the allegations regarding criminal activity were unproven as this was a responsible operator and the premises was well regulated and the police had not objected.

The panel then made their deliberations in private and the decision was read out by the legal adviser.

DECISION:

"In the matter of the Local Government (Miscellaneous Provisions) Act 1982 and the application for the renewal of a sexual entertainment venue licence in respect of Elegance, 1 Granada Road, Southsea, PO4 0RD

The Sub Committee considered very carefully an application for renewal of a sexual entertainment licence at Elegance, 1 Granada Road, Southsea.

It paid due regard to the Local Government (Miscellaneous Provisions) Act 1982, the Licensing Manager's report, written representations and oral evidence given at the hearing from the Applicant's representative as well as

the adopted statement of licensing policy and the Home Office Sexual Entertainment Venues Guidance for England and Wales.

Human Rights legislation was borne in mind whilst making the decision - this included the right to freedom of expression, protection of property balanced with rights of objectors.

Particular consideration was given to the public sector equality duty in accordance with s.149 of the Equality Act 2010 and whether any representation could be raising issues relevant to the protected characteristics. Gender equality was considered so far as appropriate to the representations.

It was noted with significance that no representation was made on behalf of the police or any other responsible authority.

The Sub Committee heard that a number of representations had been received after the expiry of the prescribed statutory period. The Sub Committee accordingly had to determine whether those representations ought to be properly considered and taken into account. The Sub Committee accepted advice that has a discretion to accept late representations and in making such a determination it should consider the following (as well as any other relevant factor):

- 1) How late are the representations?
- 2) Is there any particular reason for their lateness?
- 3) Would their admission create prejudice for the applicant (e.g. insufficient time to respond)?
- 4) To what extent do the late representations add anything significant to the strength of the objection argument?

It was noted that the Guidance indicates that the discretion may be exercised where the applicant is given the opportunity to deal with objections (paragraph 3.26).

The Sub Committee heard from the Applicant on the issue in particular stating:

- that the Applicant had been served with the late objections in advance of the hearing, but did not wish to adjourn the proceedings today in the event that the objections were admitted;
- But that there was nothing in the content of these late objections which had not already been stated in the objections received on time;
- And that the consultation period expired in March and these objections had been made extremely late.

The Sub Committee agreed to hear a summary outline of the late objections from the Licensing Manager, this summary included the suitability of the area, safety issues, allegations of criminal activities and the sexual objectification of women.

Having heard the summary and considered the Applicant's representations, the sub-committee determined not to accept and consider the late representations.

Having taken account of all of the above, and for the reasons which follow, the Sub Committee has determined to grant the licence as applied for.

Reasons

The Sub Committee noted that objection to the renewal of the licence generally focussed (but not necessarily exclusively) upon the following:

- The area is mainly residential
- Parking / infrastructure
- The effect upon issues relating to drink and drug abuse in the area
- A school and church being in close proximity
- Safety
- House prices
- Other areas being more suitable
- Nuisance

In support of the application the Sub Committee heard the following from the Applicant:

- that there was no evidence before the Sub Committee that the applicant is unsuitable;
- that there was no evidence before the Sub Committee that there will be an unsuitable manager of the business or other beneficiary;
- that the policy of the Licensing Authority of a presumption of refusal for new sexual entertainment venues does not include those in place at the time the policy was made;
- that the character of the locality, use of premises in the vicinity and layout, character or condition has not changed since the licence was renewed in 2018;
- that allegations of criminal activity at the premises are not true and no evidence has been produced to support these serious allegations and no objections have been received by the police in respect of this renewal.

The Sub Committee noted that the Guidance indicates that objections must be relevant to the grounds set out in paragraph 12 of Schedule 3 to the 1982 Act (set out at paragraph 3.23 and 3.27-3.28 of the guidance). Accordingly, issues raised by objectors, not relevant to the grounds set out therein (e.g. where relating to moral grounds or values), were not taken into consideration.

The Sub Committee noted and accepted the Licensing Officer's report and submissions of the Applicant that there are no statutory grounds to refuse the application upon a mandatory basis.

The Sub Committee considered all the grounds for a discretionary refusal of licences. It found that there is no basis to refuse the licence due to the unsuitability of the applicant, particularly given that none of the Responsible Authorities have made representations about the applicant in this respect.

Similarly, the Sub Committee found there were no reasonable grounds to refuse the licence on the basis of there being an unsuitable manager of the business or other beneficiary.

In light of the relevant grounds raised the Sub Committee focussed its mind upon the grounds set out at paragraph 3.28 (c) and (d) of the guidance and the appropriate number of sex establishments of a particular kind in the relevant locality, the character of that locality and the use to which premises in the vicinity are put. Paragraphs 7.11 - 7.17 of the adopted statement of licensing policy were also taken into consideration.

The Sub Committee was referred to the adopted statement of licensing policy, particularly paragraph 7.10 which indicates 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. However that is clarified at paragraph 7.10a where it is confirmed the presumption to refuse shall not apply to renewals of existing licences (amongst other things).

The Sub Committee therefore accepted it could reconsider the nature of the area in which the premises is located and to what extent its continued operation in that area presents a risk to the specified grounds, along with the appropriate number. The Sub Committee did take account of the fact that its policy had already considered the issue of numerical control and no significant change to the area since the formation of that policy was identified. Clearly policy can change but there was no compelling reason to depart from adopted policy in this case.

Whilst the Sub Committee had considered the objections they were not of the view that given the above comments and consideration of the policy that they are such as to justify the refusal of the application. The Sub Committee state in particular:

- They were not of the view that women would be deterred from using the area/the existence of the club would give rise to a fear of crime having considered the existence of the club in its current location over a number of years and the lack of direct evidence of such.
- They have considered the equality issues raised by objectors and given due consideration to the Public Sector Equality Duty contained within the Equality Act 2010 which 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.

- That the licence being applied for has full and extensive conditions attached to it which provides comfort to those residents and persons visiting, working or otherwise in the locality of the premises and satisfies the Sub Committee that the venue has a safe, professional and secure operating system in place.
- The Sub Committee noted in addition that the licence is renewable on an annual basis and will therefore be reconsidered again at renewal in 12 months.

The application was therefore granted."

29. Exclusion of Press and Public

The legal adviser updated the motion for the exclusion of press and public.

RESOLVED that the press and public be excluded from the hearing in accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005 and following consideration of the public interest. In order to allow a meaningful determination it is noted that the papers have not be published on this item on the grounds that the report contains information that otherwise may be defined as exempt in Part 1 of Schedule 12A to the Local Government Act 1972:

Item - Licensing Act 2003 - Consideration of a Personal Licence

Under the following exemption paragraph numbers:

- 1. Information relating to an individual**
- 2. Information that is likely to reveal the identity of an individual**
- 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).**

30. Licensing Act 2003 - Consideration of Personal Licence

Following the exclusion of press and public the personal licence matter was held in exempt session and the personal licence under consideration was revoked.

The meeting concluded at 12.10 pm.

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Councillor Claire Udy
Chair

