

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Wednesday, 19 April 2023 at 11.00 am in the Council Chamber, Portsmouth Guildhall.

Present

Councillors Dave Ashmore
Daniel Wemyss
Lewis Gosling

18. Appointment of Chair

Councillor Lewis Gosling was elected Chair.

19. Declarations of Members' Interests

No interests were declared.

20. Local Government (Miscellaneous Provisions) Act 1982 (as amended by section 27 of the Policing and Crime Act 2009) Licensing of Sex Establishments - Sexual Entertainment Venues Application for the renewal of a licence - Wellhot Ltd - Elegance 1 Granada Road Southsea PO4 0RD

Present

Jaspal Singh Ojla, the applicant
Taran Singh Ojla, Manager
Jon Wallsgrove, the applicant's solicitor

Ben Attrill, Legal Advisor
Nickii Humphreys, Licensing Manager

The Licensing Manager introduced the report and drew attention to paragraph 7.10a of the statement of licensing policy. She explained that there is a statutory requirement to advertise the application at the premises and in the local newspaper. The notice at the premises was displayed in accordance with those provisions however due to publication timescales the applicant missed the statutory deadline of the notice appearing in the press. The period for objections to be made was therefore extended. The Police, Fire Authority, Planning, Children's Safeguarding and Ward Councillors had not objected to the application.

She advised that 29 objections had been received before the deadline. There had been one late objection which was received on Thursday 13 April at 6pm. Ms Humphreys said she could read out the late objection at the hearing and she had also shown this to Mr Wallsgrove this morning prior to the start of the hearing. Mr Attrill advised the Sub Committee that it was better to consider the late representation and they therefore needed to decide whether they

wished to exercise their discretion to consider a late representation. The Sub Committee should consider how late the representation was made, the reason for its lateness, would the admission create any prejudice for the applicant given the fact they had only recently seen the representation and to what extent the late representation adds anything to the strength of the argument as well as the impact of the party who had made the representation. He advised that the applicant should have the opportunity to address the committee on this matter as well.

Mr Wallsgrove advised that the applicant had no objection for the Sub Committee to take the late representation into account. He felt it was not adding any new evidence that they would need time to consider as it was in a similar vein to many of the other representations therefore, they had no objection to the representation to be read out. The Sub Committee agreed that the late representation should be heard.

Ms Humphreys read out the late representation as follows:

'I have only just been made aware of the application and ask they you include my email as confirmation of my objection to the renewal of the sex establishment Elegance. This is a residential area with family homes and I do not think that this type of establishment is necessary or suitable in this area. At the moment I am quite happy to walk home after enjoying a meal out in Southsea but an establishment of this sort would make me more nervous of doing this because of the type of clientele that this establishment would attract'

Ms Humphreys advised that there are certain grounds for refusal; statutory grounds, which are not in question at this hearing and discretionary grounds. Ms Humphreys summarised the discretionary grounds listed on paragraph 11.1 of the report and said that these are the areas to focus on for this hearing.

In response to questions from the Sub Committee Ms Humphreys and Mr Atrill advised the following:

The discretionary grounds for refusal and case law state that objections based solely on moral grounds/values must not be considered in relation to sexual entertainment venues. It is a regulated licensable activity and there is legislation to regulate those activities. The Sub Committee should not however exclude any representations merely on the basis that they contain an element of moral objection.

Elegance had not been operating for some time but when it was open there had been no objections from the Police to the grant and renewal of the licence. There had not been any issues with either of the applicant's premises in Portsmouth. Mr Attrill reminded the Sub Committee that they should focus on this application and these premises, and it is a necessary inference that when the Police fail to make a representation that they have no concerns with regards to crime associated with the premises or the applicant.

There was no specific reference in the policy to what the locality would be in terms of proximity of churches/schools to the premises. This would be down to members to determine based on their local knowledge. The Sub Committee have a very wide discretion to determine the application. Mr Attrill advised that factors change and members could lawfully make a different decision to a previous decision on this application even though nothing materially has significantly changed in the area, however he would caution against that unless there are good reasons to do so.

The applicant had no questions for the Licensing Manager.

On behalf of the applicant, Mr Wallsgrove asked the committee to consider the following points:

The applicant had met all the procedural requirements in making the renewal application and none of the statutory grounds for refusal applied.

Regarding the discretionary grounds for refusal he explained the following:

Mr Ojla had been the owner and operator of these premises for 20 years and the licence holder during that time. The suitability of the applicant had not been raised in any of the representations.

Mr Ojla's company is the owner of the business, all the accounts are run through the company and he is the financial beneficiary of the proceeds from that premises and is responsible for all the liabilities and costs.

Although 7.10a of the policy says that there is a nil policy of SEVs in Portsmouth, the presumption to refuse does not apply to the existing SEV establishments. This ground therefore does not apply.

Mr Wallsgrove felt that the layout, character or condition of the premises was not relevant; the licence had been renewed every year and the responsible authorities had not objected.

The Sub Committee determines what the vicinity is, there is no legal definition for that. When considering what is in the vicinity, it would need to be a business that is directly impacted by these premises. Several objections mention about schools and churches being in the vicinity and members will have local knowledge of the area to determine whether they would be impacted by these premises being licensed.

He referred to the advice given by the Council's legal advisor regarding having a broad discretion to refuse the renewal application even if there has been no material change in the locality, which he did not entirely agree with. In relation to the case law that exists, it is very clear that a committee is to have regard to the fact that the premises has been licensed in the past and for how many years. The committee must therefore give weight to the fact that this premises has had a licence under the new legislation since 2012 and it was licensed and operated as a SEV many years before that. A change in the locality also

must be considered as the High Court cases where renewal applications have gone before it to determine policy and locality turned on evidence around changes in that locality. He referred to the appeal against Oxford City Council's decision to renew a SEV licence. The first renewal application was refused, and the licence holder submitted an appeal for a judicial review. In the meantime, they applied for and were granted a licence for another location which was granted. They subsequently withdrew their appeal for a licence at the original location. The policy was considered when the licence was granted. A year later the renewal application was refused because new evidence was submitted proving the negative impact that this premises had had on the locality. The appeal was dismissed.

The locality has not changed since the last renewal. The only comments the residents have put forward regarding a change in locality is a reference to when Southsea had several nightclubs on the seafront however these closed about 15-16 years ago. There have been an influx of bars and restaurants on Albert Road making the area busier and more popular as an entertainment venue however this is about a quarter of a mile away from Waverley Road. There had not been any changes to the schools or churches in the locality and they are not open when the premises is operating. There is no external advertising at the premises.

These are well-regulated premises and the Police have never objected to a refusal for a renewal for Elegance or Wiggle. He advised that the Police viewed these premises as the safest license venues in the area as they are so well regulated. The applicant holds the highest standards regarding the staff and performers.

The premises has been closed since the last renewal but is due to re-open in the next couple of weeks if the licence is renewed. He therefore felt that the premises had not had an adverse impact on the local community. He was pleased that the futile allegations made on previous applications had disappeared. Some of the representations had made comments regarding feeling safe in the area which he accepted would be a relevant representation. There has never been an incident when the Police have needed to be called. A good proportion of the customers of Elegance are women as they feel it is a safe place.

Mr Ojla is an experienced operator and has three other SEV's in other local authorities. The licences are renewed every year, two of these receive no objections and the one in Bournemouth only has local councillors objecting to it saying that it has an adverse impact however there is no evidence to back this up.

It was noted that none of the people who had made written representations were present today. The Sub Committee should take the representations into account today however they should consider what weight they can be given written representations where the person has not come to the hearing and has been able to answer questions as to what they have written in their statements. He also asked the Sub Committee to attach significant weight to the fact that the Police had not objected to the renewal application.

In response to questions Mr Wallsgrove and the applicant advised the following:

The licence permits trading 7 days a week. Mr Ojla will need to gauge going forward how many other days of the week the premises will open but it will likely not be open 7 days a week. Friday and Saturday evenings and Bank Holidays would be the peak times. Elegance is a destination venue so people are going there for a specific reason. The earliest the premises will open is 21:00 and there would not be the drunken behaviour outside the premises. There are a number of SIA security guards at the premises but they have never had to deal with antisocial behaviour.

The only change at the premises is that Moonshine has opened next door to Elegance where live bands perform and DJ nights are held. This venue has had complaints about noise. Mr Ojla owns the building but leases the premises to someone else. Its possible therefore there has been that association with the event nights causing noise issues and antisocial behaviour, this has definitely not been from Elegance.

The entrance to Moonshine is at the front of the building on the corner. The entrance to Elegance is separate further along the building. There is no access between the two premises. Elegance does not have long queues; it is not the sort of premises where large numbers of people would be entering the premises at one time. Within Elegance there is the main bar area and private rooms for performances.

There is a written welfare policy and Mr Taran Singh Ojla is responsible for updating and reviewing this every year. The welfare of the performers is paramount, and the performers want to work there as they know they will be looked after. Part of the welfare policy is to ensure that performers have transport home and that they are not leaving the premises on their own. The welfare policy has been disclosed previously to the Local Authority and if the Police or Local Authority visit the premises, they can view this. In Southampton the Police worked with the applicant on a scheme and gave panic alarms for women both customers and performers at Wiggle. In over 20 years there has never been an issue where a member of staff has had a cause for concern over safety nor that of any female customers suffering any abuse. However one of the ward councillors in Bournemouth alleges that she has had verbal abuse when walking past Wiggle in Bournemouth however this is the only allegation and the applicant refutes this. Mr Ojla added that they take the safety of performers with the highest regard and the welfare policy is available on their website. They also work with a chaplaincy service who visit the performers on a regular basis to offer their chaplaincy services.

With regard to the design of the building, Mr Ojla advised that the building had been painted white and apart from the company logo, there is no external advertising to indicate the entertainment taking place within the venue.

Summing up

The Licensing Manager and Mr Wallsgrove had nothing further that they wished to add.

The committee adjourned to deliberate in private at 12:03pm

The meeting resumed at 12:49pm.

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 has considered very carefully the application. It has paid due regard to the Local Government (Miscellaneous Provisions) Act 1982, the Licensing Manager's report, written representations (objections) and oral evidence given at the hearing today from the Applicant (and his representative), 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.

Careful 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 (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation). Gender equality was considered so far as appropriate to the content of representations received.

It is noted with considerable significance that no representation was made on behalf of the police. The corresponding inference must be that there are no police concerns with the applicant, the premises or potential crime associated with the grant of the application.

The Sub Committee heard that 1 representation had been received after the expiry of the prescribed statutory period. The Sub Committee accordingly had to determine whether that representation ought to be properly considered and taken into account. The Sub Committee accepted advice that it had the 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). Whilst provided late (at the hearing) to the applicant to deal with, there was no objection from the applicant. Accordingly the Sub Committee allowed the late representation and took it into account with the other representations.

In light of all of the above 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, having changed since initial grant of the licence
- Proximity of churches, play parks and a school
- The potential or likely exploitation of females at such a premises
- The potential to attract drunken men in a state of arousal and an increase in crime or sexual crime
- Parking
- House prices
- Other areas being more suitable
- Nuisance

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

- In relation to suitability of the applicant he has been the owner of the premises for 20 years as well as licence holder and there have been no issues in that period. The issue has not been raised by objectors.
 - The applicant is the person solely concerned with the running of the business. This issue has not been raised as an objection.
 - In relation to the number of SEVs and the number considered appropriate, the policy clearly recognises existing licences as an exception to the general position and the presumption to refuse does not apply.
 - As to the layout, character and condition of the premises - the premises is the same as previously licensed and no objections raise specific concerns on this ground.

- When determining whether the character of the area and use of the premises is appropriate, the Sub Committee should consider the potential for the premises to directly impact other premises.
- Weight must be attached to the fact that a previous licence was granted and there have been no significant changes to the area.
- The premises are well-run and have strict policies and conditions regulating their operation as a safe environment.
- There is no actual evidence of an adverse impact from the premises in the area.
- Not just men frequent the premises as it offers a safe environment for both sexes to relax.
- Weight should be given to the fact that those objecting have not attended so allegations, assumptions and evidence generally cannot be tested by questioning.
- The police have not objected and if there were concerns they would have done so.
- These are not the type of premises to generate drunken disorder or associated nuisance like other late night drinking establishments might do. The operation of the premises for 18 years out of the last 20 evidence this is the case.
- There is a written welfare policy that is published on the company website to protect performers and promote welfare. A church chaplaincy service is used along with other safeguarding measures around travelling home etc. to protect the performers.
- The premises are innocuous in appearance and do not advertise other than use of a logo on the exterior.

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 strictly to moral grounds or values), were not taken into consideration. The Sub Committee accepted legal advice, however, that where objections express concerns about the impact or consequences of such venues on relations between sexes they should not be dismissed automatically in their entirety as moral objection merely because an indication is included that the view is that they ought not exist (in this location or anywhere). The recent case of *R (on the application of CDE) v Bournemouth, Poole and Christchurch Council* was considered - particularly paragraph 57.

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 each of the grounds for discretionary refusal of licences. It finds that there is no basis to refuse the licence due to the unsuitability of the applicant and is satisfied that the applicant is the only person in overall control of the premises.

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 report referenced 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).

It was clear to the Sub Committee that it can 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 noted the fact that its policy had already considered the issue of numerical control and the applicant's assertion that no significant change to the area since the formation of that policy was identified. This was despite residential objection stating the area was now quieter and that other premises had moved. There was no compelling reason to depart from adopted policy in this case and the Sub Committee could not justify a change in position on the balance of evidence presented.

The Sub Committee is reassured by the strict conditions and policies in place and that they are sufficient to address concerns of gender based crime and that risks to gender inequality are low as a result. The Sub Committee encourages the premises to maintain those high standards.

The Legal advisor advised that the formal notification of the decision would be sent to all parties.

The meeting concluded at 1.00 pm.

Chair