

REPORT TO: LICENSING SUB-COMMITTEE – 19 FEBRUARY 2018

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MRS NICKII HUMPHREYS

**Local Government (Miscellaneous Provisions) Act 1982
Licensing of Sex Establishments - Sexual Entertainment Venue
Application for the grant of a licence – Dungen Ltd - Wiggle 1-3 Surrey
Street Portsmouth PO1 1JT**

1.0 Purpose of report

The purpose of this report is for the Committee to determine an application for the grant of a sexual entertainment venue licence in respect of the premises situated at 1-3 Surrey Street Portsmouth PO1 1JT and known by the name of Wiggle. The application has been submitted by Dungen Ltd.

2.0 Recommendation

RECOMMENDED

- a) that the Committee determine the application for the grant of a sexual entertainment venue licence in respect of the premises situated at 1-3 Surrey Street, Portsmouth, PO1 1JT and known by the name of Wiggle; and**
- b) in determining this application, the Committee shall have regard to paragraph 7.10a of its statement of licensing policy as set out below:**

Notwithstanding the provisions of paragraph 7.10 (relating to the numerical control on the number of sex establishments in a particular locality), the presumption to refuse shall not apply to:

- The renewal, transfer or variation of an existing sex establishment licence; or***
- The grant of a new sex establishment licence, whereby an application was made during the transitional period 1 November 2011 until 31 October 2012 to those premises that can demonstrate to the satisfaction of the Licensing Authority that during the 12 months prior to the commencement of the transitional period they have been regularly providing sexual entertainment that previously was only regulated under the Licensing Act 2003.***

3.0 Adoption of Policy

- 3.1 Portsmouth City Council ("PCC") originally adopted the provisions relating to Part II and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") in December 1982. These provisions provided for the control of sex shops and sex cinemas together with the licensing requirements.
- 3.2 On 22 March 2011 PCC decided to adopt Schedule 3 of the 1982 Act (as amended by section 27 of the Policing and Crime Act 2009 ("the 2009 Act")) so that it can regulate sexual entertainment venues ("SEVs") in the City.
- 3.3 On 21 September 2011 the Licensing Committee further considered its preferred approach in the formulation of its sex establishment licence policy and determined that the then Head of Legal, Licensing & Registrars be authorised to draft a policy for consideration and approval by the Licensing Committee, prior to public consultation, which was formulated upon the basis of identification of pre-determined localities and the imposition of numerical controls (Licensing Committee Minute No. 10/11 refers).
- 3.4 Consultation took place on this policy between 1st March 2012 and 12th April 2012 and the final policy was approved by the Licensing Committee on 12th October 2012. (Licensing Committee minute 12/12 refers). A copy of the current policy is attached as **Appendix A** to this report.
- 3.5 A further meeting of the Licensing Committee was held on 23 October 2013 when the adoption of standard conditions was agreed. (Licensing Committee minute 09/13 refers). These conditions are set out from page 25 onwards of the current policy document.

4.0 Background Information

- 4.1 The application for the grant of a sexual entertainment venue licence in respect of the premises known as Wiggle, situated at 1-3 Surrey Street Portsmouth has been submitted by Dunglen Ltd.

The company directors listed for Dunglen Ltd are Mr Jaspal Singh Ojla (Managing Director) and Mrs Rashwinder Kaur Ojla (Director). Dunglen Ltd is also the holder of the premises licence for these premises issued in accordance with the Licensing Act and Mr John-Cortin Fernandez is the designated premises supervisor who is in day-to-day charge of managing the premises.

- 4.2 The applicant has confirmed that neither of its directors or the manager of the premises are not prone to any grounds for refusal set out in paragraph 12 of Schedule 3 to the Act (see sections 9 and 10 of this report as regards these grounds).
- 4.3 The company wishes to operate the premises under the name of "Wiggle" and wishes to trade between the hours of 21:00 and 05:00 hours every day.
- 4.4 A copy of the application and associated documents is attached as **Appendix B**.

4.5 The premises also benefit from a premises licence issued under the Licensing Act 2003 for the provision of the sale by retail by alcohol, regulated entertainment and late night refreshment. This licence relates to both the ground floor operation as a pub named "The Surrey Arms" and the first floor which operates as a lap dancing venue named "Wiggle". **The application for the lap dancing venue relates to the first floor only.**

4.6 The premises licence issued in accordance with the Licensing Act 2003 was first granted to Dungen Ltd in 2005 and was previously licensed for the same purpose under the Licensing Act 1964. A copy of the current premises licence is attached as **Appendix C**.

5.0 Statutory Advertising Requirements

5.1 Schedule 3 of the 1982 Act requires that the applicant give formal notice of an application for the grant of a sex establishment licence. Satisfactory notice was given both to the Council and Chief Officer of Police. Equally, appropriate public notice was displayed on the premises and given in the Portsmouth News.

6.0 Consultation with the Police and Council

6.1 Details of the application were notified to the Chief Officer of Police, Chief Fire Officer, Planning Services, Director of Children, Families and Learning, City Centre Manager and Ward Councillors should they have wished to submit any representations.

7.0 Objections Received

7.1 As mentioned in paragraph 5.0 above, the Act requires the applicant to give formal notice of his application for the grant of a sex establishment licence.

7.2 Paragraph 15 of the Act states that any person who wishes to object to an application for the grant, renewal or transfer of a licence shall give notice in writing of his objection to the licensing authority, stating in general terms the grounds of the objection, not later than 28 days after the date of the application. Any person may object to an application. However, objections must be relevant to the grounds set out in the 1982 Act (See sections 6 and 7 of the statement of licensing policy). Objections based solely on moral grounds/values must not be considered.

7.3 Objections have been received in respect of the application for the grant of a licence and are attached as **Appendix D**. The 1982 Act protects the rights of objectors to remain anonymous. The Licensing Authority will not reveal names or addresses of any objector without their consent. However, general information such as if the objector lives within a certain distance of the premises in question will be released in order to give the applicant an opportunity to rebut any concerns so far as geographical vicinity or locality is concerned.

8.0 The Legislation – Summary and interpretation

8.1 In considering this application, the Committee is asked to note various statutory definitions concerning the licensing of sex establishments which may assist their consideration of this application.

8.2 The Committee is reminded that they are sitting in a quasi-judicial capacity and thus are obliged to consider the application in accordance with the rules of natural justice and have regard to the established procedure order that has been used by the Committee in considering applications. The Committee must determine the application on merit. No decision, opinions or factual findings must be based on “moral” grounds and all the facts must be considered before reaching a decision.

8.3 A sex establishment is either a sex shop, a sex cinema or sexual entertainment venue. In this case the application is for the grant of a sexual entertainment venue in respect of 1-3 Surrey Street.

8.4 A sexual entertainment venue is legally defined as follows:-

"Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer." Relevant entertainment is defined as:

"Any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)".

In terms of considering what constitutes “relevant entertainment” each case shall be judged on its merits but the informal guidance produced by the Home Office suggests that the definition of relevant entertainment would apply to the following forms of entertainment as they are most commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows.

However, the above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should merely be used as an indicator for certain types of entertainment as ultimately decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

8.5 The following are **not** sexual entertainment venues:

- Sex cinemas and sex shops;
- Premises which provide entertainment on an infrequent basis. These are defined as premises where:-
 - a) No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - b) No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) No such occasion has lasted longer than 24 hours.
- Other premises or types of performances or displays exempted by an order of the Secretary of State;
- Private dwellings with no public admittance.

8.6 General guidance has been produced by the Home Office in relation to SEVs and this is attached as **Appendix E**.

8.7 A licence can be granted and/or renewed for a period of 1 year or such shorter period as considered necessary. Licences can be granted subject to terms, conditions or restrictions and can be cancelled, revoked and transferred.

8.8 The Committee has a duty to have regard to the comments of the Chief Officer of Police.

9.0 Statutory Refusal of Licences

9.1 The Act sets out a number of statutory grounds where licences cannot be granted. These grounds are:

- a) A licence cannot be granted to a person under 18,
- b) A licence cannot be granted to a person disqualified under the Act,
- c) A licence cannot be granted to a person not resident in the UK,
- d) A licence cannot be granted to a body corporate which is not incorporated in the UK,
- e) A licence cannot be granted to a person who has, within 12 months immediately before the date of an application, been refused the grant of a licence for the same premises.

The above provisions do not apply to this applicant.

10.0 Discretionary Refusal of Licences

10.1 The Act allows for licences to be refused using discretion, for which careful and balanced reasons should be given in the following manner:

- > That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- > If the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant who would be refused the grant, renewal or transfer of such a licence if he made the application himself.
- > That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the Authority consider is appropriate for that locality
- > That the grant or renewal of the licence would be inappropriate having regard
 - i to the character of the relevant locality
 - ii to the use to which any premises in the vicinity are put or
 - iii to the layout character or condition of the premises in respect to which the application is made

11.0 Sex Establishment Policy Guidelines

11.1 The current policy in relation to the consideration of applications in respect of discretionary grounds for refusal of licences are set out in section 7 of the sex establishment licensing policy adopted by the Licensing Committee. Members may wish to refer to the following policy guidelines when determining this application:

11.2 Unsuitability of applicant

When considering the suitability or otherwise of an applicant, the Licensing Authority will have due regard to not only whether or not an applicant has been convicted of an offence but any other grounds which would call into question his/her suitability.

Para 7.3 - The Licensing Authority will wish to be satisfied that:

- *The applicant is sufficiently trustworthy to run the sex establishment in accordance with the terms and conditions imposed on any licence granted, as well as the law;*
- *The welfare of the performers at the licensed premises will be protected;*
- *That the safety of the public attending the premises will be provided for; and*

- *The needs and rights of persons/businesses living or working in the area, and indeed the area itself, are recognised and respected.*

Para 7.6 - In considering the overall suitability of an applicant to hold a licence, the following factors will be taken into account by the Licensing Authority:

- *Honesty and integrity of the applicant;*
- *Relevant experience of running similar sex establishments;*
- *Understanding of the terms and conditions relating to sex establishments;*
- *Reliability to run the premises in accordance with the licence;*
- *Track record of compliance in relation to other premises and/or licensing regimes;*
- *Intention to manage the premises himself or to employ others in that role;*
- *Existence or otherwise of a management structure to demonstrate compliance with operating conditions incorporating such matters as:*
 - ✓ *Managerial competence*
 - ✓ *Presence*
 - ✓ *Credible management structure, which will include employment of individuals who have sufficient experience in running such premises*
 - ✓ *Internal enforcement of rules (including training, monitoring, publication of rates for performers and customers)*
 - ✓ *Viable business plan*
 - ✓ *Demonstrate ability to act in the best interests of performers*
 - ✓ *Preparation and enforcement of a written welfare policy for performers*
 - ✓ *Procedures in place to ensure performers are adults and entitled to live and work in UK*
 - ✓ *Demonstrate measures to protect the public (such as transparent rate of charges and prevention of solicitation)*

In all cases, the Licensing Authority will give serious consideration to the observations of the Chief Officer of Police in relation to concerns expressed about the suitability of an individual applicant, body corporate or an individual officer of a company.

11.3 Unsuitable manager of the business or other beneficiary

Para 7.7 - The Licensing Authority will need to be satisfied that the proposed premises and activities are not a device to facilitate illegal activity and that those persons in ultimate control of the sex establishment can demonstrate that they will operate the premises in such a manner so as to promote the objectives of the legislation.

11.4 **Number of sex establishments**

Para 7.8 - PCC recognises that the Act allows discretion by the Licensing Authority to impose a numerical control on the number of sex establishments in a particular locality (including the provision that nil may be an appropriate number) and that this control can apply to both the overall number of sex establishments and also the number of each kind.

11.5 *Para - 7.10 the Licensing Authority has reached the 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.*

Para - 7.10a Notwithstanding the provisions of paragraph 7.10 above (relating to the numerical control on the number of sex establishments in a particular locality), the presumption to refuse shall not apply to:

- ***The renewal, transfer or variation of an existing sex establishment licence; or***
- ***The grant of a new sex establishment licence, whereby an application was made during the transitional period 1 November 2011 until 31 October 2012 to those premises that can demonstrate to the satisfaction of the Licensing Authority that during the 12 months prior to the commencement of the transitional period they have been regularly providing sexual entertainment that previously was only regulated under the Licensing Act 2003.***

11.6 **Character of the relevant locality**

Para 7.11 - Applicants should be aware that the Licensing Authority may refuse a licence on this ground regardless of what may or may not be an appropriate number of sex establishment licences within the locality. In considering whether it is appropriate to grant a licence having regard to the character of the relevant locality, the Licensing Authority will take account of the following factors, together with such other factors as may be considered relevant in the individual circumstances of the case:

- *The general character of the area (e.g. family residential, family leisure or educational area);*
- *The impact of the premises on the character of the area;*
- *The current use for night-time leisure activities including existing sufficient representation of sex-orientated uses;*
- *Gender equality issues, including whether the proposed use, particularly at night, would deter women from using the area comfortably or at all);*
- *Raising the fear of crime in the locality should further sex-orientated uses be authorised;*
- *Effects upon regeneration and tourism in the area;*

- *Level of genuine demand (including the risk that excess supply would drive down standards and lead to problems associated with compliance with conditions.*

11.7 Use of premises in the vicinity

Para 7.12 - Applications for sex establishment licences may be refused where the Licensing Authority considers that the grant of a licence would be inappropriate having regard to the use of other premises in the vicinity. Whilst the term “vicinity” is not defined in the 1982 Act, the Licensing Authority considers that “vicinity” will be a smaller area than “locality” as referred to in paragraph 7.8 above.

Para 7.13 - Applicants should be aware that the Licensing Authority may refuse a licence on this ground regardless of the character of a locality or indeed what may or may not be an appropriate number of sex establishment licences within it.

Para 7.14 - When considering the type of uses which may be deemed to be inappropriate, due regard will be given to the suitability of the proposed location of the premises and will take into account relevant factors including, but not limited to, the presence of what may be regarded as sensitive issues (e.g. dwellings, places of worship, schools, youth clubs, community centres, women’s refuges, libraries, parks or swimming pools)

Para 7.15 - Without prejudice to the above, applicants should also be aware that applications for sex establishment licences will normally be refused if they are proposed to be located in the vicinity of:

- *Places of worship;*
- *Swimming pools;*
- *Leisure centres;*
- *Parks;*
- *Youth centres;*
- *Historic buildings;*
- *Tourist attractions;*
- *Educational premises;*
- *Schools;*
- *Play areas;*
- *Nurseries;*
- *Children’s centres;*

Or any other similar premises.

11.8 Layout, character or condition

Para 7.17 - When considering the issue of a licence in terms of its layout, character or condition, the Licensing Authority will give consideration to general factors such as:

- *Provision of proper access for disabled people;*

- *Safe in terms of its structure and overall standards of maintenance for the building;*
- *Sufficient provision for surveillance and overall supervision;*
- *Standard of fit out of the premises;*

While the Licensing Authority will not refuse a licence merely because the premises do not have planning permission for use as a sex establishment, the authority will take into account the absence of planning permission to the extent relevant to the statutory grounds for renewal.

11.9 Plans and photographs of the immediate area are attached for consideration as Appendix E.

12.0 Consideration of the Application

12.1 The Committee must consider the application having regard to the factors outlined in this report.

12.2 If the Committee is mindful to grant the licence, the Committee should consider whether or not it is appropriate to impose conditions. Conditions may be “standard” and/or contain special conditions to reflect on individual premises.

12.3 A copy of the Council’s current standard conditions and those specific to sexual entertainment venues are attached as appendices to the sex establishment policy in Appendix A.

12.4 If the Committee is mindful of refusing the application then valid, proportionate and relevant reasons must be given in writing and within 7 days to the applicant. There are no grounds to statutorily refuse the application and therefore the Committee’s deliberations must be concentrated on the following discretionary options to refuse:

- Are the number of sex establishments in the relevant locality at the time the application is made equal to or exceed the number which the Committee consider is appropriate for that authority?
- Is the grant of the licence inappropriate having regard to;
 - the character of the relevant locality;
 - the use to which any premises in the vicinity are put; or
 - the layout, character or condition of the premises.

13.0 Human Rights

13.1 The Human Rights Act 1998 applies to this matter. The Committee must act proportionately and consider the rights of all parties affected by the application.

14.0 Appeals

If the Committee refuse the grant of the licence, there is a right of appeal to the Magistrates' Court.

15.0 Appendices

Appendix A - Copy of the current sex establishment licence policy;

Appendix B – Copy of the application together with associated documents;

Appendix C - Copy of the current premises licence issued under the Licensing Act 2003

Appendix D - Copies of objections received;

Appendix E - Home Office Guidance relating to SEVs; and

Appendix F – Plan of the immediate area;

Appendix G - Geographical Analysis of Representations;

Appendix H - Photographs of premises.

.....
Licensing Manager
For Head of Service