

REPORT TO: LICENSING SUB-COMMITTEE – 2 JULY 2021

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 renewal of a licence – Wellhot Ltd - Elegance 1
Granada Road Southsea PO4 0RD**

1.0 Purpose of report

The purpose of this report is for the Committee to determine an application for the renewal of a sexual entertainment venue licence in respect of premises situated at 1 Granada Road, Southsea, Portsmouth, PO4 0RD and known by the name of Elegance. The application has been submitted by Wellhot Ltd.

2.0 Recommendation

RECOMMENDED

- a) that the Committee determine the application for the renewal of a sexual entertainment venue licence in respect of premises situated at 1 Granada Road, Southsea, Portsmouth, PO4 0RD and known by the name of Elegance; 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 renewal of a sexual entertainment venue licence in respect of premises known as Elegance, situated at 1 Granada Road, Southsea Portsmouth has been submitted by Wellhot Ltd.
- The company directors listed for Wellhot Ltd are Jaspal Singh Ojla (Director) and Rashwinder Kaur Ojla (Director). Wellhot Ltd is also the holder of the premises licence for these premises issued in accordance with the Licensing Act 2003 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 manager's circumstances affect any grounds for refusal set out in paragraph 12 of Schedule 3 to the Act (see section 9 of this report as regards these grounds).
- 4.3 The company wishes to operate the premises under the name of "Elegance" and wishes to trade between the hours of 22:00 and 04:00 every day.
- 4.4 A copy of the application and associated documents is attached as **Appendix B**.
- 4.5 A copy of the current Sex Establishment Licence (SEV) and relevant committee decision and reasons for initial grant of the licence are attached as **Appendix C1 and C2**. **There were no objections to the renewal of the licence in 2020.**

4.6 The premises also benefit from a premises licence issued under the Licensing Act 2003 for the provision of the sale by retail of alcohol, regulated entertainment and late night refreshment. This licence relates to all of the premises but **the application for the lap dancing venue relates to the rear part of the building only.**

4.7 The premises licence issued in accordance with the Licensing Act 2003 was first granted to Wellhot 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 D.**

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 renewal 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 and Ward Councillors should they have wished to submit any representations. No comments were submitted except an objection from a councillor in the Eastney and Craneswater Ward who is no longer an elected member with effect from May 2021.

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 renewal 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 renewal of the licence. 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 and the general grounds of the objection will be released in order to give the applicant an opportunity to rebut any concerns so far as geographical vicinity or locality is concerned as well as informing of the nature of the concerns raised. A summary of objections received within the 28 day notice period is attached as **Appendix E.**

Objections received after the 28 day notice period

- 7.4 Whilst the Act clearly sets out the time period for making objections, case law¹ has clarified the position in relation to "late objections". The House of Lords determined that whilst the legislation **required** a local authority to take account of objections lodged in time, it had a **discretion** to take account of late objections.
- 7.5 Further, it was held that the discretion to admit late representations should not be seen as exceptional, as if a council received significant relevant information in a late objection, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable. Much would depend on the circumstances of the individual case, so that it might be appropriate to disregard a late objection if it was intentionally made at the last minute, or if it was received so late that taking it into account would cause prejudice to the applicant because he would not have had a chance to consider it, or if late acceptance would cause unacceptable disruption to the council's business.
- 7.6 In considering these matters, the council is only bound by general administrative principles, in so far as the court will not interfere with a decision to admit, or not to admit, a late objection unless the decision took into account irrelevant factors or failed to take into account relevant factors or was a decision which no reasonable council could, in all the circumstances, could have made.
- 7.7 The applicant's legal representative has been made aware of the late objections and been provided with information as to the geographical location in which the objectors reside together with the general grounds of the objection.
- 7.7 A summary of late objections received after the 28 day notice period is attached as **Appendix F**.
- 7.8 A number of objections refer to the judgement of *R (Alistair Thompson) v Oxford City Council v Spearmint Rhino Ventures (UK) Limited Case No C120131844 Court of Appeal (Civil Division) 11 February 2014 [2014] EWCA Civ 94*. To assist the Sub-Committee and all parties, a copy of this case is attached as **Appendix G**.

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 obliged to consider the application in accordance with the rules of natural justice. 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.

¹ [Belfast City Council v Miss Behavin' Ltd \[2007\] 1 WLR 1420](#)

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 renewal of a sexual entertainment venue in respect of 1 Granada Road.

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 license 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 H**.
- 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 carefully considered and balanced reasons should be given, in relation to the following:
- > 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.

Officer Information - Suitability of applicant:

The Licensing Authority has been made aware that the Directors of Wellhot Ltd, the applicants for the renewal of the SEV licence, were subject to formal action by Portsmouth City Council's Private Sector Housing Service last year as well as SL Rental Ltd (trading as Kings Estates Portsmouth). This was in relation to the use of a property as an HMO that did not have the appropriate licence, contrary to section 72(1) of the Housing Act 2004. PCC issued a fine to both parties. The circumstances were as follows:

1. The property known as Cabmans Rest 1 Plymouth Street Portsmouth was a former public house which had been converted to a two storey residential dwelling with 12 bedrooms. The property is owned by Jaspal Singh Ojla and Raswinder Kaur Ojla. Kings Estates Portsmouth managed the property for Mr Ojla and found tenants for him from 1 July 2019. In December 2019 an occupier of the property informed PCC that 12 unrelated individuals were living there and the property had no HMO Licence.
2. PCC formed the view that Kings Estates were in control of the property because it was in receipt of rents from the tenants as agent, and that Mr Ojla managed the property by virtue of being the owner of the freehold. The Council decided that Kings Estates and Mr Ojla had committed the offence of being in control or managing an HMO without a licence contrary to section 72(1) of the 2004 Act.
3. PCC decided to impose a civil penalty as an alternative to prosecution on both Mr Ojla and Kings Estates. On 14 February 2020 the Council gave Notice of Intention to issue a civil penalty in the sum of £7,500.00 against each of them but this was reduced to £6,000.00 following representations.

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 **Appendices I and J** respectively.

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 renew 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:

- That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or **for any other reason**.
- Does the number of sex establishments in the relevant locality at the time the application is made equal or exceed the number which the Committee consider is appropriate for that locality?
- Is the renewal 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 Public Sector Equality Duty

13.1 Section 149 of the Equality Act 2010 requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

13.2 The protected characteristics are as follows:

- i) age
- ii) disability
- iii) gender reassignment
- iv) pregnancy and maternity
- v) race - this includes ethnic or national origins, colour or nationality
- vi) religion or belief - this includes a lack of belief
- vii) sex
- viii) sexual orientation

13.3 Authorities can make use of the licensing process, in particular the attachment of conditions in order to protect performers from harassment and any potential detrimental effect on their dignity. Conditions can require proper supervision and management of the premises, codes of conduct for customers and separate facilities for dancers etc.

13.4 Women can also be protected by way of condition should there be any risk that their presence at an establishment would be less welcome.

13.5 Fears may be raised by women about using the vicinity in which the premises are situated and it may be argued that this could amount to discrimination. Where relevant, the committee should take these concerns into account when determining an application.

14.0 Human Rights

14.1 The Human Rights Act 1998 and the general principles of natural justice apply to this matter. The Committee must act proportionately, consider the rights of all parties affected by the application and ensure the hearing is fair.

15.0 Appeals

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

16.0 Appendices

Appendix A - Current sex establishment licence policy;

Appendix B – SEV renewal application form;

Appendix C1 - Current SEV licence

Appendix C2 - Decision and reasons for original grant of SEV Licence

Appendix D - Current premises licence issued under the Licensing Act 2003

Appendix E - Analysis of representations within consultation period;

Appendix F - Analysis of late representations received after consultation period

Appendix G - *R (Alistair Thompson) v Oxford City Council v Spearmint Rhino Ventures (UK) Limited Case No C120131844 Court of Appeal (Civil Division) 11 February 2014 [2014] EWCA Civ 94*

Appendix H - Home Office Guidance relating to SEVs;

Appendix I – Plan of the immediate area;

Appendix J - Photographs of premises.

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Licensing Manager
For Head of Service