



NOTIFICATION OF DECISION

Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 (as amended by section 27 of the Policing and Crime Act 2009) - Licensing Sub-Committee

PORTSMOUTH CITY COUNCIL as licensing authority in accordance with the Licensing Act 2003 ("the act") and regulations made thereunder, hereby give notice pursuant to section 23 of the act:

That a hearing was held on: **19 February 2018**

To consider an application for the **GRANT of a sex establishment licence (sexual entertainment venue)** made in accordance with the Act. The details of the applicant and premises are:

Name of Applicant: **Wellhot Limited**
Premises and address: **Elegance
1 Granada Road
Southsea
PO4 0RD**

Decision of The Licensing Authority:

In determining and considering the application, the Committee had regard to:

- The Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 (as amended by section 27 of the Policing and Crime Act 2009);
- The council's adopted statement of licensing policy for the time being in force;
- Any relevant case law;
- The representations (including supporting information) presented by all the parties

Decision:

Grant with conditions

Reasons For Decision:

The Committee have considered all written material placed before them along with the submissions made by the advocate retained by the applicant company, together with all the comments made by the Licensing Authority and the individual objectors to the application. The Committee has looked at the specific objections from page 333 of the bundle to page 443.

Portsmouth City Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 so that as an Authority PCC could regulate Sexual Entertainment Venues - the decision was made by PCC on 22 March 2011.

Portsmouth City Council adopted the Sex Establishment Licensing Policy in October 2012. This Committee is asked to determine the application by the applying company dated 24 April 2012.

The Policy specifically states that at paragraph 7.10a that the presumption to refuse shall not apply to applications for renewal, transfer or variation of an existing licence or with respect to the grant of a new sex licence whereby the application was made during the transitional period of 1 November to 31 October 2012 to those premises that can demonstrate to the satisfaction of the LA 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.

The Committee is therefore engaged in considering:

1. The basis of the applicant's ability to qualify as having provided sexual entertainment in a period 12 months before the transitional period commenced.
2. That an application for a licence has been applied for within the requisite period.

The Committee has heard the following evidence and on balance each case being assessed upon its own individual merits and facts is established to conclude that the applicants were providing sexual entertainment and the application was made within the transitional period. The committee rely upon the following:

- That it is clearly the case that the premises was trading at the appropriate point.
- No challenge was raised as to the basis of the transitional provisions applying.

Having concluded that the application is within the scope of the policy the committee must consider whether there are any statutory grounds to either refuse the application upon a mandatory basis or whether the evidence would allow refusal upon any discretionary ground.

The submissions made and accepted are such that there are in law no statutory grounds to refuse the application.

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:
 - Whilst trading over a 16 year period and whilst currently shut, it is clear that the premises has been run responsibly with a fully engaged management team.
- Unsuitable manager of the business or other beneficiary looking at 7.7 of the policy:
 - The applicant is an established manager/owner and there is no evidence to suggest that the applicant owner is not the controlling influence within the company ownership.
- Number of sex establishments looking at 7.8 to 7.10a of the policy:
 - The transitional provisions apply and whilst a policy exists as to sex establishment venue provisions paragraph 10a is specifically engaged.
- Character of the relevant locality looking at 7.11 of the policy:
 - The Committee were not persuaded that the premises within the vicinity of other premises that are affected by the existence of the establishment or by its continuing existence. The Committee are clear that the premises has traded for many years without any complaints from a Responsible Authority and in particular the police.
- Use of premises in the vicinity/layout character or condition looking at 7.12 to 7.17 of the policy
 - The premises is such that it is acceptable in terms of the PCC policy as to access standard, signage and fitness. Again it is clear that the club has attempted to work with the relevant Responsible Authority to enable trading to continue with minimal effect upon neighbours and other users of the area.

The Committee is reminded that the Human rights Act applies to this application (Article 10 Right to freedom of expression is engaged along with Article 1 Protocol 1 - protection of property see page 146 of the application).

Whilst the committee have considered the objections they are not of the view that given the above comments and consideration of the policy that the objections are such as to justify the refusal of the application. The Committee also state as follows:

- Whilst the objectors are very articulate and commendably engaged, the committee could not accept the evidence as being directly applicable to the application.
- The Committee could not accept any link as to the premises and other forms of potentially criminal activity as made out.

The application is therefore granted with the standard conditions.

Appeal Provisions:

Appeal provisions exist in respect of applications made to the Licensing Authority. Those provisions are outlined as follows:

The applicant:

In the event that the Licensing Authority refuses an application for the grant, renewal or transfer of a sex establishment licence, the applicant may appeal the decision in a magistrates' court, unless the application was refused under 12(3)(c) or (d) of the Act, in which case the applicant can only challenge the refusal by way of judicial review.

General Provisions About Appeals:

An appeal must be made to the Magistrates' court for the petty sessions area in which the premises concerned are situated.

An appeal must be commenced by notice of appeal given by the appellant to the designated officer for the Magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.¹

An appeal against the decision of a magistrates' court under paragraph 5 may be brought to the Crown court.

Action that may be taken by the Magistrates' Court or the Crown Court:

On an appeal against a decision of the Licensing Authority, a Magistrates' Court or the Crown Court may make such order as it thinks fit.

Date of Notice: **23 February 2018**



Signed on behalf of the Head of Service
(Authorised Officer)

¹ The period of 21 days will commence from the date on which written notice is given, or in the case of electronic transmission, when the text is received.