

**REPORT TO: LICENSING SUB-COMMITTEE – 19 APRIL 2023**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: NICKII HUMPHREYS**

**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**

## **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 the premises situated at 1 Granada Road, Southsea, PO4 0RD and known as Elegance. The application has been submitted by Wellhot Ltd.

## **2.0 Recommendation**

### **RECOMMENDED**

**(a) that the Sub-Committee determine the application for the renewal of a sexual entertainment venue licence in respect of the premises situated at 1 Granada Road Southsea Portsmouth PO4 0RD and known as Elegance; and**

**(b) in determining this application, the Sub-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; and***

**(c) that the Sub-Committee has considered its statutory duty under the Equality Act when determining this application.**

## **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 along with the licensing requirements.

3.2 On 22 March 2011, PCC resolved 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 could regulate sexual entertainment venues ("SEVs") in the city.

- 3.3 On 12 October 2012 the Licensing Committee determined its sex establishment licence policy and a copy is attached as **Appendix A** to this report. The policy also includes the standard conditions which were approved by the Committee in October 2013.

#### **4.0 Background Information**

- 4.1 The application for the renewal of a sexual entertainment venue licence in respect of Elegance, 1 Granada Road, Southsea 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 for the purposes of the sale by retail of alcohol, the provision of regulated entertainment and late night refreshment.

The SEV licence authorises the provision of sexual entertainment between the hours of 22:00 and 04:00 hours every day.

- 4.2 These premises have been licensed under the Licensing Act 2003 since 2005 when responsibility for alcohol licensing was transferred from the Magistrates' Courts to local authorities. The premises have also been separately licensed as a sexual entertainment venue since 2012 in accordance with section 27 of the Policing and Crime Act 2009

The area designated for the provision of sexual entertainment is located to the ground floor of the rear of the building only. The business operating at the front of the premises (Moon and Shine) has a separate licence for the sale of alcohol, regulated entertainment and late night refreshment and is operated by an independent and separate company.

The applicant has confirmed that neither of the directors' circumstances affect any grounds for refusal as set out in paragraph 12, Schedule 3 of the 1982 Act. Sections 10 and 11 of this report sets out grounds for refusal of licences.

- 4.3 A copy of the renewal application is attached as **Appendix B**.

#### **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 licensing authority and Police. Equally, appropriate public notice was displayed on the premises and given in a local newspaper.

Due to publication timescales in the local newspaper, the applicant missed the statutory deadline of the notice appearing in the press. However, to resolve this issue, the period for objections to be made was extended and the public notice on the premises was amended to extend the date for objections to be made.

## 6.0 Consultation with other Authorities/PCC services

6.1 Details of the application were notified to the Police, Fire Authority, Planning, Children's Safeguarding and Ward Councillors.

No objections were made in response to the notification of the application.

## 7.0 Objections Received

7.1 As mentioned in paragraph 5 above, the 1982 Act requires the applicant to give formal notice of the application for the renewal of the sex establishment licence.

The 1982 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 their objection to the licensing authority which shall state, in general terms, the ground 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 legislation. Objections based solely on moral grounds/values must not be considered.**

7.2 29 Objections have been received in response to the renewal application. The 1982 Act protects the rights of objectors to remain anonymous.

The licensing authority therefore 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 can be made public in order that the applicant is afforded the opportunity to rebut any concerns so far as geographical vicinity or locality is concerned as well as being informed of the nature of the concerns raised. A summary of objections received within the 28 day notice period is attached as **Appendix C**.

In terms of geographical information, of the 29 objections:

- 1 objector resides in the PO2 area
- 15 objectors reside in the PO4 area
- 4 objectors reside in the PO5 area
- 1 objector resides in the PO6 area
- 8 objectors unknown area of residence

## 8.0 The Legislation - Summary and Interpretation

8.1 In considering this application, there are various statutory definitions concerning the licensing of sex establishments which are set out within this report to assist members' consideration of this application.

8.2 The Committee are sitting in a quasi-judicial capacity and therefore 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 made 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 renewal of a sexual entertainment venue licence.
- 8.4 Section 27 of the Policing and Crime Act 2009<sup>1</sup> (the "2009 Act") introduced a new category of sex establishment called "sexual entertainment venues" (SEVs) which enables local authorities to regulate lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previous definitions were limited to either sex shops or sex cinemas.

## **9.0 Sexual Entertainment Venues**

- 9.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a "sexual entertainment venue" and "relevant entertainment" for the purposes of the statutory provisions.

### **A sexual entertainment venue is defined as:**

*"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)."*

It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.

Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.

- 9.2 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.

- 9.3 However, the above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary and therefore should merely be used as

---

<sup>1</sup> Section 27 of, and Schedule 3 to the Policing and Crime Act 2009 came into force in England on 6 April 2010 as did the Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010.

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.

9.4 The relevant entertainment must be provided for the financial gain of the “organiser” or “entertainer”.

“Organiser” means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most cases this definition will relate to the manager of the premises but there could be circumstances where it will relate to an individual who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

9.5 The 1982 Act also sets out those premises that are NOT sexual entertainment venues. These are:

- Sex shops and sex cinemas;
- 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.

9.6 General guidance has been produced by the Home Office in relation to SEVs and this is attached as **APPENDIX D** to this report.

9.7 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.

9.8 The Committee has a statutory duty to have regard to the comments, if any, of the Police.

*As mentioned in paragraph 6.1 above, the Police have not submitted any objections/comments in relation to this application.*

## **10.0 Statutory grounds for refusal of Licences**

10.1 The 1982 Act sets out a number of statutory grounds where licences **cannot** be granted or renewed. 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.

**10.2 The above provisions for refusal of the application do not apply to this applicant.**

### **11.0 Discretionary grounds for refusal of Licences**

11.1 The 1982 Act allows for licences to be refused using discretion; for which careful and balanced reasons should be given. Those grounds are:

- 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 they made the application themselves;
- 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 to:
  - i. the character of the relevant locality;
  - ii. 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.

### **12.0 Sex Establishment Policy Guidelines**

12.1 The current policy in relation to the consideration of applications in respect of the discretionary grounds for refusal of licences are set out in section 7 of the sex establishment licensing policy adopted by the Licensing Committee. For ease of reference, relevant sections of the policy have been reproduced below.

#### **12.2 *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 their suitability. Relevant sections of the policy are:

### Paragraph 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.*

### Paragraph 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 themselves 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 the 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 Police in relation to concerns expressed about the suitability of an individual applicant, body corporate or an individual officer of a company.*

### 12.3 Unsuitable manager of the business or other beneficiary

Paragraph 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.*

### 12.4 Number of sex establishments

Paragraph 7.8

*PCC recognises that the 1982 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.*

Paragraph 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.*

Paragraph 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***

### 12.5 Character of the relevant locality

Paragraph 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/renew 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).*

## 12.6 Use of premises in the vicinity

### Paragraph 7.12

*Applications for sex establishment licences may be refused where the Licensing Authority considers that the grant/renewal 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 a "locality" as referred to in paragraph 7.8 of the policy.*

### Paragraph 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.*

### Paragraph 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 regard as sensitive issues (e.g. dwellings, places of worship, schools, youth clubs, community centres, women's refuges, libraries, parks or swimming pools).*

### Paragraph 7.15

*Without prejudice to the above paragraph, 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.*

## 12.7 **Layout, character or condition**

Paragraph 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 refusal.*

## 13.0 **Public Sector Equality Duty and The Human Rights Act 1998**

13.1 The Licensing Sub-Committee must give due consideration to the Public Sector Equality Duty contained within the Equality Act 2010. In exercising its statutory licensing function, the Sub-Committee must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Any decisions which may have a negative impact on equality should only be taken after due consideration of any such negative impact and the ways in which such impact may be mitigated.

13.2 The Human Rights Act 1998 applies to this matter. The sub-committee must act proportionately and consider the rights of all parties affected by the application.

## 14.0 **Consideration of the Application**

14.1 The Committee must consider the application having regard to the matters outlined in this report.

14.2 If the Committee is mindful to renew the licence, it 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.

There are no special conditions attached to the current licence.

14.3 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 referenced in **APPENDIX A** to this report.

14.4 If the Committee is mindful of refusing the application, then valid, proportionate and relevant reasons must be given in writing within 7 days to the applicant. There are no grounds to refuse the application on the statutory grounds and therefore the Committee's deliberations must be focused on the following discretionary grounds for refusal:

- 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/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.

## **15.0 Appeals**

15.1 If the Committee refuse to renew the licence on the discretionary grounds set out in paragraph 14.4 above, there is no right of appeal for the applicant.

However, this does not prevent the applicant from applying to the High Court to seek a judicial review of the Committee's decision.

## **12.0 Appendices**

Appendix A Sex Establishment Policy

Appendix B Renewal Application Form (Redacted)

Appendix C Summary of Objections

Appendix D Sexual Entertainment Venues - Guidance from the Home Office



Licensing Manager