Neutral Citation Number: [2014] EWHC 878 (Admin)

Case No: CO/17374/2013 and CO/17440/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Leeds Combined Court Centre
1 Oxford Road, Leeds
West Yorkshire
LS1 3BG
Date: 25/03/2014

Before:

THE HONOURABLE MR JUSTICE STUART-SMITH

- -

Between:

The Queen (on the application of Bean Leisure Trading A Limited)	**Claimant**
- and -	
Leeds City Council	**Defendant**
And Between:	
R (Ruby May (1) Limited)	**Claimant**
-and-	
Leeds City Council	**Defendant**

- -
- -

David Matthias QC and Isabella Tafur (instructed by **Woods Whur LLP**) for **Bean Leisure**
Charles Holland (instructed by **Ford & Warren**) for **Ruby May**
Ranjit Bhose QC and Josef Cannon (instructed by **Leeds City Council Legal Services**) for the **Defendant**

Hearing dates: 6 & 7 March 2014

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Approved Judgment

Mr Justice Stuart-Smith:

Introduction

1. "Wildcats" and "Deep Blue" are lap dancing clubs in the centre of Leeds. They are Sexual Entertainment Venues ["SEVs"] within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 ["LGMPA"] as amended by s. 27 of the Policing and Crime Act 2009 ["PCA 2009"]. On 3 December 2013 Leeds City Council ["the Council"] made decisions refusing to renew the SEV licences for each club. Decision letters were sent on 4 December 2013. The decisions have provoked two applications for Judicial Review, the Claimants in each action being the proprietors of their respective clubs. I shall refer to the Claimant in application CO/17374/2013 as "Bean Leisure" and the Claimant in application CO/17440/2013 as "Ruby May".

2. The Council's decisions not to renew the licences were to take effect at 4am on Friday 13 December 2013. Bean Leisure issued proceedings on 9 December 2013 and sought interim relief. On 12 December 2013 Griffith Williams J stayed the Council's decision in relation to Wildcats pending the hearing of Bean Leisure's application for permission to bring proceedings. On the same day, Ruby May issued proceedings and HHJ Belcher sitting as a Judge of the High Court made a similar order to that of Griffith Williams J, staying the Council's decision in relation to Deep Blue pending the hearing of Ruby May's application for permission. After further orders of the Court, the applications came to be listed on 6 and 7 March 2014 for a rolled up permission hearing.

3. The applicable legal framework and most of the factual background is common to each of the applications. This judgment therefore follows the following course:

Summary of Conclusions

4. In each case I grant permission to bring the proceedings, but for the reasons set out below, conclude that the challenge fails. The Council was entitled to reach the conclusions it did, which were in accordance with its published policy. Its decisions were rational and proportionate.

The Statutory Framework and Ministerial Guidance

5. The powers provided under Schedule 3 of LGMPA come into operation where a local authority resolves to adopt them and takes the steps prescribed for that purpose: see s. 2(1)-(4) of LGMPA.

6. Paragraph 12 of Schedule 3 to LGMPA sets out various mandatory and discretionary grounds for refusing applications. The grounds that are relevant to the present applications are set out in paragraphs 12(3)(c) and (d) and are:

> "(c) that the number of sex establishments in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
>
> (d) that the grant or renewal of the licence would be inappropriate, having regard—
>
> (i) to the character of the relevant locality; or
>
> (ii) to the use to which any premises in the vicinity are put; or
>
> (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
>
> (4) Nil may be an appropriate number for the purposes of sub-paragraph (3)(c) above.
>
> (5) In this paragraph "the relevant locality" means—
>
> (a) in relation to premises, the locality where they are situated; and
>
> …"

7. Other relevant provisions of Schedule 3 are that:

   i) Licences shall be in force for one year or for such shorter period specified in the licence as the appropriate authority may think fit: paragraph 9; and

   ii) Disappointed applicants whose application is refused under paragraph 12(3) have a right of appeal to the magistrates' court unless the grant or renewal of their licence was refused on either ground specified in paragraph 12(3)(c) or (d): paragraph 27(3).

8. In March 2010, the Home Office published guidance for local authorities carrying out their functions under Schedule 3. The Ministerial Forward gave a clear statement of the policy aims that had driven the introduction of SEVs as a new category of sex establishment to be regulated by local authorities:

> "In September 2008, the previous Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed a consultation with local authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.

> In order to address these concerns, section 27 of the Policing and Crime Act 2009 reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under schedule 3 of the [LGMPA].
>
> These new measures … will, if adopted by local authorities, give local people a greater say over where and how many lap dancing clubs open and operate in their neighbourhoods.
>
> These are important reforms to further empower local communities and the purpose of this guidance is to provide advice to local authorities, operators, local people and other interested parties on the new measures introduced by section 27 and the associated secondary legislation."

9. I respectfully adopt and endorse the observations of Sales J in *R(ex parte KVP Ent Limited) v South Bucks DC* [2013] EWHC 926 (Admin) at [12], [15] and [17]:

> "12. It is clear from the terms of paragraph 12(3)(d)(i) that a local authority has a very broad power to make an evaluative judgment whether the grant of a licence would be inappropriate having regard to the character of the relevant locality. That imports a significant evaluative power for the local authority at two levels: first, in assessing whether the grant or renewal of the licence would be "inappropriate" — which is a very broad and general concept; and, secondly, in assessing the character of the relevant locality — which, again, involves questions of fact and degree and local knowledge which import, at that level also, a broad power of evaluative judgment to be exercised by the local authority.
>
> …
>
> 15. I accept the submission by Mr Cannon for the Council that the inference from this is that Parliament plainly intended to provide that the considerations inherent in paragraph 12(3)(d) were considerations for the local authority's own evaluative judgment, subject only to the supervisory jurisdiction of this court.
>
> …
>
> 17 Parliament came to consider that that regime did not adequately meet community concerns about SEVs. Parliament passed section 27 of the 2009 Act in order to bring SEVs under the same system of control as sex shops and sex cinemas. This was a deliberate act by Parliament so as to widen the grounds upon which a licence for an SEV might be refused and also to enable such discretion to be exercised annually."

10. To similar effect, in *R (ex parte Thompson) v Oxford City Council* [2014] EWCA Civ 94 at [25], Lloyd Jones LJ said:

> "The Schedule 3 regime gives a wide discretion to licensing authorities, in particular in forming value judgments as to whether the grant or renewal of a licence would be appropriate having regard to the character of the locality. … Moreover, the fact that the maximum term of an SEV licence is twelve months indicates that local authorities are to keep these matters under frequent review."

11. At first instance in *Thompson* [2013] EWHC 1819 (Admin), Haddon-Cave J had said at [49] that the differing appeal treatment applied to the grounds specified in paragraph 12(3)(c) and (d):

> "flags up Parliament's intention to give local authorities a wide discretion under grounds (c) and (d) without unnecessary supervisory interference of the courts."

I respectfully agree. It seems to me to be plain that Parliament's intention was to give primacy to the evaluative judgment of local authorities who have the advantage of local knowledge, the responsibility vested in them by election and the accountability to their constituents imposed by the local democratic process.

The Council's Policies

12. On 19 January 2011 the Council resolved to adopt the provisions of Schedule 3 of LGMPA (as amended) with effect from 1 October 2011. The intervening period was used for consultation and formulation of policy and standard conditions to be applied when determining sex establishment licences in the Leeds district. The overriding principle when determining a licensing application was that "each application will be determined on its own merit, taking into account local knowledge, this licensing policy and the guidance issued by the Home Office."[1] The 2011 Policy did not identify any locations or land uses for special treatment and imposed no numerical limit on the number of SEV licences that might be issued. It acknowledged the terms of paragraph 12(3) of Schedule 3 of LGMPA by setting out the discretionary grounds on which permission could be refused: see paragraph 8.31: the Council's policy formulation in relation to locations and land usage was accordingly left at a very general level. Acting in accordance with the 2011 Policy, the Council issued seven SEV licences, including one to Bean Leisure and one to Ruby May.

13. In June 2012 the Council resolved to review the 2011 Policy. As part of that review the Council established a working group of members and officers. That working group recommended wider consultation to see if there were localities within the district that were unsuitable for SEVs. Leeds already had in place a Citizen's Panel of 4000, which the Council consulted. 1847 responses were received, though not every respondent replied to every question[2]. On the evidence, this was a reasonable rate of

[1] Paragraph 7.1

[2] Percentage figures are calculated by reference to the numbers of responses to individual questions, not the overall figure of 1847.

return from a group which can suffer from progressive consultation fatigue, and the Council took the results into account in its formulation of its revised Policy.

14. The results of the Citizens' Panel Consultation provided the following information:

i) When asked to state whether they agreed or disagreed that it was *not* acceptable to site SEVs in different localities within Leeds, three stood out as being ones in which it was not acceptable, namely residential areas (83% strongly agreed or agreed), deprived areas (69%), and rural areas (64%). By contrast, 32% considered that it was not acceptable to site SEVs in the city centre. The context of this question shows that "residential areas", "deprived areas" and "rural areas" were here being used to describe areas other than the city centre;

ii) When asked for their opinion on which parts of the city centre would not be acceptable for a lap dancing club, 50% or more identified the following six areas: Millennium Square, Calverly Street (70%), City Square (64%), the area around the Combined Courts (61%), The Headrow, Eastgate (52%), East Parade, Park Row (51%), and New Briggate, Briggate (50%). Four other areas were identified as being unacceptable by 40-49%, including New Station Street, Wellington Street (41%). The areas were not defined precisely but their scope is indicated in an annotated plan that was available for the present hearing ["the Annotated Plan"];

iii) When asked to consider the maximum number of SEVs that might be acceptable in the city centre 59% considered that four or less was the maximum that might be acceptable;

iv) When asked to consider particular types of areas and buildings in more detail, the following places were identified as being those where 50% or more either strongly agreed or agreed that it was not acceptable for SEVs to operate near them: education (93%), youth facilities (93%), play areas/parks (92%), residential (92%), women's refuges (91%), family leisure facilities (90%), places of worship (87%), places used for celebration or commemoration (85%), cultural leisure facilities such as libraries and museums (82%), retail (77%), historic buildings (76%); sports facilities (73%), train and bus stations (63%) and financial/banks (54%).

15. A report to the Licensing Committee meeting on 25 June 2013 summarised the results of the public consultation and recommended that the Committee consider the draft policy and refer it to the Executive Board. The Policy then went to the Council's Executive, which approved it on 17 July 2013. The 2013 Policy was in force when the two decisions now under challenge were made. It represented a major shift in policy because it addressed the issue of inappropriate numbers, localities and land usage in much greater detail than the 2011 Policy. It did so having set out the wide-ranging considerations that influenced the formulation of policy on sex establishments for the future. It is central to the present applications and relevant extracts (with summaries of some of its contents) are set out in Annexe A. Some of the text was common to the 2011 and 2013 Policies. Text that was new in 2013 is highlighted in Annexe A.

16. Certain points may be noted at this stage:

i) Section 2 was substantially amplified by the introduction of paragraphs 2.7-2.15, which dealt expressly with the public consultation, specifically in relation to the overall numbers that were appropriate in different localities (which led the Council to the conclusion that the answer was "nil" in all localities other than the city centre) and the sensitivity of various parts of the city centre and particular types of premises;

ii) Sections 4 and 6 retained the 2011 Policy's description of the Leeds district and Cultural Activities in Leeds, though section 6 was amplified by adding descriptions of the Leeds Arena (which was described as having an "iconic design"), Trinity Leeds (which was described as "a retail beacon" and one which "seamlessly joins day with night, ushering into the city a new era of world-entertainment and culture") and Eastgate Quarters (a substantial retail development which was perceived as contributing to the regeneration of the North East of the City Centre);

iii) Section 7, which set out the general principles that lie at the heart of the Policy, introduced for the first time specific and detailed principles relating to overall numbers and localities that took into account all the preceding information, including the results of the public consultation. It highlighted the Vision for Leeds 2011-2030, the Violence Against Women Strategy, and Child Friendly (to which it had given special consideration at paragraphs 5.2-5.5) and concluded as a general principle that "SEVs are not in accordance with a culturally rich and diverse city";

iv) Having reviewed the results of the consultation it concluded as a general principle at paragraph 7.12 that SEVs "are generally not appropriate near" buildings having any of the usage types identified in paragraph 7.11. Those usage types reflected the results of the consultation exercise listing the highest-scoring usages down to Historic Buildings, which had "scored" 76%. The next two categories in the consultation had been sports facilities and train and bus stations, which had scored 73% and 63% respectively;

v) The Council accepted that SEVs would not be appropriate in any other area of the district than the city centre (which included areas outside the city centre described in the consultation as residential, deprived or rural). It adopted a more nuanced approach within the city centre. Having summarised the consultation findings about sensitivity of localities within the city centre at 2.13, it did not then identify any of those localities as being in a discrete category; nor did it simply apply a numerical limit for the city centre as a whole. Instead, it established the general principle at paragraph 7.17 that "the appropriate number of SEVs in the city centre is a *maximum* of four *providing those premises are not near properties with sensitive uses or in sensitive locations.*" In this way it tied the principle of overall numbers (the subject of paragraph 12(3)(c) of Schedule 3 to LGMPA) to the character of relevant locality and the use of premises in the vicinity (the subject of paragraphs 12(3)(d) of Schedule 3 to LGMPA). It did not commit itself to allowing as many as four SEVs in the city centre: as a matter of general principle four was the maximum;

vi) The emphasis upon evaluation taking into account the sensitivity of the area in question with the benefit of local knowledge was retained: see paragraphs 2.3, 7.1 and 8.25;

vii) The phrase "near" (or "in the vicinity to") to properties with (particular) sensitive uses was not further defined. However, "near" is always a relative term and it was implicit that the nearer an SEV was to a property with sensitive use, the less appropriate it would be for licensing. The exact level of sensitivity and proximity would inform the Council's decision when applying its local knowledge to whether an applicant's premises were sufficiently near to particular premises so that it was inappropriate to grant or renew a licence. It does not follow that usages that came further down the list would not give rise to a finding of inappropriateness: the 2013 Policy expressly said the opposite;

viii) Similarly, no formal weighting was provided in relation to the different areas within the city centre; but, since the Council expressly had regard to the results of the consultation, it was implicit that Millennium Square and those areas which had "scored" most highly as inappropriate would, in general terms, be regarded as less appropriate locations for the granting or renewal of an SEV licence than those which had "scored" more modestly. Once again, it does not follow that those lower down the list would not give rise to a finding of inappropriateness.

17. Viewed overall, the 2013 Policy represented a marked tightening of the criteria for the regulation of SEVs. In particular it represented a significant shift of emphasis towards promoting and furthering the vision of Leeds as a city that is culturally diverse and which is moving towards being "locally and internationally recognised as the best city in the UK", "fair, open and welcoming" and with a particular emphasis on being child friendly.

18. The significance of this shift cannot have been lost on the SEV operators in Leeds; nor was it, either before or after the introduction of the 2013 Policy. It cannot have been lost on them because it was an inevitable consequence of the general principles set out in section 7 of the 2013 Policy that, if more than four SEVs were otherwise appropriate to be licensed in the city centre, the Council would determine which should be licensed and which should not. It was equally inevitable that, in making that decision, it would do so in accordance with the general principles set out in section 7 and would do so using local knowledge.

19. Mr Whur, the solicitor who had represented all seven of the SEVs to whom licences had been granted under the 2011 Policy, clearly appreciated the significance of the shift. He wrote in response to the public consultation, not doing so not on behalf of any of the SEVs but as an experienced Licensing Lawyer and businessman of Leeds over 20 years. He wrote:

> "As an immediate point of note it seems inconceivable and unfair that operators under three sets of legislation, without negative regulatory interaction, now run the risk of having their authorisations taken away from them.

> …
>
> It is firmly my view that if Leeds wishes to place a numerical limit on the number of premises that can be given SEV Licences in Leeds, then this number should not be reduced from those that have traded successfully with SEVs since they were granted last summer. If there is to be a cap, then it should be set at this level, but there should not be the removal of legitimate and licensed businesses within Leeds purely on a numerical reduction."

20. That this represented the view of the SEV operators is supported by a letter written by Mr Gourlay (the owner of Bean Leisure and therefore effectively the proprietor of Wildcats). Although he did not write in response to the consultation, he later wrote to the Council in support of the Bean Leisure application for renewal that is the subject of these proceedings:

> "You can … imagine our surprise when we learned earlier this year of a new consultation process that it seems is designed once again to reduce the number of clubs in Leeds and that once again, we as a business, and our employees face an uncertain future. As I stated earlier, given that we have traded without any license infringements, we find the current situation intolerable."

21. As will be seen, both Bean Leisure and Ruby May specifically addressed the general principles introduced and enhanced by the 2013 Policy when they submitted their applications for renewal.

The Factual Background: Bean Leisure

22. Wildcats' premises are on the South side of the Headrow between East Parade and Park Row. They are directly opposite the block on the North side between Calverley Street and Cookridge Street. Running from West to East, the buildings on that block which face the Headrow and Wildcats are the City Library, City Art Gallery and the Henry Moore Institute, in front of which stands the Cenotaph on Victoria Square. Immediately to the West of that Block stands the Town Hall and, next beyond that, the Oxford Place Methodist Church. During the hearing that collection of buildings was described as "iconic" and as the heart of municipal and civic Leeds, both of which descriptions are apt. All are within approximately 100 metres of Wildcats apart from the Oxford Place Methodist Church which is just over 150 metres away. The buildings on the South side of the Headrow are not themselves municipal or civic and are not as distinguished as those to the North. They are mainly offices with some licensed premises, all of which are immediately recognisable as such. Although not themselves part of the civic edifice of the city, they provide the southern boundary for what is unquestionably one of the best known vistas in Leeds, if not *the* best known.

23. The positions of Wildcats and the other 2013 applicants' premises are shown on the Annotated Plan. Red Leopard is also on the South side of the Headrow, about 40 metres to the West of Wildcats, just beyond East Parade. It faces the same buildings as Wildcats, being directly opposite the Town Hall, closer than Wildcats to the

Oxford Place Methodist Church but further than Wildcats from the City Library, City Art Gallery, the Henry Moore Institute, and the Cenotaph. Deep Blue is to the North of Leeds City Station and about 50-75 metres from City Square. It is on Wellington Street, which is a major thoroughfare, near to where it becomes New Station Street. Silks is to the South of Leeds City Station in an area which is not specifically identified in the consultation or the 2013 Policy but which is subject to some redevelopment. Liberte and Purple Door are on York Place, a road in the office quarter on which there are some residential flats but no other buildings with sensitive uses. It is less of a thoroughfare than the Headrow or New Station Street.

24. Mr Gourlay's evidence is that Wildcats has been a "Gentlemen's Club" since 2005. It has a capacity of 450 and has 150 "entertainers/dancers" on its books in addition to 36 directly employed managerial and administrative staff.

25. In July 2007 the Council granted planning permission to change the use of the premises from being a shop to mixed use. The application had been made (and was understood by the Council to be made) with a view to running the premises as a lap dancing club, as was shown by the plans submitted with the application. In granting permission the Council took into account the various policies then in force and concluded that "on balance the [Council] considers the development would not give rise to any unacceptable consequences for the environment, community or other public interests of acknowledged importance."

26. Until 1 October 2012, Wildcats operated under the licensing regime established by the Licensing Act 2003 without any regulatory concerns being raised. When the new regime was introduced, the then owners applied for and obtained an SEV license for 12 months from 1 October 2012. The Council's Licensing Sub-committee took the decision in June 2012 after considering objections from members of parliament, councillors, interested organisations and other members of the public. The objections raised various topics of concern, including the unsuitability of the locality of the premises and women's safety, both leaving work at night and going to work early in the morning. Conditions were imposed, including that Wildcats' hours of opening should be 10pm-4am Sunday to Thursday and 10pm-5am Friday and Saturday. The Notice of Decision stated:

> "The locality was the subject of many objections to this application. The licensing sub committee heard expert evidence of behalf of the applicant and market research results together with a change in the visual appearance of the premises that has already occurred. The applicant also consented to the removal of the cat woman logo if it was considered, as in the many objections, to cause offence.
>
> The locality was not considered unsuitable given that the opening hours suggested by the applicant places this premises operating in the late hours of the night to the early hours of the morning. The licensing sub committee were of the opinion that appropriately set hours could ensure that the premises could operate without impacting upon the surrounding locality. With regard to the close proximity of one other lap dancing club, it was the licensing sub committees view that this did not

> ghettoise or create a specific area of Leeds given over to lap dancing clubs. The bus stop mentioned by objectors outside the Red Leopard Club was for one bus service only that ceased to run at 9pm. The concession by the applicant regarding opening hours was sufficient to address the concerns raised relating to the perceived risk to women's safety."

27. During 2013 Mr Gourlay bought Bean Leisure and so became the proprietor of Wildcats. He knew that the Council's policy on SEVs was changing but considered that his purchase was worth the commercial risk because, in his view, Wildcats was the best lap dancing club in Leeds. The commercial risk included that there is 15 years left on the lease with no break clause and a current rental of £120,000 per annum, an annual service charge of £15,000 and non-domestic rates of approximately £60,000 per annum. Mr Gourlay entered into a personal guarantee in respect of the full extent of Bean Leisure's obligations under the lease. He has invested additional substantial sums in the business since taking it over.

28. There is no evidence that the external appearance of Wildcats changed materially during the period of the initial SEV license. At the time of the challenged decision, the name "Wildcats" appeared prominently above the entrance. Apart from that it had no signage displaying its name, any logo, or any description of the use of the premises that was visible from the Headrow. As part of the 2013 application, Bean Leisure volunteered to remove the sign above the door, which has now been done. As a result, there is now no signage at all, which is itself a contrast to the buildings around it, most or all of which provide some indication of what they are. What were shop windows are now plain with a purple (or "dark plum") curtain in each that blocks the view into the premises. The only other embellishment is the placing of chairs and a table on which stand silver ice buckets containing champagne-type bottles. I understand that the shop windows were either exactly or generally the same at the time of the challenged decision. Whether this presentation (with or without the name above the entrance) really anonymises the premises or does the opposite by suggesting the true nature of their use is debateable and may ultimately be for local councillors rather than a judge to decide, though I informed the parties of my personal view.

29. In his oral submissions, Mr Matthias QC submitted on behalf of Wildcats that it had the reputation as the premier venue of its kind in Leeds. Given the attempts to anonymise the frontage of the premises, that submission raises the question whether the reputation is widespread in Leeds or limited to those who wish to use the club. In 2012 Wildcats, Deep Blue and another club (Purple Door) commissioned research in order to support their application for a licence under the new regime. The main objectives of the research included testing awareness of the specific venues. The researchers based their report on 100 interviews with respondents who had to be 21 or over and had to live in the city centre or visit the city centre at least once every two months. 76% of respondents were aware of the presence of lap dancing venues in Leeds and were asked further questions. When asked to name any lap dancing venue that they could, Wildcats (42% of the 76%) was the most commonly cited venue, with Red Leopard (the other club on the Headrow – 39%) second. Deep Blue was cited by 5%. Not least because of the gender split of the respondents (46 men/54 women) it is overwhelmingly unlikely that the 76% of all respondents who were aware of the

presence of lap dancing venues were all or even preponderantly users or potential users of the clubs. No evidence was given of advertising (online or otherwise) but the inference from the market research is that most people in Leeds know that there are lap dancing venues with a significant proportion (about 1/3) being aware of and able to name Wildcats.

30. The report of the Head of Licensing and Registration on Bean Leisure to the 2013 Sub-committee provided details of objections, confirmed that there had been no regulatory breaches in the past year, and drew attention to the introduction of the 2013 Policy. It highlighted "notable comparable differences" in sections 2, 5, 7 and 8 of the Policy and (at [9.4]) set out sensitive uses and sensitive locations that were listed in the 2013 Policy. It included a map of the locality showing Wildcats' proximity to the North side of the Headrow. Bean Leisure had the report.

31. Mr Whur acted for Bean Leisure on its application for renewal. It is clear from his evidence in these proceedings that Bean Leisure (and he) realised that the policy limit of four SEVs in the City Centre meant that there would be an element of competition between the six applicants for renewal: fairness was to be achieved by considering all applications and then deciding on them all at the same time. Bean Leisure and Mr Whur analysed the policy changes and decided in the circumstances that they needed to produce expert evidence. They commissioned three reports including one from Mr Etchells, an expert surveyor in licensing matters, who was instructed to consider the issues of numbers and location identified in section 7 of the 2013 Policy. His report reviewed the 2013 Policy and considered the position of Wildcats and other SEVs. Specifically, he noted the proximity of Wildcats to the Civic Buildings (at [4.21]) but made the point that other SEV premises were closer to residential accommodation, citing Liberte and Purple Door (at [6.2]). In addition to Mr Etchells' report, Bean Leisure submitted photographs of Wildcats taken by day and night from some of the sensitive premises on the North side of the Headrow, namely the Town Hall, the Leeds Art Gallery, the Cenotaph and from the junction of the Headrow and Cookridge Street. In addition to the original images, Bean Leisure submitted edited ones showing the frontage with no signage. It is plain from Bean Leisure's submission and its evidence in this case that it was fully conversant with the terms and effect of the 2013 Policy and that it tried to address the potential policy implications of its proximity to the sensitive premises on the North side of the Headrow by its evidence and submissions.

32. Bean Leisure attended the hearing of its application and Mr Whur made oral submissions in support. Mr Whur referred the committee to the photographs that had been taken, and offered that Wildcats should open an hour later than at present and be open only to those who were 21 or over. He addressed the objections that had been made and submitted that there had been no real negative impact. Mr Etchells gave evidence and was asked about the presence of the Civic Buildings and also the relative impact of other clubs on their areas[3]. In summing up, Mr Whur submitted that the key paragraphs of the 2013 Policy were [2.3] and [4.7] and that it would be irrational to refuse to renew the licence for Wildcats on the basis that "there is no real

[3] See Notes of hearing at (688)

risk, it is all perceived."[4]. He did not at that point refer to [7.17] of the 2013 Policy or to the presence of sensitive buildings on the North side of the Headrow.

33. At the application hearing the committee had available to it six "Radius Plans". Each plan showed the position of an applicant and a ring centred on that applicant's position with a radius of 250 metres. Buildings with sensitive uses were identified within the 250 metre radius. Bean Leisure obtained a copy of the Radius Plan for Wildcats but not for the other applicants. As would be expected, the public buildings on the North side of the Headrow were shown on the Wildcats Radius Plan, as were other buildings that were further away.

34. When the committee came to make its decision on 3 December 2013, it renewed the licences for Liberte and Purple Door for a year and the licence for Silks for eight months, but refused to renew the licences for Wildcats, Red Leopard or Deep Blue.

35. The material parts of the Council's decision letter for Bean Leisure dated 4 December 2013 are at Annexe B. The following points emerge:

    i) Large parts of the Bean Leisure decision letter were also included in others, as indicated in Annexe B. This is not surprising or indicative of a lack of proper consideration since the application fell to be considered under the same policy and many aspects of the Sub-committee's deliberations would necessarily be common to each application;

    ii) The Sub-committee made an error when stating as part of the Decision that "the number of sex establishments, or of sex establishments of a particular kind, 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 had previously been the statutory test under paragraph 12(3)(c), but by the time of these decisions it had been amended so that the relevant time was when the application was *determined*.

    iii) At first sight, the section of the Decision relating to the discretionary ground under paragraph 12(3)(c) is confusing. However, once its structure is understood, its meaning becomes clear. The critical words are the reference in the Decision to the 2013 Policy statement at paragraph 7.17 that the appropriate number of SEVs in the city centre is four "*providing those premises are not near properties with sensitive uses or in sensitive locations*." This was the nuanced statement of policy pursuant to paragraph 12(3)(c) to which I have already referred. Applying that approach, "the committee was of the view that [Wildcats] was excluded from the maximum of four because of the location of these premises near to properties with sensitive uses or in sensitive locations." In other words, Wildcats could not fall within paragraph 12(3)(c) – and was therefore liable to be refused renewal – because it could not be one of the maximum of four SEVs that could be appropriate for the city centre;

    iv) No such difficulty arises in interpreting the section of the Decision that decided not to renew on the discretionary ground under paragraph 12(3)(d);

[4] See Notes of hearing at (693)

v) There was no room for doubt that the committee regarded the introduction of the 2013 Policy as a significant change that they could take into account, and that the emphasis on sensitive locations was a key feature of the new Policy;

vi) While it would have been known for some time that Leeds Trinity and the Leeds Arena were coming, the committee linked their opening and the Queen's official launch in July 2012 to Leeds' ambition not only to be a child friendly city but also to be a 24 hour city attractive to all. This was a clear reference to the aspirational aspects of the 2013 Policy and the Council's policies more generally to alter Leeds progressively for what was, in the Council's view, the better;

vii) The decision letter devoted a discrete section to the impact of the 2012 Decision to grant a licence. It identified that the present committee was differently constituted and entitled to reach a different decision. It identified the changes that had occurred since June 2012, namely the introduction of the 2013 Policy and the events which it considered significant in having an understanding of Leeds' ambitions. It did not include reasons for reaching a different conclusion in the section devoted to the impact of the 2012 decision, leaving its reasons for reaching its decision for later in the decision letter;

viii) The Reasons for the Decision section of the decision letter left no possible room for doubt that the fundamental reason for the refusal to renew was the proximity of the sensitive civic and religious buildings on the North side of the Headrow.

36. After Bean Leisure and Ruby May had moved for interim relief, the Council issued amplified reasons, while not accepting that its original reasons were deficient. Relevant extracts from those reasons are at Annexe D. The following points emerge:

i) The Amplified Reasons state the order of sensitivity attributed to the six applicants: Liberte and Purple Door were the least sensitive and were not otherwise distinguished; Silks was considered to be the third least sensitive but was renewed for eight months only because of the proposed development and its impact on Leeds' aspirational progression towards being a child friendly and 24 hour city; Deep Blue came next because of its proximity to the Railway Station and was regarded as inappropriate for inclusion in the maximum of four SEVs that might be licensed in the city centre; Wildcats and Red Leopard presented most concern because of their proximity to the Civic Buildings on the Headrow;

ii) It does not appear from the Amplified Reasons that the ranking was formalised. Wildcats and Red Leopard came "last" because they "presented most concern"; Deep Blue was "effectively ranked fourth"; the other three were in locations that "presented insufficient concern to refuse to renew in all three cases" and were considered to be "far less sensitive" than those where renewals were refused. This lack of formalised ranking also makes sense of the last sentence of the Amplified Reasons ("However, had there been a ranking, the Sub Committee is clear that Deep Blue would have been fourth, followed by Red Leopard and Wildcats.") which, in the context of what has been said before, can only mean that there was no formal ranking even though

> the committee evidently formed a view about which premises were more or less objectionable, which should have their licences renewed, and which should not.

The Factual Background: Ruby May

37. Deep Blue has been at 36 Wellington Street since 2002. It is about 50-75 metres from City Square. Its frontage faces South and is near to one of the pedestrian entrances to Leeds City Station. It is common ground that Deep Blue does not face a collection of buildings and monuments of the same level of significance as those facing Wildcats. Wellington Street is a busy pedestrian and traffic thoroughfare in what is essentially a prime office area of the city centre.

38. Deep Blue has traded as a lap dancing club for 11 years. It employs 61 staff. During that time there has never been any police or regulatory objection to the licensing of the club. The outstanding term of the lease is 19 years at an annual rent of £88,000. The proprietors of Ruby May have given personal guarantees under the lease for that term. There is no evidence that the lease includes a break clause.

39. When the new regime was introduced Ruby May applied for and obtained a SEV licence for 12 months from 1 October 2012. The Council's Licensing Sub-committee took the decision in June 2012 after receiving objections from a similar body of objectors to those who objected to Wildcats, being primarily of a general nature and addressing similar concerns to those expressed in relation to other clubs. Conditions were imposed including that opening hours should be 10pm-4am Sunday to Thursday and 10pm-5am Friday and Saturday (as with Wildcats) and in relation to leafleting and distribution of flyers and use of vehicles for solicitation or touting. In addition, the applicant was required to submit a revised draft logo for approval. In giving its reasons, the Sub-committee said:

> "Deep Blue occupies a small premises on Wellington Street. The immediate locality is predominantly office buildings with a public house next door and residential flats close by. The lap dancing clubs of Purple Door and Liberte are to be found on York Place to the rear…
>
> The locality was not considered unsuitable given the opening hours suggested by the applicant places this premises operating in the late hours of the night to the early hours of the morning. The licensing sub committee were of the opinion that appropriately set hours could ensure that the premises could operate without impacting upon the surrounding offices and workers.
>
> With regard to the close proximity of two other lap dancing clubs, it was the licensing sub committees view, due in part by the size of the three clubs, that this did not ghettoise or create a specific area of Leeds given over to lap dancing clubs. The concession by the applicant regarding opening hours was sufficient to address the concerns raised relating to the perceived risk to women's safety.

> Councillor Lowe objecting pointed out that the locality was sensitive due to the premises being viewable from Leeds railway station. The sub committee accepted the evidence of the expert for the applicant that the view of the premises was oblique. The proposed changes to the front of the premises would be made it less visible.
>
> The logo was considered inappropriate and could be offensive due to it portraying male genitalia. It was noted that the applicant was happy to make any changes required by the council. Other imagery proposed to be used at the venue and on flyers was not considered offensive. The licensing sub committee felt that the reference to "stunning girls" waiting for customers should be changed to "dancers" waiting for customers so as to remove any ambiguity that may be regarded as offensive.
>
> Flyer distribution was said to take place along the street and city square which may or may not exceed 100 metres of the establishment. Dancers, when smoking, are not visible from the street and are separated from members of the public. They are further to be wrapped in gowns of at least knee length so are not portraying an indecent image when seen by the public outside the venue."

40. Apart from the removal of the logo that had been considered unacceptable, the exterior of Deep Blue did not change materially during the period of the initial SEV licence. At the time of the challenged decision, the name "Deep Blue" appeared prominently above the entrance. It had no other signage displaying its name or any description of the use of the premises that was visible from the exterior.

41. Ruby May commissioned an expert report from Mr Martin Nicholson, a chartered surveyor. His evidence was that the presentation of the premises was low key and opaque to casual people passing by on foot or by car or bus and that the outside of the premises does not identify them as an SEV "without very close inspection." He noted and emphasised the lack of objections to Deep Blue's presence and business over years.

42. The Report of the Head of Licensing and Registration to the 2013 Sub-committee was in the same form as the report on Bean Leisure: see [30] above. The attached map showed the proximity of Deep Blue to the Railway Station and City Square. Ruby May had the report.

43. Mr Nicholson attended the application hearing with Ruby May, as did Ruby May's solicitor. Before doing so, there was a meeting of the proprietors, Mr Nicholson and others at which final preparations for the hearing were made. Deep Blue's location and proximity to Leeds Central Railway station were discussed as an issue and it was "decided it was best to mention this straight away." The issue was addressed by Mr Nicholson in his evidence. While accepting that Deep Blue was not far from the station, he said that not many people who visit Leeds go down Wellington Street: most head up Park Row and Boar Lane towards the shops and restaurants. He said

that only office workers use Wellington Street during the day, when Deep Blue would be closed. In addition, since the club was opening at 10pm, he said that most trains had departed from or arrived at the station by then and that Deep Blue was not visible from the City Square exit, and its appearance was discreet. Summing up for Ruby May, their solicitor said that Deep Blue was well run, was a good neighbour, was not subject to objections and was not obviously an SEV from its external appearance. After the hearing, the solicitor emailed the Council offering that Deep Blue would open later, in line with other SEVs and, by a separate email, offering "to alter the appearance of the premises to such an extent and in such a way as to address any concerns which Leeds City Council may possibly have in respect of it."

44. Ruby May's Radius Plan identified the Leeds Railway Station and City Square as being near to Deep Blue with other buildings further away.

45. The material parts of the Council's decision letter for Ruby May dated 4 December 2013 are at Annexe C. The following points emerge:

    i) The format was the same as that of the Bean Leisure decision letter: see [35(i)-(vii)] above;

    ii) The Decision section of the decision letter stated that the committee's concern in relation to Deep Blue was its close proximity to Leeds Railway Station and City Square, and its location on a main road and close to bus stops. That concern was amplified and explained in the Reasons section of the decision letter in the passages that were specific to Deep Blue.

46. The Amplified Reasons provided by the Council applied to Ruby May and Bean Leisure. Relevant extracts are at Annexe D. The same points emerge as are set out at [37] above.

The Applicable Legal Principles

47. In large measure, the applicable legal principles are clear and not in dispute between the parties. I bear the following matters in mind when considering the challenges to the Council's decision in this case.

The Obligation to Give Reasons

48. The principles summarised at [35-37] of *South Bucks DC v Porter* [2004] UKHL 33 apply to reasons on SEV applications: see *Thompson* in the Court of Appeal at [44] per Lloyd Jones LJ.

Amplifying Reasons

49. The provision of amplified reasons is appropriate where a disappointed applicant complains that the reasons given are inadequate. Generally they should only elucidate what has been provided before: see *KVP* at [62]-[68]. Where reasons are provided after a decision is challenged, they should be scrutinised carefully to see whether they are new reasons contrived to provide an ex post facto justification or genuine amplification of the reasons already given.

Departing from a previous decision

50. The provision for annual renewal of licences means that the Council is entitled to "have a fresh look" at the matter. If there has been no change in circumstances since an earlier decision and the Council wishes to depart from an earlier decision, it must give its reasons for so doing. This is clear from the judgment of O'Connor LJ in *R v Birmingham City Council ex parte Sheptonhurst Ltd* [1990] 1 All ER 1026, where he said:

> "…[W]here Parliament, having expressly limited the grounds on which a licence may be refused, has drawn no distinction between grant and renewal of the licence and provided that a licence shall not last for more than a year, then it seems to me that to accede to Mr. Tabachnik's submission [that Parliament cannot have intended that the vagaries of local opinion should be determinative of an existing trader's rights to continue to trade] would be to introduce a fetter on the discretion of the Local Authority in cases of renewal which Parliament has not done. However, although the discretion is unfettered, there is a difference between an application for grant and an application for renewal and that distinction, as the cases have pointed out, is that when considering an application for renewal the Local Authority has to give due weight to the fact that a licence was granted in the previous year and indeed for however many years before that. It is of particular importance that the licensing authority should give due weight to this fact in this field, for I do not doubt that there is opposition to sex shops on grounds outside the limits imposed by paragraph 12 of the Schedule. I have come to the conclusion that the licensing authority were entitled to have a fresh look at the matter… In a case where there has been no change of circumstances, if the licensing authority refuses to renew on the ground that it would be inappropriate having regard to the character of the relevant locality, it must give its reasons for refusal: see paragraph 10(20) of the Schedule. If the reasons given are rational, that is to say properly relevant to the ground for refusal, then the court cannot interfere. I believe this to be the true protection for a licence holder applying for renewal against a wayward and irrational exercise of discretion. The fact that in previous years the licensing authority did not chose to invoke those reasons for refusing to grant or renew the licence does not make the reasons irrational"

51. In *Thompson*, Lloyd Jones LJ referred to the need to "grasp the nettle of any disagreement with the earlier decision" and summarised the position at [35] as follows:

> "In summary, therefore:
>
> (1) On an application to renew an SEV licence it is not necessary for an objector to demonstrate that something has

> changed since the decision granting the licence. Were the position otherwise, the efficacy of annual reconsideration would be much reduced.
>
> (2) However, the decision maker has to have due regard to the fact that a licence was previously granted.
>
> (3) If there is no relevant change of circumstances, the decision maker has to give his reasons for departing from the earlier decision."

52. It is clear from [34] of *Thompson* in the Court of Appeal that, in this context as elsewhere, the need to explain why a different conclusion is reached forms part of "the function of reasons as a safeguard of sound decision making." It may also be said to flow directly from the *South Bucks v Porter* requirement that the reader must be enabled to understand why the matter was decided as it was, with the degree of particularity required depending entirely on the nature of the issues falling for decision. The Court of Appeal in *Sheptonhurst* and *Thompson* respectively said that reasons for departing from an earlier decision should be given "where there has been no change of circumstances" or "if there is no relevant change in circumstances". I would only add that the reasons for not reaching the same conclusion as a previous decision are infinitely variable and may range from where a subsequent committee takes a different view of unchanged circumstances to where circumstances have changed to such an extent that the basis for the previous decision has ceased to apply; and it may involve a combination of changed circumstances and a different view being taken of those that are unchanged. Wherever in this spectrum a case may lie, the over-riding principle is that the reasons for the new decision must be intelligible and enable the reader to understand why the matter was decided as it was. Where a decision may be seen as differing from an earlier decision, it will almost invariably be necessary for the later decision at least to acknowledge the existence of the earlier: it is not possible to be prescriptive about what more is required to show that the later decision maker has given it any weight that is appropriate.

53. One of the features in *Sheptonhurst*, to which Mann LJ referred at first instance, was that the committee taking the second decision was differently constituted from the one that took the first. He pointed out that "the legislature must be taken to know that a local authority is a body of changing composition and shifting opinion, whose changes and shifts reflect the views of the local electorate. …. What is "appropriate" may be the subject of different perceptions by different elected representatives." I respectfully agree. Subject to the obligation to give adequate reasons and to have due regard to earlier decisions, a later committee is entitled to take a fresh look and is not bound in any way by the views of an earlier one.

Human Rights

54. If the licensing regime engages the Human Rights of operators of lap dancing clubs at all, it does so at a very low level. While some may wish to argue that there are material distinctions between the sale of pornography and the running of a lap dancing venue, they have in common that they are areas of social control in which the broad power of judgment entrusted to local authorities by the legislature is accorded a wide margin of appreciation. If the local authority exercises that power rationally and

in accordance with the purposes of the statute, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights. If the local authority does not refer to an applicant's Convention rights that may be an indication that it has given inadequate attention to them; but the question in every case is whether the applicant's rights have been infringed, which is a question of substance and generally not simply one of procedure: see *Belfast City Council v Miss Behavin' Ltd* [2007] 1 WLR 1420 at [16], [17], [37], [91-95]. Proportionality requires the striking of a fair balance between a Claimant's economic interests and the general public interest: see *Tre Traktorer Aktiebolag v Sweden* (1991) 13 EHRR 309.

The Bean Leisure Application

55. Bean Leisure's amended Statement of Facts and Grounds lists eight grounds of challenge, as follows:

i) the Council's approach to 'ranking' the premises applying for the renewal of their sexual entertainment licences breached the rules of natural justice in that the Claimant was not informed that such an exercise would be undertaken as part of the decision-making process and was not informed of the method or criteria which would be used in ranking the premises;

ii) the Council erred in law in failing to give any, or any adequate reasons for its finding (at page 4 of the Notice of Decision) that "*In terms of ranking the committee found in applying the Policy that there were other premises which ranked above these premises as they were in less sensitive locations";*

iii) the Council erred in law and was irrational in deciding (at page 4 of the Notice of Decision) that "…irrespective of the ranking, … the premises were excluded from the maximum of four because of the location of these premises near to properties with sensitive uses or in sensitive locations";

iv) the Council erred in law and was irrational in deciding … that the number of sex establishments in the relevant locality was "equal to or exceeds the number which the authority consider is appropriate for that locality", having regard to the number of SEV licensed premises and to the relevant legislation and the Council's Licensing Policy;

v) the Council erred in law in deciding that "… irrespective of the ranking, … the premises were excluded from the maximum of four because of the location of these premises near to properties with sensitive uses or in sensitive locations" and in deciding (at page 5) "on the discretionary ground under Schedule 3 12(3)(d) of the Act that the grant or renewal of the licence would be inappropriate, having regard - (i) to the character of the relevant locality; or (ii) to the use to which any premises in the vicinity are put", because the Council failed to have any adequate regard or to give due weight to its previous decision to grant a SEV licence for the Wildcats premises in 2012, or to the decision of its own planning department to grant planning permission for the use of the Wildcats premises as a lap dancing club in 2007;

vi) the Council erred in law in failing to give any, or any adequate reasons for reaching a different conclusion from the previous licensing Sub-committee in

2012 on one of the principal issues upon which its decision turned and/or for reaching a different conclusion to that of its own planning department upon that issue in 2007;

vii) in all the circumstances the Council's decision constitutes a disproportionate and unlawful interference with the Claimant's rights under Article 1 of the First Protocol to the European Convention on Human Rights;

viii) in reaching its decision the Council erred in law in failing to discharge the public sector equality duty imposed upon it pursuant to section 149 of the Equality Act 2010.

Ground 1: breach of natural justice in relation to ranking

56. The central proposition underlying this ground of challenge is that Bean Leisure was not told either that some premises would be regarded as more or less objectionable than others or what considerations would inform the committee's views when deciding on the comparative sensitivity of the various premises. The proposition is unsustainable.

57. Bean Leisure accepts that it was aware that a new policy had been adopted, which identified certain types of use that were deemed to be sensitive and which provided (at [7.17]) that the appropriate number of SEVs in the city centre is a maximum of four providing those premises are not near properties with sensitive uses or in sensitive locations. It also knew that there were more than four applicants for renewal. It followed inevitably that the Sub-committee would in all probability reject at least two applications for renewal and that proximity to sensitive properties or being in sensitive locations would be policy criteria that would be applied. Bean Leisure understood this, as is plain from its instruction of Mr Etchells and the content of his evidence and its submissions to the Sub-committee. Mr Etchells' discussion of the proximity of Wildcats to the Civic Buildings was evidently an attempt to meet the clear and new emphasis of the 2013 Policy to which I have referred; and his evidence that other SEV premises were closer to residential accommodation was a comparative exercise going directly to the competitive nature of the application. It is therefore incorrect for Bean Leisure to submit that "it had not had the opportunity to submit any written evidence as to the comparative sensitivity of the Wildcats and other premises in light of the evidence shown in the radius plans." Although Bean Leisure was not shown the Radius Plan for Wildcats until the hearing and was not shown the Radius Plans for the other applicants, Mr Matthias QC correctly accepted that it could have drawn up plans serving an identical function had it wished to do so. It is clear from Mr Etchells' evidence that Bean Leisure was able to submit written evidence on comparative sensitivity, and that it did so.

58. That is not to say that proximity to sensitive properties or being in sensitive locations were the only factors to be taken into account by the committee. Although the changed emphasis of the 2013 Policy was (and was appreciated to be) very important, other matters going to the history and management of Wildcats remained relevant and were addressed by the Sub-committee at the hearing.

59. Bean Leisure asserts that the fact of "ranking" was rendered unfair because it was not told what criteria would be adopted or how they would be applied. Specifically, it

complains that it was not told what use would be made of the Radius Plans or how the comparative sensitivity of the various locations was to be determined. I reject these complaints. First, the criteria to be applied in assessing the various applications were those set out in the 2013 Policy, which was clear. Second, Bean Leisure invests the "ranking" with a formality that is not warranted. There is no evidence to suggest that the Sub-committee applied mathematical precision or pre-determined weighting to different considerations and no reason to suspect that it did so. Rather, the terms of the decision letters (and the Amplified Reasons) indicate that, having considered all of the applications, the Sub-committee formed a view based on all of the evidence about which applicants were sufficiently acceptable to merit renewal and which were not. That inevitably involved forming a view of the absolute merits or demerits of each application, which in turn was bound to lead to an informal view of the order of merit, or "ranking", of the applications. The Radius Plans were obviously useful tools for the Sub-committee. The fact that the radius was drawn at 250 metres does not suggest that all sensitive premises within the radius would be afforded equal significance and it is plain from the decision letters that they were not. No criticism can be made of the Sub-committee having before it a plan which showed the immediate proximity of the Civic Buildings to Wildcats or the fact that there were other properties with sensitive uses further away. The decision letter identified the buildings and locations which had led it to its conclusion that the application should be rejected: they were the Cenotaph and the buildings on the North side of the Headrow.

Ground 2: failure to provide adequate reasons

60. In its written and oral submissions, Bean Leisure repeatedly asserted that it was unable to understand the reasons for the Council's decision to refuse to renew its licence or to regard Wildcats as being in a more sensitive location than other premises. That is a surprising assertion.

61. Any reasonable appreciation of the impact of the 2013 Policy would lead to the recognition that the North side of the Headrow could rationally be seen as one of the most sensitive areas in Leeds. The decision letter showed that to be the Sub-committee's view and gave their reasons for taking it:

> "*The concern in relation to Wildcats was the number of buildings with sensitive uses nearby, and the density of such buildings within a small area.*
>
> …
>
> <u>The Policy</u>
>
> The committee found that they were entitled to take into account any changes since June 2012. They found that the introduction of the new Policy was a significant change they could take into account. The committee noted that the introduction of the current Policy had not been legally challenged by any of the applicants.
>
> Further they decided that the policy in place in June 2012 when the original decision to grant the licence was made was different to the one in place now. The policy previously adopted by Leeds City Council and in place when the June

2012 Decisions were made did not set a limit on the numbers of establishments and each application was judged on its own merits.

…

The committee decided that these premises were very close to not just one but more than one building which could be described as having a sensitive use as set out in section 7 of the Policy and that the buildings with sensitive uses were set very close together in a small area. The committee found that the objections relating to sensitive use of location were valid.

The committee found of importance that Leeds has sought to establish itself as a major European city and cultural and social centre with an intention to create a vibrant 24 hour city. The importance of cultural activities in Leeds relevant to these applications is set out in section 6 of the Policy.

These premises are situated directly opposite the Art Gallery and the Henry Moore Sculpture Gallery which are on Victoria Gardens on which also stands the Cenotaph. The Library is in the same building as the Art Gallery. The premises are diagonally opposite the Town Hall. There are residences close to the premises and nearby are offices and other bars. Behind the Art Gallery is Millennium Square, bars and restaurants and other public buildings. Oxford Road Methodist Church is nearby.

…
The committee was of the view that the premises could never be invisible. The premises and entry to them are on a main road. If the signage was removed activity around the premises through people entering and exiting and promotion nearby would indicate what the premises are used for.

…

… The committee took the view that people should be able to consider Leeds as a 24 hour city, safe to walk about particularly in sensitive locations *including those with cultural activities. The committee was aware that some functions at the Town Hall finished at 11pm and following that people would be in the area. People would also be in the area following any event in Millennium Square or following events or being out for the night at locations nearby.* The committee thought there was a valid objection that women walking by should feel safe and free to do so without concern.

Leeds Vision 2011-2030 focuses on the aspiration to be the best city in the UK. The committee was of the view that this includes the way the city is viewed by local people, and visitors. The sensitivity of locations near visitor attractions is therefore important to this vision, a point reflected in the Policy consultation replies.

…

> In addition to the sensitive uses in paragraph 7.11 the committee took into account the fact that the premises are *on one of the city's main roads. The committee found of significance the nature of the road. The road is only a few metres wide so only a very short distance from the nearby sensitive buildings and locations such as the Art Gallery and Cenotaph.*
>
> *The Headrow can be described as one of the key gateways into and out of the city of Leeds, being the main road which runs through it and the road on which significant buildings such as the Town Hall and Art Gallery stand. This is a road which brings a number of visitors including tourists to the city. The relevance of the events since June 2012 as set out above include the opening of the Arena and Trinity and are indicative of the growing number of visitors to the city. They are both specifically referred to, including their impact on visitors to the city in paragraphs 6.10 and 6.11 of the Policy.*
>
> …"

62. Even without the Amplified Reasons, the decision detter reflected and explained the view of the Sub-committee that Wildcats could not meet the requirements of the 2013 Policy (and, specifically paragraph 7.17) and that it fell short by a wide margin. It set out its reasons for reaching that conclusion with a clarity that defies misunderstanding, as set out above. The Amplified Reasons elucidated why other applicants were regarded as less objectionable than Wildcats and Red Leopard in terms that were clear and reasonably calibrated. While being suitably cautious of the risk of ex post facto justifications, the Amplified Reasons provide a cogent elucidation of why the Sub-committee came to the views that it did. Bean Leisure has not demonstrated that the Amplified Reasons should be rejected or disregarded. On the contrary, to my mind, a fair reading shows that, although doubtless drafted by a lawyer or with a lawyer's assistance, they are reasonably consistent with the decision letter.

63. Bean Leisure attempts to avoid this conclusion by pointing to the fact that Liberte and Purple Door were nearer to residential accommodation than Wildcats, this being the very point that Mr Etchells had made in his evidence. The argument proceeds on the implicit assumption that proximity to residential accommodation "trumps" other sensitivities. The assumption is not justified and is wrong. First, none of the applicants were within a residential area within the meaning of paragraph 2.11 of the 2013 Policy: they were in the city centre. Second, the listing of areas in paragraph 2.13 did not establish a rigid hierarchy to be applied with mathematical precision. If it had done so it would not have helped Bean Leisure since it was "on" the Headrow (the fourth in the list) and "near to" two of the first three areas, namely, Millenium Square/Calverley Street, and the area round the combined Courts. Third, and in the same way, the listing of sensitive uses in paragraph 2.15 did not establish a rigid hierarchy such that proximity to a building with a use higher up the list would inevitably be regarded as more objectionable than proximity to one lower down. To have adopted such a policy would itself have been arguably irrational, given that the percentages of respondents who regarded it as objectionable to site SEVs near to *any* of the types of areas and buildings other than "late night entertainment areas" exceeded 50%, and the percentage variation between different types were often

modest: see [14(iv)] above. Fourth, the proviso to paragraph 7.17 of the 2013 Policy ("… providing those premises are not near properties with sensitive uses or in sensitive locations") includes two variables which cannot be the subject of formulaic precision, namely the degree of proximity involved in "near" and the level of sensitivity of "properties with sensitive uses or in sensitive locations."

64. Adopting the *South Bucks v Porter* approach to the obligation to give reasons, the decision letter stated expressly that other premises were in less sensitive locations and set out detailed reasons that enabled the reader to understand why the Sub-committee regarded the proximity of Wildcats to the number of identified buildings with sensitive uses as rendering its application for renewal objectionable.

Ground 3: error of law and irrationality in deciding that Wildcats was excluded from the maximum of four

65. Bean Leisure submits that it was irrational to decide that Wildcats was excluded because it was near to premises with sensitive uses while deciding that Liberte and Purple Door were included even though they were near to other premises with sensitive uses.

66. There can be no doubt that Wildcats was near properties with sensitive uses or in sensitive locations, for the reasons already discussed. It would therefore not be arguable that, viewed in isolation, it was irrational to exclude Wildcats from the maximum of four: it contravened paragraph 7.12 and failed to meet the requirements of the proviso to paragraph 7.17 of the 2013 Policy. This ground of challenge must necessarily be by reference to the comparative merits of Wildcats on the one hand and Liberte and Purple Door on the other.

67. Although presented as a rationality challenge, this ground of challenge requires the Court to consider the factual basis for the Sub-committee's conclusion that the licence for Wildcats should not be renewed while reaching the opposite conclusion on the licences for Liberte and Purple Door. In addressing the challenge, it is necessary to bear well in mind the respective roles of the Council, with its broad power to make an evaluative judgment taking into account its local knowledge, and the Court, which is not in a position to replicate the Council's role and, in any event, not entitled to do so.

68. Bean Leisure's submissions on this ground again rely upon the assertion that Liberte and Purple Door were closer than Wildcats to premises used as schools or education centres, which it describes as "the most sensitive type of use", or residential accommodation, which it describes as "the second most sensitive use". Accepting the factual assertion for the purposes of the challenge, it does not begin to show that the Council behaved irrationally. In the light of the 2013 Policy there is no arguable basis on which the Court could properly form the view that it was irrational for the Council to regard Wildcats' proximity to the North of the Headrow as being more objectionable than the proximity of Liberte and Purple Door to other buildings having other sensitive uses. To my mind, that is precisely the sort of evaluative judgment that is for the Council to take. It is not susceptible to a formulaic or mathematically precise calculation that is capable of being objectively assessed by the Court. To the contrary, the Policy emphasises the increased weight to be given to all sensitive uses and the Council was entitled rationally to conclude that the "iconic" beating heart of

civic Leeds on the North side of the Headrow was highly sensitive in a way that York Place was not.

Ground 4: error of law and irrationality in deciding that the number of sex establishments was equal to or exceeded the number appropriate for the locality

69. Bean Leisure submits that this section of the decision letter was patently wrong because it only authorised three renewals, so that the maximum number of four was not exceeded. It suggests that the Sub-committee was confused by the fact that there were six applications and was therefore wrongly considering that number rather than the three which it decided to renew.

70. I have referred at [35(iii)] above to the initially confusing terms of the section of the Decision relating to the discretionary ground under paragraph 12(3)(c). To my mind, once the section is read as intended, the meaning is clear and the factual basis for this ground of challenge goes. I do not accept that the Sub-committee's incorrect reference to the time when the applications were "made" shows that they misunderstood the nature of the exercise on which they were engaged. It is clear from the terms of the decision letter read as a whole that the Sub-committee appreciated that six was not the relevant number. I consider that it is also clear that the reason why the Sub-committee considered that three was equal to the number considered appropriate was because only three applicants satisfied the terms of the proviso.

Ground 5: failure to have regard or give due weight to the 2012 decision to grant a licence or the 2007 grant of planning permission

Ground 6: failing to give any or any adequate reasons for reaching a different conclusion from the 2012 decision or the 2007 grant of planning permission

71. I take these two grounds together as the question whether due weight was given can only be answered in the light of the Council's reasons for reaching the conclusion it did.

The 2012 Decision

72. Bean Leisure submits that the decision letter does not contain any rational justification for the difference between the 2012 and 2013 Decisions. It submits that there is nothing in the 2013 Policy that undermines or contradicts the logic of the 2012 decision that, provided various steps were taken, the locality was not unsuitable for the presence of Wildcats and that "if such measures were considered sufficient one year, and insufficient the following year, there should be an adequate explanation for that difference."

73. The decision letter was written in full awareness of the 2012 Decision, as is apparent from the introduction, Background, and the section specifically devoted to its impact. Bean Leisure submits that it is not sufficient merely to refer to an earlier relevant decision, but the decision letter goes well beyond that:

    i) It recognised that its findings in 2013 could be seen as a departure from the 2012 Decisions;

ii) It identified that it was a differently constituted committee entitled to reach a different conclusion;

iii) It stated that the there was no guarantee of entitlement to renew an annual licence (or, in other words, that it was entitled to take a fresh look);

iv) It considered what had changed since the 2012 Decision (which goes to the question whether reasons for departure are required at all as discussed above) and identified:

a) The formulation, consultation and introduction of the 2013 Policy;

b) The significant events in Leeds since the 2012 Decisions were taken;

v) It based its decision squarely upon the 2013 Policy, explaining why its introduction was a significant change;

vi) It gave its reasons for reaching the conclusion it did, as set out in Annexe B. In doing so it drew specific attention to the ambition that Leeds should change so as to establish itself as a major European city and cultural and social centre with an intention to create a vibrant 24 hour city.

74. The Council was entitled to consider that the introduction of the 2013 Policy was a significant change, with its emphasis on sensitive uses and locations and the aspirations for Leeds that were reflected in the Policy. The fact that a particular venue had not been regarded as inappropriate when considered in the context of the earlier Policy does not indicate that it should not be so regarded under the new; and the Sub-committee set out fully its reasons for concluding that, applying the 2013 Policy, Wildcats could and should be regarded as inappropriate. It is no answer to say that the 2012 Decision had addressed the suitability of the location: the 2013 Sub-committee was differently constituted, was entitled to have a fresh look, was obliged to apply the 2013 Policy, and was entitled to come to a different view provided that it gave rational and sufficient reasons for its conclusion. As I have already said, the reasons given were clear; and they were rational in being properly relevant to the ground for refusal. There is accordingly no basis upon which the Court can properly intervene.

75. On the basis of the formulations of principle in *Sheptonhurst* and *Thompson* in the Court of Appeal to which I have referred above, there were relevant changes of circumstances as a result of which the requirement to give reasons for departing from the earlier decision did not arise. However, even if it arose, there is no need for a formulaic response (e.g. by including words such as "We depart from the earlier decision because …"). What happened in this case was that the Sub-committee gave the reasons for coming to the conclusion it did, which were also the reasons for not following the earlier decision. In my judgment, the approach and content of the decision letter show that the Sub-committee had the 2012 Decision in mind throughout and, in giving its reasons, it satisfied any requirement to grasp the nettle – if indeed there was a nettle to be grasped given the changes that had occurred since June 2012.

The 2007 Planning Permission

76. I reject the submission that there was any need to address the 2007 Planning Permission. Six years is a long time in politics, policy and the life of a city. The Sub-committee was required to take its decision under statutory provisions that had not been adopted by Leeds in 2007 and a Policy that had not been formulated until earlier in the year of the decision. In those circumstances, the 2007 Planning Permission was not a relevant consideration for the Sub-committee to take into account.

Ground 7: disproportionate and unlawful interference with Bean Leisure's Rights under Article 1 of the First Protocol to the European Convention on Human Rights

77. The decision letter addressed the issue of Bean Leisure's Human Rights, specifically in the paragraphs headed "Financial impact and impact on livelihoods" and "Relevant additional legislation considered". It concluded that the decisions were proportionate. Bean Leisure submits that the question is whether the Council's objective could be achieved by means which are less interfering with Bean Leisure's rights. In effect this must mean the addition of further conditions, that being the mechanism available to the Council which falls short of refusal. It places weight on a number of factors which reproduce many of the arguments that have already been deployed in support of the suggestion that refusal was irrational: the 2012 Decision; the lack of physical change since the 2012 Decision; the proposal to open an hour later; the absence of any incidents of crime, disorder or public nuisance associated with the business; the quality of the management; the provision of disabled access; and the financial impact on employees and Mr Gourlay.

78. All of these factors were before the Sub-committee. There were also factors that went the other way: the 2013 Policy; the other changes that had occurred in Leeds to which the Sub-committee referred; the fact that the premises have planning permission for alternative uses and are licensed for the sale of alcohol, music and other entertainments; and the fact that Mr Gourlay bought his interest in Bean Leisure knowing of the draft policy and freely assumed the commercial risk of refusal.

79. I am unable to identify anything very unusual in the features relied upon by Bean Leisure that would justify a conclusion that the decision was a disproportionate restriction on its human rights. In particular, I do not accept that the absence of evidence of crime, disorder or public nuisance can be determinative in the context of the 2013 Policy. The Sub-committee referred expressly to Bean Leisure's human rights and gave its reasons for coming to the conclusion that the decision was proportionate. Those reasons were rational and are not susceptible to challenge on the grounds that they were disproportionate. Bean Leisure has not identified additional conditions that could have been imposed and which would have enabled the Council's policy objectives as set out in the 2013 Policy to be fulfilled, and I am unable to do so.

Ground 8: failure to discharge the public sector equality duty imposed on it pursuant to section 149 of the Equality Act 2010

80. Although covered by Bean Leisure's written submissions, this ground was not developed at the hearing and it is unclear whether it is still a live issue. In any event, I would reject it.

81. Bean Leisure provided evidence to the Sub-committee that Wildcats had disabled access and facilities and that Liberte had a level entrance and disabled facilities. The Sub-committee had the issue in mind, because one of its members asked what percentage of Wildcats' customers were disabled: the answer was one or two a week and less than 5% overall. One or two a week would in fact be a small fraction of 1% on the basis of Mr Gourlay's evidence that Wildcats was visited by 800-1300 clients a week.

82. The decision letter did not refer expressly to disability; but it did refer to the Equality Act as set out in the 2013 Policy. Paragraph 7.25 of the 2013 Policy refers to the duty to exercise its functions in accordance with the 2010 Act; and paragraph 7.26 identifies disability as one of the relevant protected characteristics. The decision letter therefore demonstrates that the duty under s. 149 was taken into account by the Sub-committee.

83. I accept the submission that the duty is one of substance not form. In the light of the evidence given to the Sub-committee, no further reference to the potential impact upon disabled clients was necessary or desirable.

Conclusion

84. For the reasons set out above, Bean Leisure's challenge to the Council's decision fails.

The Ruby May Application

85. The 2013 Sub-committee formed the view that Deep Blue's location was less sensitive than that of Wildcats and Red Leopard. No one has suggested that this was an untenable view and, having seen both localities from the outside it is in my view clearly right. Deep Blue occupies smaller premises than Wildcats. Although it is near to City Square, the main area of the Square cannot be seen from Deep Blue; and New Station Street/Wellington Street, onto which Deep Blue faces directly, were not regarded as being of the same level of sensitivity as either City Square or the Headrow by respondents to the consultation.

86. By its Amended Grounds of Claim and written submissions Ruby May challenges the Council's decision on the following grounds:

    i) There has been a conflation of s.12(3)(c) and s.12(3)(d);

    ii) There has been a material error in relation to the s.12(3)(c) ground by refusing to grant Deep Blue a licence, within the quota of four licences given that only 3 have been granted;

    iii) There has been a failure to identify the ranking and/or ranking criteria;

    iv) There has been an unjustified departure from the 2012 Decision and the 2011 Policy and/or a failure to give adequate reasons for that departure;

    v) There has been a failure to deal with the renewal application fairly, by failing to give Deep Blue the opportunity to deal with the Council's concerns;

vi) There has been a failure to undertake the requisite duty to act proportionately in relation to Ruby May's Article 1/Protocol 1 rights;

vii) There has been a failure to apply properly the Provision of Service Regulations 2009;

viii) There has been a failure to consider adequately or at all the provisions of Article 10, European Convention of Human Rights.

87. Counsel who appeared for Ruby May, Mr Holland, was first instructed very shortly before the hearing. Despite that, he presented Ruby May's case cogently, succinctly and persuasively so that his clients were not (so far as I could tell) disadvantaged in any way. He sensibly concentrated upon the fact of the departure from the 2012 Decision, which he submits was unjustified and irrational. Following his lead, I will address Ground 4 first.

Ground 4: unjustified departure from the 2012 Decision and the 2011 Policy and/or a failure to give adequate reasons for that departure

88. In oral submissions, Ruby May highlighted the fact that the 2012 Decision had expressly considered the impact of Deep Blue on the locality. As set out at [38] above, the 2012 Sub-committee had formed the view that:

i) The locality was not considered unsuitable given the opening hours suggested by the applicant;

ii) Appropriately set hours could ensure that the premises could operate without impacting upon the surrounding offices and workers;

iii) The presence of three clubs close to each other did not ghettoise or create a specific area of Leeds given over to lap dancing clubs;

iv) The concession by the applicant regarding opening hours was sufficient to address the concerns raised relating to the perceived risk to women's safety;

v) The view of the premises from Leeds Railway Station was oblique and the proposed changes to the front of Deep Blue would make it less visible;

vi) The issue of flyer distribution had been considered and not found to be cause for a refusal.

Departure from the 2011 Policy

89. The 2013 Policy is central to any consideration of Ruby May's case, just as it is for Bean Leisure's. There is no challenge to the lawfulness of the 2013 Policy in these proceedings and for the purposes of this judgment it must be assumed to be lawful. I have already drawn attention to the shifts in emphasis that were introduced by the 2013 Policy, which the 2013 Sub-committee rightly regarded as a significant change from the 2011 Policy, which it superseded. That is of itself sufficient justification for departing from the 2011 Policy, and Mr Holland wisely did not argue to the contrary.

Departure from the 2012 decision

90. The principles applicable to Ruby May's case on this issue are those summarised at [50]-[53] above. It follows that the 2013 Sub-committee was entitled to take a fresh look and, if they thought right, reach a different conclusion. The real issue is whether the 2013 decision is shown to be irrational when due weight is given to what had been decided in 2012. It is therefore necessary to look at the 2013 decision with care.

91. The Ruby May decision letter followed the same format as that for the other applicants, including Bean Leisure. As with the Bean Leisure decision letter, the Sub-committee addressed the fact and impact of the 2012 Decision head on. The reasons that were specific to Ruby May were:

> "*The committee's concern in relation to Deep Blue in particular was the close proximity to Leeds Railway Station; to City Square and its restaurants and bars; its location on a main road and close to bus stops.*
>
> …
>
> The Applicant argued that the physical premises in the locality had not changed since June 2012. Whilst the committee did not disagree with this the committee found that they were entitled to take into account the emphasis on sensitive locations as set out in the new Policy.
>
> *The committee decided that these premises were in a sensitive location being very close to the Railway Station and City Square. Specifically the committee found that their consideration of these locations as sensitive was supported by the results from the Citizen's Panel Survey as set out in the Policy. The committee found that the objections relating to the sensitivity of these locations were valid.*
>
> …
>
> *These premises are situated opposite and very close to a key entrance to the Railway Station and close to City Square with restaurants and other amenities.*
>
> The applicant argued that as the premises did not open until a time when the buildings with sensitive uses had closed so there was no impact on them. *In relation to the Railway Station the applicant said that people would have arrived /departed by 10pm. The committee did not accept this. The committee was aware from their local knowledge that City Square and the Railway Station is at the centre of Leeds and is a place which would be used by a number of people beyond 10 pm and 11pm, including people leaving other premises, such as restaurants, and events taking place in the city.*
>
> *The committee noted the applicant's offer in relation to signage and whilst recognizing attempts to address concerns was of the view that the premises could never be invisible.* If the signage was removed activity around the premises through people entering and exiting and promotion nearby would indicate what the premises are used for.
>
> …
>
> The committee accepted that there were valid objections in relation to the sensitivity of locality and effect on the child friendly vision for Leeds and in relation to being an open to all thriving 24 hour city.

> In addition to the sensitive uses in paragraph 7.11 the committee took into account the fact that the premises *and entry to them are on a main road. The committee noted that whilst traffic, due to the road layout, is unlikely to pass the premises entering the city, traffic would pass the premises on exit. The road is a key bus route for exiting the city. The relevance of the events since June 2012 as set out above include the opening of the Arena and Trinity and are indicative of the growing number of visitors to the city. They are both specifically referred to, including their impact on visitors to the city in paragraphs 6.10 and 6.11 of the Policy."*

92. It is to be noted that the Sub-committee accepted that the physical premises in the locality had not changed. It addressed this point by reference to the introduction of the 2013 Policy and its emphasis on sensitive locations. In setting out its reasons relating to sensitive locations, it referred to four matters that had not been referred to in the 2012 decision, namely:

    i) Where the 2012 Decision had referred to the view of the premises from the Railway Station as being "oblique", the 2013 Sub-committee took the view that Deep Blue was "opposite and very close to a key entrance to the Railway Station"; and, relying on its local knowledge, it did not accept that people would have arrived and departed by 10 pm or even 11 pm;

    ii) It referred to users of restaurants and people attending other events in the city after 10pm or 11 pm, again using its local knowledge;

    iii) It placed more detailed emphasis on the proximity of City Square, with its restaurants and other amenities;

    iv) It identified the main road as a key bus route for exiting the city.

93. The 2013 Sub-committee commented more than once that it was relying upon local knowledge, which is in accordance with the statutory objective of the licensing scheme under LGMPA and the 2013 Policy. As I have said, the Court does not have anything approaching that combination of local knowledge and democratic validation, and cannot replicate the decision making process that has been vested in the Sub-committee. That being so, it would in my judgment be impermissible for the Court to quash the 2013 Sub-committee's taking of a different view from that of its predecessors in 2012, for a number of reasons. First, Deep Blue is unable to show that the features relied upon were factually wrong and therefore impermissible; nor is it able to show that the reasons given were reasons that were unfounded and irrational in that sense. Second, the 2013 Policy provided a context for the 2013 decision which was significantly different from that created by the 2011 Policy because of its increased emphasis upon the sensitivity of buildings, places or localities. Third, the result of this policy shift is that the finding of the 2012 Sub-committee that the locality was not considered unsuitable could not be determinative since different policy criteria applied in 2013. Fourth, another result of the policy shift was that the absence of evidence of crime, disorder or public nuisance was also not determinative. Fifth, the 2013 Sub-committee relied upon matters which were relevant but which had not featured in the 2012 Decision. Sixth, the emphasis in the 2013 decision letter

upon Leeds' aspirations to become a "better" city was relevant, in accordance with the 2013 Policy and properly brought into account.

94. Subject to the complaint of lack of reasons, therefore, this ground of challenge fails.

Adequate Reasons?

95. I have dealt generally with the structure of the decision letters at [35] above. It would have been sufficient for them to state that the premises were near to properties with sensitive uses or in sensitive locations, identifying the relevant properties and locations: that would have justified refusal under paragraph 12(3)(d) and would in turn have taken the premises out of the potential number of establishments specified in accordance with paragraph 12(3)(c). However, the letters went considerably further than that in amplifying the reasons in terms that were intelligible and so that Ruby May could not reasonably have been in doubt about why its application had been refused. For the same reasons as given under grounds 5 and 6 of Bean Leisure's Application, the Ruby May letter satisfied any obligation to give reasons for departing from the 2012 decision: see [72]-[75] above.

96. It follows that I reject Ruby May's challenge under its ground 4.

Ground 1: conflation of s.12(3)(c) and s.12(3)(d)

97. I reject this ground because, when properly understood, the Decision section of the decision letter addresses the s. 12(3)(c) and the s. 12(3)(d) tests in turn: see [35(iii)] above. I would accept that the relevant passage could have been more clearly expressed, and that it may have been easier if the Sub-committee had dealt with the two tests in reverse order, but that is not sufficient for Ruby May's purposes. Even if I had been satisfied that the reference to the 12(3)(c) test had become muddled with considerations applicable to 12(3)(d), the 12(3)(d) test was then separately applied and would justify refusal in any event.

Ground 2: material error in refusing to grant Deep Blue a licence, within the quota of four licenses given that only 3 have been granted

98. Given the finding that Deep Blue was near to sensitive locations and was therefore inappropriate to be awarded a licence, Ruby May's position cannot be salvaged by reference to the maximum number of four establishments contemplated by paragraph 7.17 of the 2013 Policy. There was no obligation to issue as many as four licences; and there was no obligation to issue a licence to any applicant whose premises were near to properties with sensitive uses or in sensitive locations as Deep Blue was.

Ground 3: failure to identify the ranking and/or ranking criteria

99. Ruby May was aware of the 2013 Policy and what it said. It also knew that there were more than four applicants so that there was inevitably an element of competition. It therefore knew, just as Bean Leisure did, both that it had to satisfy the proviso in paragraph 7.17 of the 2013 Policy and also that, if more than four applicants satisfied it, the least appropriate applicant would lose out. I reject this ground of challenge for reasons that are essentially the same as given in relation to Bean Leisure at [56]-[59]

above, making due allowance for the applicant being Ruby May rather than Bean Leisure.

Ground 5: failure to deal with the renewal application fairly, by failing to give Deep Blue the opportunity to deal with the Council's concerns

100. The Council's concerns were adequately set out in the 2013 Policy, which was well known to Ruby May. In addition, Ruby May had the objections that had been lodged and was able to address them. Mr Nicholson's evidence addressed the location of Deep Blue, identifying the features that in his view minimised the impact of Deep Blue given that it was near to City Square and the Railway Station. The suggestion that Ruby May did not have an opportunity to deal with the matters that led to the refusal is without any foundation.

Ground 6: failure to undertake the requisite duty to act proportionately in relation to Ruby May's Article 1/Protocol 1 rights

101. In its written submissions (which were not drafted by Mr Holland) Ruby May asserted that there had been no weighing of the balance and no analysis of the competing private and public interests.

102. As with Bean Leisure, the decision letter addressed this issue specifically in the paragraphs headed "Financial impact and impact on livelihoods" and "Relevant additional legislation considered." Those paragraphs show that there was a weighing of the balance and of the competing private and public interests, the fact of and outcome from those exercises being summarised in those paragraphs.

103. In its written submissions Ruby May did not identify any unusual features upon which it would rely to justify a conclusion that the decision was disproportionate. Mr Holland did not do so either; nor did he develop this ground in his oral submissions. I reject this ground of challenge for essentially the same reasons as set out in relation to ground 7 of Bean Leisure's challenge at [77]-[79] above.

Ground 7: failure to apply properly the Provision of Service Regulations 2009

104. This ground of challenge was set out at [96A]-[96H] of the Amended Statement of Grounds. Mr Holland did not pursue it. He was right not to do so: see *Thompson* in the Court of Appeal at [45].

Ground 8: failure to consider adequately or at all the provisions of Article 10, European Convention of Human Rights.

105. Mr Holland did not pursue this ground of challenge. Once again, he was right not to do so. The question to be asked is whether Ruby May's human rights were breached, which is not the same as whether they have been taken into account.

Conclusion

106. For the reasons set out above, Ruby May's challenge to the Council's decision fails.

ANNEXE A
THE COUNCIL'S 2013 POLICY

Summarised sections are in [square brackets].
Sections that are new to the 2013 Policy are in *italics.*

Executive Summary

The Policing and Crime Act 2009 amends the Local Government (Miscellaneous Provisions) Act 1982 s2 and Sch 3 to introduce a new classification of sex establishment, namely sexual entertainment venues. This brings to lap dancing, pole dancing and other "relevant entertainment" a new licensing regime.

The legislation provides for local authorities to adopt a policy and standard conditions relating to sexual entertainment venues, sex shops and sex cinemas.

…

Section 1 Interpretation

…

Section 2 The purpose of the licensing policy

2.1 This policy is prepared under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. It was approved by Leeds City Council as the licensing authority for the Leeds metropolitan district on *17th July 2013 with effect from 1st September 2013*. It will be reviewed regularly.

2.2 This policy is concerned with the regulation of sex establishments, namely sexual entertainment venues, sex shop and sex cinemas.

2.3 The council's licensing regime aims to ensure that sex establishments in the Leeds district operate in a safe, fair and discreet manner and are sensitive to the local area in which they are situated. Specific attention has been taken to advertising, staff welfare, external appearance, locality and the number of licensed premises.

2.4 This policy also has regard to the guidance issued by the Home Office.

2.5 The council adopts the overall approach of encouraging the responsible promotion of licensed activities. However, in the interests of all its residents, it will not tolerate irresponsible licensed activity. The council will impose conditions where necessary to

promote responsibility and will use effective enforcement to address premises where there are problems, …

…

Public consultation

2.7 In January 2013 the Council consulted with the Citizen's Panel. The Citizens' Panel is a group of residents of Leeds who have volunteered to give up their time to complete between 4 and 6 surveys a year about a range of issues. The information provided from Citizen's Panel has been used to inform policy making in the council.

Numbers

*2.9 The survey asked if respondents thought that the council should set a maximum number for any locality in Leeds. **87%** of the people who responded to the question stated yes.*

2.10 The survey asked what number should be set for certain localities.
[The specified localities were: A residential area, a deprived area, a rural area, an industrial area, a busy late night economy area, a built up area i.e. a town centre, and the city centre.]

Localities

2.11 Respondents were asked if there are any localities within Leeds that they considered were not appropriate for SEVs:
[The specified localities were the same as in 2.10: results are summarised in the judgment at [14(i)]

2.12 Respondents were asked if it would not be acceptable to have a lap dancing club anywhere in Leeds:
[28% either strongly agreed or agreed that it would not be acceptable to have a lap dancing club in any locality in Leeds; 28% neither agreed nor disagreed; 44% either disagreed or strongly disagreed.]

2.13 Respondents were asked if there were any localities in the city centre that they would not consider to be acceptable to locate a lap dancing club on or near to:
[Results are summarised in the judgment at [14(ii)]

2.14 Respondents were also asked if it would not be acceptable to locate a lap dancing club anywhere in the city centre:
[34% either strongly agreed or agreed that it would not be acceptable to locate a lap dancing club anywhere in the city centre; 23% neither agreed nor disagreed; 43% either disagreed or strongly disagreed.]

Vicinity

2.15 The respondents were asked to consider the use of premises in the vicinity of SEVs and where asked to state their opinion on whether it would not be acceptable to have a SEV near to any of the following types of areas or buildings
[Results are summarised in the judgment at [14 (iv)]

…

Section 3 The scope of the licensing policy

…

Section 4 The Leeds district

…

4.1 Leeds City Council has sought to establish Leeds as a major European city and cultural and social centre. It is the second largest metropolitan district in England and has a population of 2.2 million people living within a 30 minute drive of the City Centre.

4.2 The Leeds metropolitan district extends over 562 square kilometres (217 square miles) and has a population of 751,000 (taken from the 2011 census). It includes the city centre and the urban areas that surround it, the more rural outer suburbs and several towns, all with very different identities. Two-thirds of the district is greenbelt (open land with restrictive building), and there is beautiful countryside within easy reach of the city.

4.3 Over recent years Leeds has experienced significant levels of growth in entertainment use within the city coupled with a significant increase in residential development. The close proximity of a range of land uses and the creation of mixed-use schemes have many benefits including the creation of a vibrant 24-hour city.

4.4 Leeds has strong artistic traditions and has the best attended outdoor events in the country. The success of arts and heritage organisations including the Grand Theatre, City Varieties, West Yorkshire Playhouse, Opera North, Northern Ballet Theatre, Phoenix Dance Theatre, Harewood House and the Henry Moore Institute, has helped to attract other major arts and heritage investments such as the award winning Royal Armouries and the Thackeray Medical Museum. The city also boasts a wealth of community based sports heritage and recreational facilities. There is a vibrant voluntary sector including thousands of groups and societies.

4.5 Sport is a passion for people in Leeds and Yorkshire. Leeds United Football Club has a loyal and passionate following and Elland Road is one of England's great traditional grounds. Cricket is followed with enthusiasm with Yorkshire County Cricket Club's

home in Headingley. Leeds has the world's first dual-code rugby partnership - Leeds Rhinos Rugby League and Leeds Carnegie Rugby Union. The Leeds Rhinos in particular have enjoyed great success in recent years. Wetherby racecourse was established in 1891 and is considered one of best jump courses in the country.

4.6 Leeds is a city with many cultures, languages, races and faiths. A wide range of minority groups including Black Caribbean, Indian, Pakistani, Irish and Chinese as well as many other smaller communities make up almost 11% of the city population.

4.7 The Vision for Leeds 2011-2030 published by the Leeds Initiative as the city's strategic partnership group, indicates that Leeds is now one of Britain's most successful cities. It aims that "by 2030, Leeds will be locally and internationally recognised as the best city in the UK". By 2030:

- Leeds will be fair, open and welcoming.
- Leeds' economy will be prosperous and sustainable.
- All Leeds' communities will be successful.

4.8 This licensing policy seeks to promote licensing within the overall context of the three aims set out in Vision for Leeds 2011-2030.

Section 5 Integrating other guidance, policies, objectives and strategies

5.1 In preparing this licensing policy the council has had regard to, and sought to integrate the licensing policy with, the following strategies:

- Vision for Leeds 2011 to 2030
- Leeds Unitary Development Plan
- The Local Development Framework including the Leeds City Centre Area Action Plan
- The Home Office Tackling Violent Crime Programme
- Leeds City Council – Anti-Social Behaviour Statement
- Leeds City Council – Environmental enforcement policies
- Leeds City Council - Violence Against Women Strategy

Child Friendly

5.2 Since the original policy was adopted and published, the council has announced its intention for the city to become 'Child Friendly'. This links back to the council's vision which states:

'Best city… for children
Leeds will be a child-friendly city where the voices, needs and priorities of children and young people are heard and inform the way we make decisions and take action.'

5.3 There are over 180,000 children and young people in Leeds. To become a child friendly city, and the best city for children and young people, their voices and views need to be heard and responded to, and that they are active participants in their local community and citywide.

…

5.5 As part of the aim for Leeds to become a child friendly city, the council declared 12 wishes:
In a child friendly Leeds…

1. *Children and young people can make safe journeys and can easily travel around the city*
2. *Children and young people find the city centre welcoming and safe, with friendly places to go, have fun and play*
3. *…*

5.6 This policy is particularly affected by wish 2 – "Children and young people find the city centre welcoming and safe, with friendly places to go, have fun and play" and wish 3 – "There are places and spaces to play and things to do, in all areas and open to all".

5.7 In response to this new initiative, the council has taken special consideration of the location of sex establishments and the number that is considered suitable for Leeds.

Other policies

5.8 …

…

Section 6 Cultural activities in Leeds

6.1 Leeds City Council (in common with other local authorities) is a major provider of facilities for public recreation. The Council has a tradition of promoting a wide range of cultural activity for the benefit of the city and district.

6.2 Leeds has a long established reputation for the encouragement of community and diverse cultural events and public entertainment as an essential aid to community involvement and an increasing sense of common identity.

6.3 Leeds Town Hall is the dedicated public concert hall/performance area in Leeds and the Carriageworks Theatre is dedicated to amateur performance and public use for Leeds.

6.4 Millennium Square in the city centre is used for public events and entertainment such as the Christmas market and 'Icecube' (a temporary ice rink).

6.5 Leeds Art Gallery has been described as 'probably the best collection of twentieth century British art outside London' (John Russell Taylor, The Times). Leeds Art Gallery is a newly re-furbished creative and lively gallery in the heart of Leeds on The Headrow in Leeds' Cultural Quarter. Offering displays of Leeds' stunning collections as well as a dynamic programme of changing exhibition, Leeds Art Gallery is an innovative and exciting place to visit for people of all ages and tastes.

6.6 Leeds City Museum is located in one of Leeds' much loved civic buildings - the Leeds Institute building on Millennium Square. The Leeds Institute is one of the City's most important historic buildings and was completed in 1862 by Cuthbert Brodrick, who also built Leeds Town Hall and the Corn Exchange. The Institute was built to provide education for the City's industrial workers and as a venue for lectures and large scale events. Work began in autumn 2005 on an ambitious project to turn it into an exciting new museum in the heart of Leeds. The project was funded by the Heritage Lottery Fund, Leeds City Council and Yorkshire Forward and has transformed the Grade II-listed Civic Institute building into a state-of-the-art museum.

6.7 The Carriageworks theatre is a thriving theatre at the heart of Leeds' Millennium Square. It showcases the best national and regional performance with a dynamic programme of theatre, dance, comedy and film. …

…

6.10 The Leeds Arena brings live entertainment to life in a way never experienced in the UK before and can host over 140 events a year, such as pop and rock concerts, boxing, wrestling, darts, dance ice shows, comedy shows, basketball and family entertainment. The 13,500 capacity Leeds Arena is the United Kingdom's first purpose built 'fan-shape' arena and has an iconic external design that can change appearance through an ever changing kaleidoscope of coloured lights.

6.11 Spread across a tapestry of arcades that traverse three of the busiest shopping streets in Leeds (Briggate, Albion and Commercial Street), and covering one million square feet over three levels, Trinity Leeds is a retail beacon. It gives shoppers 120 sensational shops, stores, restaurants and cafes to explore at their leisure. The mix of restaurant, café and leisure destinations in Trinity Leeds seamlessly joins day with night, ushering into the city a new era of world-class entertainment and culture.

6.12 Eastgate Quarters will deliver over one million square foot of new high quality retail led development transforming this brownfield site. The scheme will create a new focus for the North East of the City Centre joining up Kirkgate Market, Vicar Lane and the Grand Arcade. The creation of new, well-proportioned retail space at Eastgate Quarters will ensure Leeds is lifted in the retail rankings, reaffirming its position as the premier retail destination in the region. In addition to the urban renewal of the city, Eastgate makes a positive contribution to its economic prosperity

with the creation of in the region 4,000 permanent retail and leisure jobs supported by pre-employment and skills training programmes.

Section 7 General principles

7.1 In determining a licensing application the overriding principle will be that each application will be determined on its own merit, taking into account local knowledge, this licensing policy and the guidance issued by the Home Office. Where it is necessary to depart from the guidance or this Policy the council will give clear and cogent reasons for doing so.

Mandatory grounds for refusal

…

Discretionary grounds for refusal

7.4 There are also a number of discretionary grounds. These are:

- if the applicant is unsuitable,
- if the business would be managed by or for the benefit of a third party who would be refused licence in their own right,
- that the number of sex establishments in the locality or of sex establishments of a particular kind in the locality equals or exceeds the number considered appropriate,
- is inappropriate having regard to:
    - Character of relevant locality
    - Use of premises in vicinity
    - Layout, character, condition or location of the premises.

Suitability of applicant

7.5 …

Suitability of manager or beneficiary

7.6 …

Appropriate numbers and localities

7.7 The council may refuse a licence on the grounds that the number of licences of that type is equal to or exceeds the number which the authority consider is appropriate for that locality. The council has considered each and every part of the city of Leeds in order to identify whether there are any localities in which the licensing of sex establishments is appropriate.

7.8 In deciding when and if so what policy to adopt in relation to this discretionary ground, the council has taken into account the matters set out in sections 2 to 6 of this policy. It has been influenced by the following considerations.

7.9 The Council has taken account of its own corporate strategies and priorities as represented by its Vision for Leeds 2011 to 2030, Leeds Unitary Development Plan, Violence Against Women Strategy and Child Friendly. The council believes that, in taking these strategies into consideration, SEVs are not in accordance with a culturally rich and diverse city. In particular SEVs tend not to be inclusive facilities, appeal only to a narrow sector of the community and are unlikely to enhance the cultural and child friendly reputation of the city.

7.10 The council has had due regard to the need to advance equality of opportunity between men and women. It considers that the presence of SEVs in any locality of Leeds will not advance equality of opportunity of women workers or residents. It recognizes that a nil per locality policy may reduce the employment opportunities for dancers. However is also recognises that those working in SEVs are often peripatetic and self-employed and will retain the opportunity to find employment as performers in other venues in Yorkshire or in other roles in the entertainment industry. The council believes that, on clear balance, in gender equality terms, its policy is both supportable and correct.

7.11 The consultation with the Citizen's Panel revealed that a majority of residents in Leeds consider that SEVs are inappropriate in the vicinity to premises with particular sensitive uses. The following uses all scored highly:

- *Schools and other areas of education*
- *Play areas/parks*
- *Youth facilities*
- *Residential areas*
- *Women's refuge facilities*
- *Family leisure facilities such as cinemas, theatres and concert halls*
- *Places of worship*
- *Places used for celebration or commemoration*
- *Cultural leisure facilities such as libraries, museums*
- *Retail shopping areas*
- *Historic buildings*

7.12 The council agrees that these uses are sensitive and that SEVs are generally not appropriate near them.

7.13 The consultation with the Citizen's Panel indicated that in particular rural, residential and deprived areas were particularly unacceptable as localities for SEVs to be located in. When considering each of the council wards the council has considered if it could be considered a rural, residential or a deprived area. Even areas outside of the city that would be considered a built up area are also largely residential. The council has

considered each and every ward and has determined all areas outside of the city centre to be unacceptable localities for SEVs to be located due to their proximity to rural, residential or deprived areas.

7.14 The same results indicated that 32% agreed and 50% disagreed that the city centre would not be an acceptable locality to locate a lap dancing club in. In addition 42% of respondents agreed and 36% of respondents disagreed that it would not be acceptable to locate a SEV in busy late night economy area. 39% of respondents agreed and 41% of respondents disagreed that it would not be acceptable to locate a SEV in a built up area such as a town centre.

7.15 The Citizens Panel also looked at areas within the city centre that would not be acceptable to locate a SEV. 10 of the 11 areas designated in the survey received a response that indicated that it is more unacceptable than acceptable to locate a SEV on or near to them. The only area in the city centre that was inconclusive was the Call Lane, The Calls, Assembly Street area. This area is designated as a violent crime hotspot by West Yorkshire Police and is included in the council cumulative impact policy under the Licensing Act 2003.

7.16 Therefore, it is the council's policy that there is no locality outside of the city centre in which it would be appropriate to license a sexual entertainment venue. Accordingly the appropriate number of SEVs for outside of the city centre is nil.

…

…

The Provision of Services Regulations

7.21 The Provision of Services Regulations 2009 implements the European Services Directive. These regulations ensure that any refusal of a licence is:

- **non-discriminatory** in regard to nationality,
- **necessary** for reasons of public policy, public security, public health or the protection of the environment and
- **proportionate** with regard to the objective pursued by the legislation.

7.22 The council will consider these three issues in relation to the refusal of licence applications.

Crime and Disorder Act 1998

7.23 …

Equality Act 2010

7.25 The Equality Act 2010 places a duty on the council to exercise its functions with due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
- Advance equality or opportunity between persons who share relevant protected characteristic and person who do not share it;
- Foster good relation between persons who share a relevant protected characteristic and persons who do not share it.

7.26 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.27 The council is aware that sex establishments tend to be predominantly marketed to men and that the licensing of these establishments must not encourage discrimination against women especially in regard to women who work at the premises, women who may wish to visit the premises or women who are using the area for other purposes but who may feel intimidated by the presence of such premises.

7.28 Accordingly, due regard has already been and will continue to be given during the review of this policy, to the determination of licences and the attaching of conditions.

Planning

7.29 …

…

Section 8 Application Procedure

The application process

…

Reasons for decisions

8.25 In determining licence applications under the Local Government (Miscellaneous Provisions) Act 1982 the council will take into consideration the application before it, any objections received as well as local knowledge including local issues and cultural sensitivities.

8.26 Every decision to refuse a licence made by the Licensing Committee, subcommittee or officers will be accompanied by clear reasons for the decision.

…

Section 9 Enforcement

…

Appendix 1 Standard Conditions

These conditions may be dispensed with, added to or modified by the council. Where, in these conditions, there is a reference to the consent of the council being required, the consent may include terms, conditions and restrictions as appropriate.

Sexual Entertainment Venues

General

1.

…

Hours of opening

10. The premises will only be open to the public during the following hours:

Monday	*22:00 to 04:00*	Friday	*22:00 to 05:00*
Tuesday	*22:00 to 04:00*	Saturday	*22:00 to 05:00*
Wednesday	*22:00 to 04:00*	Sunday	*22:00 to 04:00*
Thursday	*22:00 to 04:00*		

Conduct on the premises

… …

External appearance

… …

19. The external appearance of the premises must be approved by the council in writing.

20. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council before work is undertaken.

… …

Advertising

… …

ANNEXE B

THE WILDCATS DECISION LETTER: 4 DECEMBER 2013
[SECTIONS SPECIFIC TO WILDCATS ARE HIGHLIGHTED IN *ITALICS*]

…

… The applicant sought renewal of the licence granted on 15 June 2012 and confirmed that the application for the licence was to authorise the activity of sexual entertainment in the form of lap dancing.

This licence was considered under the Council's Licensing of Sex Establishments Statement of Licensing Policy ("The Policy") which was approved by the Executive Board of the Council on 17 July 2013 and came into effect on 1 September 2013.

In September 2013 renewal applications were received in relation to 6 premises: Purple Door, Deep Blue, Liberté, Silks, Red Leopard and Wildcats.

…

Members confirmed at the outset of each individual hearing, including the one relating to this application, that one of the members of the committee had been on the Licensing Committee working group which had made recommendations in relation to the Policy. …

In reaching their decision the committee considered and took into account all representations made, and all documentation submitted, …

Background

…

On 15 June 2012 the Licensing Sub Committee granted licences in relation to 7 premises for sexual entertainment licences. In September 2013 only 6 of the 7 licensees applied for renewal of their licences namely: Purple Door, Deep Blue, Liberté, Silks, Red Leopard, and Wildcats.

General to all 6 applications

Planning
The committee noted that there had been no objections on planning grounds to any of the applications. …

Policies and codes of conduct for employees, dancers and customers
The committee noted that all applicants had in place, or indicated that they would have in place should the licence be granted, the required policies and codes of conduct as set out in the Policy. They were also given assurances that fining of dancers did not take place, prohibition of fining being a condition of the Policy.

Issues of non-compliance
The committee was informed that any issues of non-compliance under the current licences had been dealt with to the satisfaction of the Head of Licensing and Registration.

West Yorkshire Police had been informed and had not submitted any observations on any of the 6 applications.

Impact of the decision to grant a licence in June 2012 in relation to these applications.
The Committee recognised that its findings in relation to one or more of the applications currently before it could be seen as a departure from the Council's decision to grant licences in June 2012. One of the members of this committee had been on the committee in June 2012 which decided those applications. However this was a differently constituted committee entitled to reach a different conclusion.

The licences granted under the legislation are for up to a year only so there is no guarantee of entitlement to the renewal of a licence.

The committee considered what had changed since the granting of the licence on 15 June 2012.

On 26 June 2012 the Licensing Committee resolved the timetable to fully review the 2011 Sex Establishments Policy including full public consultation within the next 12 months.

From September 2012 to February 2013 the working group met to review the policy including seeking the views of a wide range of people. In addition in January 2013 consultation took place with the Citizen's Panel Survey when they were questioned on numbers, locality and vicinity of premises. Further public consultation took place from 18 March to 26 April 2013.

The Policy was approved on 17 July 2013 effective from 1.September 2013.

The committee noted significant events in the Leeds calendar since June 2012 were that on 19 July 2012, the Queen officially launched LCC's ambition to be a child-friendly city; on 21 March 2013 Leeds Trinity opened and on 24 July 2013 the Leeds Arena opened.

The members noted the events since June 2012 to be significant in having an understanding of Leeds' ambition to not only be a child friendly city but to be a 24 hour city attractive to all.

Objections

Some objections received were common to all of the applications. These included a number of similar letters with minor variations, as well as separate letters.

In addition some objections received were specific to one or more of the individual applications.

A letter of support common to all applications was received.

The Application

…

Members noted that the renewal application included a proposal to alter the external appearance of the premises by removing all signage from the façade of the premises including the windows.

It was confirmed that the hours of operation under the current licence are 22.00 hrs until 4.00 hrs Sunday to Thursday and 22.00 hrs until 5.00hrs Friday and Saturday.

Members noted the applicant's offer to alter the opening hours to 23.00 hrs to 5.00 hrs Sunday to Thursday and 23.00hrs until 6.00hrs Friday and Saturday, and to increase the entrance age to the premises from 18 years to 21 years.

The application attracted 26 written objections and one letter of support as indicated above. Three objectors attended the hearing. Two made oral representations.

The applicant produced a number of written expressions of support from the public taken from a survey conducted by the applicant, and two letters of support from local businesses.

…

Decision

The law

The committee noted that government guidance and case law make it clear that moral objections to sexual entertainment are not relevant to consideration of these applications and did not take any moral objections expressed into account in reaching their decision.

The committee noted the mandatory and discretionary grounds to refuse licences under the Local Government (Miscellaneous Provisions) Act 1982. They also noted, if they were minded to refuse an application, the need to consider if any additional conditions would persuade them not to refuse.

Decision

Taking all the above into account the committee reached the following decision:

The committee decided that in all cases the relevant locality is the area near to the premises.

The committee **decided not to renew** the licence in relation to Wildcats on the discretionary ground under Schedule 3 12(3)(c) of the Act that the number of sex establishments, or of sex establishments of a particular kind, 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.

The Policy states at paragraph 7.17: "Taking into consideration all the matters mentioned in this section the appropriate number of SEVs (sexual entertainment venues) in the city centre is a maximum of four providing those premises are not near properties with sensitive uses or in sensitive locations".

In terms of ranking the committee found in applying the Policy that there were other premises which ranked above these premises as they were in less sensitive locations. In any event, and irrespective of the ranking, the committee was of the view that the premises were excluded from the maximum of four because of the location of these premises near to properties with sensitive uses or in sensitive locations.

The concern in relation to Wildcats was the number of buildings with sensitive uses nearby, and the density of such buildings within a small area.

Separately and independently of the above ground for refusal the committee **decided not to renew** the licence on the discretionary ground under Schedule 3 12(3)(d) of the Act that the grant or renewal of the licence would be inappropriate, having regard -

(i) to the character of the relevant locality; or
(ii) to the use to which any premises in the vicinity are put.

Reasons for the above decisions

The reasons set out below apply to the decisions not to renew under Schedule 3 12(3)(c) of the Act and Schedule 3 12(3)(d).

The Policy

The committee found that they were entitled to take into account any changes since June 2012. They found that the introduction of the new Policy was a significant change they could take into account. The committee noted that the introduction of the current Policy had not been legally challenged by any of the applicants.

Further they decided that the policy in place in June 2012 when the original decision to grant the licence was made was different to the one in place now. The policy previously adopted by Leeds City Council and in place when the June 2012 Decisions were made did not set a limit on the numbers of establishments and each application was judged on its own merits.

Members were of the view that the policy changes were significant. The council had gone to great lengths to put in a place a policy to regulate the licensing of sex establishments and before doing so had taken considerable care and time to consult with the people of Leeds. The council could have sought to put in place a nil policy but had carefully considered all the issues and had gone to the extent of forming a working group to ensure that all views were aired and taken into account before the Policy was formed. The committee took the view that the Policy had been arrived at fairly following considerable consultation with a number of people and bodies including the Citizen's Panel.

The Committee was aware that they could depart from the Policy if they were so persuaded but did not find sufficient reason to do so.

The Applicant argued that the physical premises in the locality had not changed since June 2012. Whilst the committee did not disagree with this the committee found that they were entitled to take into account the emphasis on sensitive locations as set out in the new Policy.

The committee decided that these premises were very close to not just one but more than one building which could be described as having a sensitive use as set out in section 7 of the Policy and that the buildings with sensitive uses were set very close together in a small area. The committee found that the objections relating to sensitive use of location were valid.

The committee found of importance that Leeds has sought to establish itself as a major European city and cultural and social centre with an intention to create a vibrant 24 hour city. The importance of cultural activities in Leeds relevant to these applications is set out in section 6 of the Policy.

These premises are situated directly opposite the Art Gallery and the Henry Moore Sculpture Gallery which are on Victoria Gardens on which also stands the Cenotaph. The Library is in the same building as the Art Gallery. The premises are diagonally opposite the Town Hall. There are residences close to the premises and nearby are offices and other bars. Behind the Art Gallery is Millennium Square, bars and restaurants and other public buildings. Oxford Road Methodist Church is nearby.

The applicant argued that as the premises did not open until a time when the buildings with sensitive uses had closed there was no impact on them. *They also argued that the steps they would take to reduce signage; to increase the entrance age and to change the hours of opening would remove any impact on sensitive locations or buildings with sensitive uses. The applicant argued that the premises are "realistically invisible". The committee disagreed with these arguments.*

The committee was of the view that the premises could never be invisible. The premises and entry to them are on a main road. If the signage was removed activity around the premises through people entering and exiting and promotion nearby would indicate what the premises are used for.

The committee found that raising the entrance age might mean less customers of a younger age attending the premises but there was nothing to suggest that this would reduce the visibility of the premises or remove or reduce the impact on the buildings nearby with sensitive uses, or on people using them, or walking past these premises at night.

The committee took into account the impact on visitors as well as local people in the area of the premises. The committee took the view that people should be able to consider Leeds as a 24 hour city, safe to walk about particularly in sensitive locations *including those with cultural activities. The committee was aware that some functions at the Town Hall finished at 11pm and following that people would be in the area. People would also be in the area following any event in Millennium Square or following events or being out for the night at locations nearby.* The committee thought there was a valid objection that women walking by should feel safe and free to do so without concern.

Leeds Vision 2011-2030 focuses on the aspiration to be the best city in the UK. The committee was of the view that this includes the way the city is viewed by local people, and visitors. The sensitivity of locations near visitor attractions is therefore important to this vision, a point reflected in the Policy consultation replies.

The committee accepted that there were valid objections in relation to the sensitivity of locality and effect on the child friendly vision for Leeds and in relation to being an open to all thriving 24 hour city.

In addition to the sensitive uses in paragraph 7.11 the committee took into account the fact that the premises are *on one of the city's main roads. The committee found of significance the nature of the road. The road is only a few metres wide so only a very short distance from the nearby sensitive buildings and locations such as the Art Gallery and Cenotaph.*

The Headrow can be described as one of the key gateways into and out of the city of Leeds, being the main road which runs through it and the road on which significant buildings such as the Town Hall and Art Gallery stand. This is a road which brings a number of visitors including tourists to the city. The relevance of the events since June 2012 as set out above include the opening of the Arena and Trinity and are indicative of the growing number of visitors to the city. They are both specifically referred to, including their impact on visitors to the city in paragraphs 6.10 and 6.11 of the Policy.

Section 5 of the Policy considers Leeds designation as a child friendly city and what this means for the city. The committee noted that the references are to children and young people.

Financial impact and impact on livelihoods. Members noted what was said by the applicant on this; however they concluded that there was no guarantee that a licence would be renewed and the applicant would have been aware of this. They also considered whilst there may be an impact on jobs their concern for the siting of the premises next to sensitive locations overrode this, bearing in mind the outcome of the public consultation which formed the Policy.

Use of conditions. The committee considered whether the use of any conditions would address any concerns so as to allow the licence to be granted. They considered this generally and in relation to the offer made by the applicant to amend the premises signage, to alter the hours of opening and to restrict the entrance age limit. Whilst mindful that the applicant had by making such offers recognised and were seeking to address concerns the committee did not feel that these conditions, or any other conditions they could think of could be used to address the specific concern about closeness to premises of sensitive use, or in relation to character of the locality.

Relevant additional legislation considered .The committee considered its duty under the Crime and Disorder Act 1998. The committee also took into account the requirements of relevant legislation and guidance in relation to Human Rights, The Provision of Services Regulations 2009, and the Equality Act 2010 as set out in pages 21 and 22 of the Policy. The committee considered if there were any Human Rights implications but found that an applicant's right to protection of his licence was not a right so significant as to override their own calculation of the public interest.

The committee considered The Provision of Services Regulations 2009 and was of the view that their decision was not discriminatory, and that it was necessary and proportionate given the Policy agreed by the council following public consultation.

They concluded that none of the rights set out in the legislation referred to were breached when weighing up the applicant's rights and the interests of the public as set out in the Policy.

They also concluded that the decisions reached were proportionate, necessary and fair taking everything into account.

…

APPENDIX C
THE DEEP BLUE DECISION LETTER: 4 DECEMBER 2013
[SECTIONS SPECIFIC TO DEEP BLUE ARE HIGHLIGHTED IN *ITALICS*]

…

…The applicant sought renewal of the licence granted on 15 June 2012 and confirmed that the application for the licence was to authorise the activity of sexual entertainment in the form of lap dancing.

This licence was considered under the Council's Licensing of Sex Establishments Statement of Licensing Policy ("The Policy") which was approved by the Executive Board of the Council on 17 July 2013 and came into effect on 1 September 2013.

In September 2013 renewal applications were received in relation to 6 premises: Purple Door, Deep Blue, Liberté, Silks, Red Leopard and Wildcats.

…
Members confirmed at the outset of each individual hearing, including the one relating to this application, that one of the members of the committee had been on the Licensing Committee working group which had made recommendations in relation to the Policy. …

1 In reaching their decision the committee considered and took into account all representations made, and all documentation submitted…

Background

…

On 15 June 2012 the Licensing Sub Committee granted licences in relation to 7 premises for sexual entertainment licences. In September 2013 only 6 of the 7 licensees applied for renewal of their licences namely: Purple Door, Deep Blue, Liberté, Silks, Red Leopard, and Wildcats.

General to all 6 applications

Planning
The committee noted that there had been no objections on planning grounds to any of the applications. …

Policies and codes of conduct for employees, dancers and customers
The committee noted that all applicants had in place, or indicated that they would have in place should the licence be granted, the required policies and codes of conduct as set out in the Policy. They were also given assurances that fining of dancers did not take place, prohibition of fining being a condition of the Policy.

Issues of non-compliance
The committee was informed that any issues of non-compliance under the current licences had been dealt with to the satisfaction of the Head of Licensing and Registration.

West Yorkshire Police had been informed and had not submitted any observations on any of the 6 applications.

Impact of the decision to grant a licence in June 2012 in relation to these applications.
The Committee recognised that its findings in relation to one or more of the applications currently before it could be seen as a departure from the Council's decision to grant licences in June 2012. One of the members of this committee had been on the committee in June 2012 which decided those applications. However this was a differently constituted committee entitled to reach a different conclusion.

The licences granted under the legislation are for up to a year only so there is no guarantee of entitlement to the renewal of a licence.

The committee considered what had changed since the granting of the licence on 15 June 2012.

On 26 June 2012 the Licensing Committee resolved the timetable to fully review the 2011 Sex Establishments Policy including full public consultation within the next 12 months.

From September 2012 to February 2013 the working group met to review the policy including seeking the views of a wide range of people. In addition in January 2013 consultation took place with the Citizen's Panel Survey when they were questioned on numbers, locality and vicinity of premises. Further public consultation took place from 18 March to 26 April 2013.

The Policy was approved on 17 July 2013 effective from 1 September 2013.

The committee noted significant events in the Leeds calendar since June 2012 were that on 19 July 2012, the Queen officially launched LCC's ambition to be a child-friendly city; on 21 March 2013 Leeds Trinity opened and on 24 July 2013 the Leeds Arena opened.

The members noted the events since June 2012 to be significant in having an understanding of Leeds' ambition to not only be a child friendly city but to be a 24 hour city attractive to all.

Objections

Some objections received were common to all of the applications. These included a number of similar letters with minor variations, as well as separate letters.

In addition some objections received were specific to one or more of the individual applications.

A letter of support common to all applications was received.

The Application

The application attracted 25 written objections and one letter of support as above. No objectors attended the hearing.

In support of their application the applicant asked for a number of matters to be taken into account.

The committee also noted the late letter received from their representative dated 28th November 2013 which said:

"I understand that at least one applicant for the renewal of an Sexual Entertainment Venue licence advised the committee hearing their application that notwithstanding the opening hours sought in the application to renew the premises licence and the hours detailed in Leeds City Council, Licensing of Sex Establishments- Statement of Licensing Policy at Appendix 1 Standard Conditions, paragraph 10, that they would be content to accept the following opening hours:

1. Sunday-Thursday 23.00 to 05.00;
2. Friday & Saturday 23.00 to 06.00.

I am now instructed to advise the Licensing Authority that the applicant would if the Licensing Committee felt it assisted their decision making, be prepared to change the hours they are seeking for the premises to those listed above. If the new proposed opening hours are "not acceptable" to the Licensing Authority, then the applicant is content to revert to seeking those opening hours sought in the SE1 application."

On 2 December 2013 the Applicant's representative sent a further late letter stating: "I am instructed to advise you that if Leeds City Council deem it appropriate the licence holder is prepared to alter the appearance of the premises to such an extent and in such a way as to address any concerns which Leeds City Council may possibly have in respect of it."

Decision

The law

The committee noted that government guidance and case law make it clear that moral objections to sexual entertainment are not relevant to consideration of these applications and did not take any moral objections expressed into account in reaching their decision.

The committee noted the mandatory and discretionary grounds to refuse licences under the Local Government (Miscellaneous Provisions) Act 1982. They also noted, if they were minded to refuse an application, the need to consider if any additional conditions would persuade them not to refuse.

Decision

Taking all the above into account the committee reached the following decision:

The committee decided that in all cases the relevant locality is the area near to the premises.

The committee **decided not to renew** the licence in relation to Deep Blue on the discretionary ground under Schedule 3 12(3)(c) of the Act that the number of sex establishments, or of sex establishments of a particular kind, 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.

The Policy states at paragraph 7.17: "Taking into consideration all the matters mentioned in this section the appropriate number of SEVs (sexual entertainment venues) in the city centre is a maximum of four providing those premises are not near properties with sensitive uses or in sensitive locations".

In terms of ranking the committee found in applying the Policy that there were other premises which ranked above these premises as they were in less sensitive locations. In any event, and irrespective of the ranking, the committee was of the view that the premises were excluded from the maximum of four because of the location of these premises near to properties with sensitive uses or in sensitive locations.

The committee's concern in relation to Deep Blue in particular was the close proximity to Leeds Railway Station; to City Square and its restaurants and bars; its location on a main road and close to bus stops.

Separately and independently of the above ground for refusal the committee **decided not to renew** the licence on the discretionary ground under Schedule 3 12(3)(d) of the Act that the grant or renewal of the licence would be inappropriate, having regard -

(iii) to the character of the relevant locality; or
(iv) to the use to which any premises in the vicinity are put.

Reasons for the above decisions

The reasons set out below apply to the decisions not to renew under Schedule 3 12(3)(c) of the Act and Schedule 3 12(3)(d).

The Policy

The committee found that they were entitled to take into account any changes since June 2012. They found that the introduction of the new Policy was a significant change they could take into account. The committee noted that the introduction of the current Policy had not been legally challenged by any of the applicants.

Further they decided that the policy in place in June 2012 when the original decision to grant the licence was made was different to the one in place now. The policy previously adopted by Leeds City Council and in place when the June 2012 Decisions were made did not set a limit on the numbers of establishments and each application was judged on its own merits.

Members were of the view that the policy changes were significant. The council had gone to great lengths to put in a place a policy to regulate the licensing of sex establishments and

before doing so had taken considerable care and time to consult with the people of Leeds. The council could have sought to put in place a nil policy but had carefully considered all the issues and had gone to the extent of forming a working group to ensure that all views were aired and taken into account before the Policy was formed. The committee took the view that the Policy had been arrived at fairly following considerable consultation with a number of people and bodies including the Citizen's Panel.

The Committee was aware that they could depart from the Policy if they were so persuaded but did not find sufficient reason to do so.

The Applicant argued that the physical premises in the locality had not changed since June 2012. Whilst the committee did not disagree with this the committee found that they were entitled to take into account the emphasis on sensitive locations as set out in the new Policy.

The committee decided that these premises were in a sensitive location being very close to the Railway Station and City Square. Specifically the committee found that their consideration of these locations as sensitive was supported by the results from the Citizen's Panel Survey as set out in the Policy. The committee found that the objections relating to the sensitivity of these locations were valid.

The committee found of importance that Leeds has sought to establish itself as a major European city and cultural and social centre with an intention to create a vibrant 24 hour city. The importance of cultural activities in Leeds relevant to these applications is set out in section 6 of the Policy.

These premises are situated opposite and very close to a key entrance to the Railway Station and close to City Square with restaurants and other amenities.

The applicant argued that as the premises did not open until a time when the buildings with sensitive uses had closed so there was no impact on them. *In relation to the Railway Station the applicant said that people would have arrived /departed by 10pm. The committee did not accept this. The committee was aware from their local knowledge that City Square and the Railway Station is at the centre of Leeds and is a place which would be used by a number of people beyond 10 pm and 11pm, including people leaving other premises, such as restaurants, and events taking place in the city.*

The committee noted the applicant's offer in relation to signage and whilst recognizing attempts to address concerns was of the view that the premises could never be invisible. If the signage was removed activity around the premises through people entering and exiting and promotion nearby would indicate what the premises are used for.

The committee took into account the impact on visitors as well as local people in the area of the premises. The committee took the view that people should be able to consider Leeds as a 24 hour city, safe to walk about particularly in sensitive locations. The committee thought there was a valid objection that women walking by should feel safe and free to do so without concern.

Leeds Vision 2011-2030 focuses on the aspiration to be the best city in the UK. The committee was of the view that this includes the way the city is viewed by local people, and

visitors. The sensitivity of locations near visitor attractions is therefore important to this vision, a point reflected in the Policy consultation replies.

The committee accepted that there were valid objections in relation to the sensitivity of locality and effect on the child friendly vision for Leeds and in relation to being an open to all thriving 24 hour city.

In addition to the sensitive uses in paragraph 7.11 the committee took into account the fact that the premises *and entry to them are on a main road. The committee noted that whilst traffic, due to the road layout, is unlikely to pass the premises entering the city, traffic would pass the premises on exit. The road is a key bus route for exiting the city. The relevance of the events since June 2012 as set out above include the opening of the Arena and Trinity and are indicative of the growing number of visitors to the city. They are both specifically referred to, including their impact on visitors to the city in paragraphs 6.10 and 6.11 of the Policy.*

Section 5 of the Policy considers Leeds designation as a child friendly city and what this means for the city. The committee noted that the references are to children and young people.

Financial impact and impact on livelihoods. Members noted what was said by the applicant on this; however they concluded that there was no guarantee that a licence would be renewed and the applicant would have been aware of this. They also considered whilst there may be an impact on jobs their concern for the siting of the premises next to sensitive locations overrode this, bearing in mind the outcome of the public consultation which formed the Policy.

Use of conditions. The committee considered whether the use of any conditions would address any concerns so as to allow the licence to be granted. They considered this generally and in relation to the offers made by the applicant as set out above. Whilst mindful that the applicant had by making such offers recognised and were seeking to address concerns the committee did not feel that these conditions, or any other conditions they could think of could be used to address the specific concern about closeness to premises of sensitive use, or in relation to character of the locality.

Relevant additional legislation considered .The committee considered its duty under the Crime and Disorder Act 1998. The committee also took into account the requirements of relevant legislation and guidance in relation to Human Rights, The Provision of Services Regulations 2009, and the Equality Act 2010 as set out in pages 21 and 22 of the Policy. The committee considered if there were any Human Rights implications but found that an applicant's right to protection of his licence was not a right so significant as to override their own calculation of the public interest.

The committee considered The Provision of Services Regulations 2009 and was of the view that their decision was not discriminatory, and that it was necessary and proportionate given the Policy agreed by the council following public consultation.

They concluded that none of the rights set out in the legislation referred to were breached when weighing up the applicant's rights and the interests of the public as set out in the Policy. They also concluded that the decisions reached were proportionate, necessary and fair taking everything into account.

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APPENDIX D

THE COUNCIL'S AMPLIFIED REASONS

The Sub-committee has decided to issue amplified reasons for the decisions notified on 4th December 2013 to refuse to renew the sexual entertainment venue licences for the above premises.

The reasons for its decision to issue amplified reasons are as follows:

1. On 2 January 2014 Messrs. Ford & Warren, Solicitors for the operators of Deep Blue, requested answers to a series of questions, briefly: the premises which were found to rank above and below Deep Blue, the ranking of Deep Blue itself; whether "sensitive" premises referred to in the decision were of the type referred to in paragraph 7.11 of the Statement of Licensing Policy and what properties are being referred to. The Sub-committee considers that the requests are reasonable ones, and has decided to issue amplified reasons so as to provide answers to those questions.

2. On 9th December 2013 the operators of Wildcats lodged a claim for judicial review of the decision without first having issued a letter of claim pursuant to Judicial Review Pre-Action Protocol or in any other way indicated that it was dissatisfied with the reasons for the decision. The Sub-committee records its deep concern at those failures, because it has apparently led to High Court litigation which might have been avoided had there been a simple request for amplified reasons. The Sub-committee understands that the first ground of the claim is that the Sub-committee did not explain why other premises were in less sensitive locations. Had there been a request for amplified reasons, the Sub-committee would have answered it, as it proposes to answer the request made on behalf of the operators of Deep Blue. It does not believe that it should decline to provide amplified reasons merely because the applicant failed to take the reasonable step of asking for them, particularly since it is applying such reasons in relation to the above mentioned application.

Given the similarity of the requests, the Sub-committee finds it convenient to give amplified reasons in both cases in the same document.

The Sub-committee wishes to emphasise that the amplified reasons which follow simply set out the discussions and agreements which were actually reached prior to the determination date. The amplified reasons reflect what was decided rather than any post-decision rationale for the determinations.

The same Sub-committee sat on all six applications. It was assisted by bundles of evidence and competent submissions in all cases. The Sub-committee members were all very familiar with the centre of Leeds. The Sub-committee therefore felt itself to be in a good position to make the necessary assessment.

The Sub-committee was clear that the two premises which presented most concern were Red Leopard and Wildcats. The sensitivity of the location is set out in the decision letter. The Sub-committee does not consider that it requires amplification. Although it was not necessary for the Sub-committee to rank Red Leopard and Wildcats individually, the two premises were ranked last.

The Sub-committee found that the next ranked premises i.e. those effectively ranked fourth, were Deep Blue. The reasons why the Sub-committee considered the location to be sensitive are set out in the decision and require no amplification. The Sub-committee considered the premises to lie in a place which, because of the railway station, was a key gateway to the city. The Sub-committee gave consideration to the fact that the railway station was not on the list of those features which were considered by the Citizens' panel to be sensitive, as set out in paragraph 7.11 of the Policy. However, the Committee took the view that the list was not intended to be an exhaustive list of the locations which the Committee was entitled to deem to be sensitive. It was clear that the premises' location was sensitive, for the reasons given in the decision, and that therefore the premises should not be included as among the "appropriate" number of four mentioned in the Policy, as set out in paragraph 7.17 of the Policy. In so finding, the Sub-committee was fully aware that there were no objections from any residences, and that it had not been argued that there were any residences nearby.

The three premises whose licences were renewed were Purple Door, Liberte and Silks. The Sub-committee considered that their locations presented insufficient concern to refuse to renew in all three cases. The locations were considered to be far less sensitive than those where renewals were refused.

The Sub-committee considered that the least sensitive were Purple Door and Liberte. It was not necessary to rank these premises against each other. They were in an area which is largely office accommodation and could not fairly be described as a residential area, although the Committee was aware that there are residences in York Place and did take that into account. The report by Mr Etchells states: "whereas to the south the primary use is professional offices from the Headrow southwards to Wellington Street / City Square" The Sub-committee also took into account that there were no objections from anybody residing near Purple Door and Liberte. While the same was true of Wildcats and Red Leopard, as stated above it was considered that these lay in a far more sensitive area. The Sub-committee also took into account that there was a general lack of sensitive premises nearby.

In the case of Silks, there had been two objections from individual residents, but the applicant's solicitor, through his presentation, was able to satisfy the Sub-committee that the objectors did not live near to the premises. Silks is on the South side of the railway station which the Committee considered to be less sensitive than the North side, although there would still be some footfall. The Committee did not consider this to be a gateway site, and there are no other sensitive uses nearby. However, as the decision records, the Sub-committee was concerned about the proposed development, in the context of Leeds' aim to be a child friendly and 24 hour city. This led to a renewal for a shorter period. As the decision states, had the development been more imminent, it would have led to a refusal. Silks was, therefore, considered to be the third least sensitive premises, after Purple Door and Liberte.

The Sub-committee considers that the premises whose license were refused were in sensitive locations, and therefore outside the "appropriate number" policy altogether. However, had there been a ranking, the Sub Committee is clear that Deep Blue would have been fourth, followed by Red Leopard and Wildcats.