IN THE HIGHBURY CORNER MAGISTRATES COURT

IN THE MATTER OF

SECRETS (EUSTON) LIMITED

SECRETS (PROMOTIONS) LIMITED

SL LH HOLDINGS LIMITED

SECRETS (WESTER) LIMITED

APPELLANTS

AND

THE LONDON BOROUGH OF CAMDEN

RESPONDENT

The Appellants are each the holder of Sexual Entertainment Licences for premises in Camden which trade under the name of Secrets Table Dancing Venues and operate from four locations, Eversholt Street, Euston; Grays Inn Road, Holborn; Finchley Road, Swiss Cottage and Parker Street, Covent Garden.

The appeal is brought pursuant to Paragraph 27(1)(c) of Schedule 3 to the Local Government (Miscellaneous provisions) Act 1982 ("the Act") as the appellants are aggrieved by certain conditions subject to which each licence is held.

It is convenient to hear the appeals together as they involve the same parties, the decision to grant the licences with conditions were all taken by the Respondent at the

same time and largely the same issues arise in respect of each licence and both parties have agreed to this course of action.

It is common ground and agreed between the parties that Secrets establishments, of which there are 6 venues in the London area have been established for 16 years. They were licensed under earlier statutory provisions which prevailed at the time and are well run premises of their kind. The management have properly engaged with all appropriate authorities over the years in the running of their business and the agreed position is that each of these four premises the subject of this appeal cause little or no difficulty in their localities.

On 28th April 2011 the London Borough of Camden adopted the sexual entertainment provisions of the Act so commencing a process which would require existing Sexual Entertainment Venues (a new category of sex establishment introduced by Section 27 of the Policing and Crime Act 2009) and new entrants to the market in due course to be licensed pursuant to the Act's provisions. The process required, after adoption, the Respondent to engage in a period of statutory consultation. Between 23rd May 2011 and 4th July 2011 Phase one of the consultation took place with the aim being to obtain views on sex establishments and the approach which the Respondent should take to the licensing of them. Phase two of the consultation took place between 1st August 2011 and 2nd September 2011 seeking the views of the respondents on a published draft Sex Establishments Policy. In fact Solicitors acting on behalf of the appellants responded to that consultation.

The Respondent adopted the Sex Establishment Policy on 7th November 2011 at a meeting of the full council. The Respondent published at that time a Sex Establishment Policy setting out the respondent's approach to the regulation of Sex Establishments and which applied to not only Sexual Entertainment Venues but also to sex Shops and Sex Cinemas. The policy included at paragraph 56 et seq. the transitional arrangements for Sexual Entertainment Venues. As part of the timetable for transition existing operators were required to make application for a new licence by 1st May 2012.

On 30th April 2012 the Respondent received duly completed applications for Sex Establishment licences from the appellants in respect of each of the four venues now the subject of appeal. The applications were for Sexual Entertainment Venues made in accordance with the Policing and Crime Act 2009 (Commencement No.1 and Transitional and Savings Provisions) (England) Order 2010.

The applications were heard by the Respondent's Licensing (Sexual Entertainment Venues) Sub-Committee in two stages. At the first stage the sub-committee considered the applications and oral evidence and submissions on behalf of the appellants on 16th October 2012. The sub-committee then took two days on 31st October 2012 and 14th November 2012 to consider these applications together with 5 other similar applications by existing Sexual Entertainment Venues within the London Borough of Camden.

On 31st October 2012 the sub-committee dealt with the Eversholt Street and the Finchley Road venues of the appellant's business. The sub-committee resolved to

grant a licence for each premises subject to the Standard conditions for sex establishment licences with some variation from the standard conditions and with the addition of a condition. The sub-committee found that in order to meet the objectives of the Respondent's Sex Establishment Policy it was necessary to impose the standard conditions set out in the Policy with a number of minor amendments to address local circumstances that were considered uncontentious and to clarify a number of points.

On 14th November 2012 the sub-committee dealt with the Grays Inn Road and Parker Street venues of the appellant's business. The sub-committee resolved to grant a licence for each premises subject to the Standard conditions for sex establishment licences with some variation from the standard conditions and with the addition of a condition. The sub-committee found that in order to meet the objectives of the Respondent's Sex Establishment Policy it was necessary to impose the standard conditions set out in the Policy with a number of minor amendments to address local circumstances that were considered uncontentious and to clarify a number of points.

By the term "standard conditions" the sub-committee were referring to the standard conditions contained in the Sex Establishment policy, of which the first 75 were applicable to the applications of the appellant. The power to include such standard conditions is contained in Schedule 3, Paragraph 13 of The Act:

13 (1) Subject to the provisions of this schedule, the appropriate authority may make regulations prescribing standard conditions applicable to licences for sex establishments that is to say terms, conditions and restrictions, on or subject to which

Licences under this schedule are in general to be granted, renewed or transferred by them.

(1A) .....

(2) Regulations under sub-paragraph 1 may make different provision for

(a) sexual entertainment venues... ...

(b) for different kinds of sexual entertainment venues .....

(3) Without prejudice to the generality of sub-paragraphs 1 and 2 above regulations under this paragraph may prescribe conditions regulating

(a) the hours of opening and closing of sex establishments

(b) displays or advertisements in or on such establishments

(c) the visibility of the interior of sex establishments to passers-by and,

(d) .....

(4) Where the appropriate authority have made regulations under sub-paragraph 1 above, every such licence granted, renewed or transferred by them shall be presumed to have been so granted renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or varied.

Nothing in the history above is contentious between the parties. There is no suggestion that the sex establishments policy is unlawful or that the approach taken by the Respondents to the adoption or process by which the statutory scheme was introduced was flawed in any way. During the course of the evidence it was clarified that the sub-committee contained only 4 out of the originally planned 5 members due to illness. The sub-committee composition was however remarked upon in that the chairman was married to one of the other members. The chairman was also said to have a casting vote. No issue was taken before me to suggest that the constitution of

the sub-committee should in any way invalidate the decisions taken and so I gave no further consideration to the point.

Before briefly rehearsing the evidence which I heard I make it plain that I considered the whole of the bundle of documents produced, and in particular paid significant regard to the Sex Establishment Policy of the Respondent. The policy is predicated on wide consultation within the communities likely to be affected by the grant of Licences to Sexual Entertainment Venues in a transparent way as outlined in paragraphs 1-9 so that it purports to guide the respondent when considering these applications in balancing the needs of residents, communities, commercial interests, patrons and employees. At paragraph 52 it outlines, inter alia, a specific consideration as to whether the applicant is able to comply with the standard conditions applicable to all sex establishments and any special conditions the council may consider appropriate to apply to that particular sex establishment licence. The importance of the local policy is clear. Sexual Entertainment Venues affect different people in different ways. The very existence of such venues affects the sensibilities of a section of a local population whereas others in the same locality may be keen patrons. The diversity of Camden's community, well known to me as a local District Judge, is noted at paragraph 18 and the need to respect the views of different sectors is acknowledged at paragraph 29. The importance of considering such a local policy is highlighted by Toulson LJ in *R (Hope and Glory Public House Ltd) V City of Westminster Magistrates' Court [2011] EWCA civ 31* when speaking as to the nature of the administrative function of a local authority in taking a licensing decision he described the decision as the exercise of a power delegated by the people as a whole to decide what the public interest requires.

The legal framework for my decision is once again helpfully agreed between the parties. In the light of that agreement and only so as to avoid repetition I approach my decision on the basis outlined in the Respondent's skeleton argument at paragraphs 34-44 inclusive.

I turn briefly to the evidence which I do not note here as the legal adviser has a full note of the evidence.

I heard from Mr Stephen Less the co-founder of Secrets Table Dancing venues. He spoke to the conditions which they now sought to vary.

As to conditions 11,12 and 31 of the standard conditions he maintained that it should be sufficient that passers-by would not see the performance venue rather than the reception area. His concern was that closed doors would provide the wrong connotation and may lead to a person entering the club unaware that it was a sexual entertainment venue although he had to acknowledge that signs on the premises display words such as "Secrets Table and ~~Lap~~ Pole Dancing Club".

As to condition 14 he said that they had used business cards for 16 or 17 years. He produced what he described as a business card. On one side of the card was the venue's logo, manager's details address and contact details. On the other side was a free entry pass for the holder and up to 4 guests to the venue. His evidence was that the amended special condition would require him if wanted to hand over a business card whilst on private premises such as a restaurant he would have to gain the agreement of the owner of the premises, something he considered impractical. He

estimated that the loss caused to his business by this special condition even as amended was in the region of 20 per cent, hundreds of customers a week.

As to condition 37 he simply disagreed that he needed two SIA registered door staff at each entrance and that if that was required together with a further SIA registered member of staff in the performance venue then the cost may be prohibitive.

As to condition 57(a) he felt that this inhibited the dancers, was impossible to police and was unnecessary in view of the other conditions imposed upon the dancers code of conduct.

As to condition 57i his view was the same.

As to conditions 57n, 57o and 62 his view was that the conditions were unnecessary and impractical especially in a venue where the smoking area was very small. He confirmed that there were toilets provided for the performers in their dressing rooms but was concerned about the possibility of emergencies, such as a dancer caught short who was faced with a long queue for or a malfunctioning dressing room toilet.

My view of the evidence of Mr Less was that he was keen to demonstrate that his companies operated good establishments which caused no trouble. He did not readily accept when asked that there might be a section of the community who would be offended by the company's operations. He over dramatised the potential for difficulty, for instance suggesting that a dancer needing to use a toilet and in some desperation might be 5th in a queue for the performer's toilet characterising that as an emergency.

His evidence however in respect of the loss of 20 per cent of his business by being unable to fully use business cards and not use flyers at all was unchallenged.

I heard evidence from Cora Dennis who was able to describe the difficulties dancers may face with the standard conditions 57a and 57i. Her evidence was sensible and valid.

I heard evidence from Tony Hawkes of the respondent authority who spoke to his statement and the respondent's policy, statutory processes and to some extent about the reasoning of the sub-committee. In particular he told me that the councillors were split on the suitability of the relevant Wards in Camden to host any licensed Sexual Entertainment venue. In each case two councillors had opted for zero licensing and two had adopted the stance that 1 premise in each of the four wards where there was an existing secrets venue should be licenced. He was clear that the panel's decision to grant was premised firmly on the grant subject to the standard conditions as amended.

During submissions it became clear that the Respondent conceded that a proper interpretation of condition 57i should be that the terms of Condition 57(i) do not prevent performers from covering with their hands those parts of their bodies to which reference is made in the said condition. That wording was provided by Counsel for the Respondent and agreed by Counsel for the appellant. Both parties suggested that if those words of comfort and explanation as to interpretation were to be included in these reasons then there would be no requirement for me to determine that aspect of

the appeal. I include those words and make no further determination on the decision of the sub-committee to impose that standard condition in an un-amended form.

I am however required to determine the appeal on the basis of the grant of the respective Sex Establishment licences subject to standard conditions 11,12, 31,37, 57a, 57n, 57o and 62 and to the varied standard condition 14.

The first stage of my test after a re-hearing and testing of the evidence is to ask myself whether I am satisfied that the sub-committee decision was wrong in respect of its decision to refuse to vary the above conditions or in the case of standard condition 14 whether the decision to vary that condition in the way in which it did was wrong. I approach that question by an evaluation of all the factors placed before me, weighing competing considerations and deciding whether the conditions as imposed are reasonable and proportionate. I consider that against the background of the reasons provided by the sub-committee for their decisions.

I remind myself that this was a statutory process adopted by the local authority which involved a significant local consultation process leading to the adoption of the Policy for sex establishments and the standard conditions. That the decision of the sub-committee is the exercise of a power delegated by the people as a whole to decide what the public interest requires. There has been no legal challenge to the policy published as long ago as November 2011.

The reasoning of the sub-committee is fairly succinct. It simply says that it found that in order to meet the objectives of the Respondent's Sex Establishment Policy it was

necessary to impose the standard conditions set out in the Policy with a number of minor amendments to address local circumstances that were considered uncontentious and to clarify a number of points. Where the reasoning of a licensing committee falls to be considered on an appeal such as this I should pay great attention to the fact that the duly constituted and elected committee has come to an opinion and I should not lightly reverse their opinion. It is settled law that reasons which are fuller and so provide a greater explanation of the decision making process assist that process. Here however in respect of the un-amended conditions the combined effect of Schedule 3 paragraph 13(4) and the Respondent's sex establishment policy make it very plain that the default position must always be the imposition of the standard conditions. Here the duty of the sub-committee would be to give reasons which justified a departure from standard conditions, it is quite sufficient in my view for the committee's reasoning on the imposition of standard conditions to simply reflect as they did that they were a necessary imposition to meet the objective of the consulted and published sex establishment policy of the respondent authority.

Looking at the specific standard conditions imposed in their un-amended standard form:

Conditions 11,12 31

These conditions can be taken together as they all relate to the position considered by Parliament in schedule 3 paragraph 13(3)(c) of the Act where it specifically provided an instance as to where a local authority might want to set standard conditions. This is the issue of the visibility of the interior of the sex establishment to passers-by. It is cleat that standard conditions are not required simply to relate to the performance area

but the whole of the interior. These standard conditions properly implemented impose, insofar as is possible where exterior doors clearly have to open for short periods of time to admit patrons, a scheme to ensure that the interior of these sex establishments are not visible to passers-by. There are of course good reasons for this, to avoid unnecessary upset where a passer-by might be upset or intimidated by the environment which they might glance or to help prevent solicitation from inside the premises. I am of the view that these conditions are properly imposed and for good reason the sub-committee imposed them as part of the regime of standard conditions to ensure that the objectives of the sex establishment policy were upheld. It follows that I am firmly of the opinion that the decision of the committee was not wrong and I uphold their decision.

Condition 37

Here the issues are proportionality and necessity. The sex establishment policy at paragraph 52 makes it plain that part of the consideration for the grant of a sex establishment licence is whether the establishment which will comply with standard conditions. Here the appellant simply wishes to resile from standard conditions because it simply disagrees with the need and points to the additional expense. Those considerations in the balance do not persuade me that the significant argument that such a condition is standard across the licensing authority area for sex establishments should on these facts be displaced. It is a condition which has been consulted upon, published and so is a condition which would need good reason to displace. I can discern no such good and compelling reason. I am of the view that this condition is properly imposed and for good reason the sub-committee imposed it as part of the regime of standard conditions to ensure that the objectives of the sex establishment

policy were upheld. It follows that I am firmly of the opinion that the decision of the committee was not wrong and I uphold their decision.

Condition 57a 57n 57o 62

These standard conditions can be taken together. They relate to the conduct of the dancers. I find that they are each reasonable and proportionate. I find that a well run sex establishment should have little or no difficulty in implementing and enforcing such conditions. The conditions are for the mutual protection of patrons and dancers and are entirely responsible and appropriate. No evidence which I have heard persuades me to the contrary. Some of the evidence I heard was overly dramatic and did not stand up to sensible scrutiny. I am of the view that these conditions are properly imposed and for good reason the sub-committee imposed them as part of the regime of standard conditions to ensure that the objectives of the sex establishment policy were upheld. It follows that I am firmly of the opinion that the decision of the committee was not wrong and I uphold their decision.

That leaves consideration of condition 14 which is the standard condition but as amended. This condition requires more scrutiny as the sub-committee did not provide any reasoning for their amendment and for the specific wording of the amendment. Where the committee said that it had made a number of minor amendments to address local circumstances that were considered uncontentious and to clarify a number of points I do not consider that this issue was uncontentious or that the amendment provided clarification. In fact the appellant had sought a wider variation to allow flyers, personal solicitation and business cards so long as that did not contain or involve any offensive material or depictions of nudity.

There is uncontested evidence that the business has lost 20 per cent or hundreds of patrons as a direct result of the imposition of this standard condition as amended although no data or figures have been supplied in support of that contention. I referred earlier to a tendency in Mr Less when giving evidence to exaggerate. It must however be the case that the business has been negatively affected by their inability to use personal solicitation and flyers.

In fact the appellant now only seeks the ability to use business cards as I described above. It is not in the colloquial sense a business card pure and simple as it has a dual role, the reverse is a marketing tool which acts as a free entry pass to a secrets venue.

In my judgement the sub-committee would not have been wrong to implement the standard condition 14 in un-amended form. As with the other conditions above it would have fitted with their scheme provided for in the sex establishment policy.

Before the committee the appellant had maintained that the standard wording would prevent managers from promoting the premises where in fact there was nothing wrong with soliciting business for a well run operation. The appellant submitted that quite a lot of business was obtained from handing out the cards and that this had never caused a problem. The appellant suggested that the condition should specify no advertising boards or branded vehicles but should allow business cards or flyers provided that they did not contain offensive material or nudity. It was said that the small business cards were a form of invitation to the premises and were given out at functions such as boxing matches and sometimes on the street. They were fundamental to the ongoing business and were necessary to redress the drop in spend per head since the

recession began. The distribution of these cards, it was said, brought in several hundreds of customers a week. The sub-committee were provided, as I was, with an example of the business card.

At paragraph 12 of his statement Mr less described the amended condition 14 as unduly restrictive, anti-competitive and unreasonable. He says that the impact on the business has been very considerable indeed and has removed their ability to compete with other lap dancing clubs in London. However I find that this assertion, untroubled as it is by any analysis figures or data is an example of Mr Less exaggerating. He had to accept in cross examination that in the neighbouring borough of Westminster, which has the largest saturation of sex establishments in London had a total ban on any kind of touting. He had also to accept that the other venues in Camden were subject to an un-amended condition 14 or a similar condition so that Secrets was placed at no competitive disadvantage to them.

Although the sub-committee does not appear to me to have given any reason for amending standard condition 14 it is clear that it must have been affected by the submissions made on behalf of the appellant. It must have had regard to the potential of loss of business opportunity and balanced that against the clear policy requirement that there be no personal solicitation. It is clear that the sub-committee thought it had adequately reflected that balance in the wording of the condition as amended.

I determine that I too must therefore have regard to that reasoning and not lightly interfere with it. It clearly was a difficult balance to strike. There were perhaps three specific uses of the business card placed before the committee, and it is now only the

business card and personal solicitation by the distribution of those cards with which I am concerned, not the flyers. The first was distribution on a personal basis by the managers and the senior management team, which was repeated in evidence before me. The second was their distribution at functions such as boxing matches and the third was their distribution on the street. It is clear that the committee purported to allow their distribution by managers on private premises and with the permission of the owner of those premises, together with distribution on the same terms at functions such as boxing matches. The sub-committee had moved significantly in the direction of the appellants but drew a line in the sand prohibiting distribution on the street. This was a balanced decision, it took account of the commercial business need and where such a distribution would not be a public offering and certainly on the street it took the decision to allow it. I do not characterise that as a decision which is wrong. I accept that was a decision which I could properly have taken on the evidence. I have considered whether the wording of the condition where it requires the permission of the owner of the premises on which the cards are distributed to that distribution was reasonable and proportionate but I am satisfied that it is. The committee having been told that the cards were distributed at functions such as boxing matches clearly sought to ensure the regulation of that distribution with the permission of the owner of the premises. I am of the view that this condition is properly imposed and for good reason the sub-committee imposed it as part of the regime of standard conditions to ensure that the objectives of the sex establishment policy were upheld and that the amendment was for good reason. It follows that I am firmly of the opinion that the decision of the committee was not wrong and I uphold their decision.

For these reasons I dismiss the appeal

District Judge (Magistrates' Courts) McPhee

14th June 2013.