Neutral Citation Number: [2013] EWHC 1819 (Admin)

Case No: CO/10908/2012

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/06/2013

Before:

MR JUSTICE HADDON-CAVE

- -

Between:

R (ALISTAIR LOCKWOOD THOMPSON)	**Claimant**
- and -	
OXFORD CITY COUNCIL	**Defendant**

- -
- -

Gerald Gouriet QC & Jeremy Phillips (instructed by **Berwin Leighton Paisner LLP**) for the **Claimant**
Ranjit Bhose QC (instructed by **Jeremy Thomas, Head of Law and Governance of Oxford City Council**) for the **Defendant**

Hearing date: 11th June 2013

- -

Approved Judgment

MR JUSTICE HADDON-CAVE:

INTRODUCTION

1. This case raises issues regarding the licensing of lap-dancing clubs. It has been said that one could guess at what exactly lap-dancing involves, but one could not faithfully describe it (*per* Ward LJ in *Sutton v. Hutchinson* [2005] EWCA Civ 1773).

2. The Claimant challenges Oxford City Council's refusal on 24th September 2012 to renew a sexual entertainment venue licence for a lap-dancing club known as 'The Lodge' on Oxpens Road in Oxford. The Claimant had operated a lap-dancing club at these premises without incident since the November 2011. He had previously operated a similar establishment, also called The Lodge, at premises at Pennyfarthing Place in Oxford since February 2010.

3. In 2010, lap-dancing clubs were brought within the same licensing regime as sex shops and sex cinemas and other *"sex establishments"*. The relevant licensing legislation is Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("LGMPA 1982") as amended by Section 27 of the Policing and Crime Act 2009 ("PCA 2009"), which amended the definition of *"sex establishment"* in paragraph 2 to Schedule 3 of the LGMPA 1982 to include a *"sexual entertainment venue"* ("SEV") such as a lap-dancing club. Oxford City Council adopted this new legislative regime for the licensing of lap-dancing clubs in April 2010 (see further below).

THE FACTS

The Lodge at Pennyfarthing Place in 2007

4. The Lodge first opened in 2007 as a bar and nightclub in premises in Pennyfarthing Place near St Ebbes Street and Pembroke College in Oxford. The claimant and his business partner, Mr Opher, ran The Lodge as tenants of the landlord and licencee, Greene King Retailing Limited. The same premises had previously operated as a public house, a late night music venue, a nightclub, a sports bar and a bar and restaurant under various ownership since about 1972. A Public Entertainment Licence had been in force there from at least 1996.

5. On 14th October 2009, Greene King Retailing Limited lodged an application for a licence variation to alter the layout of the Pennyfarthing Place premises to add the licensable activities of *"film, performance of dance, facilities for making music and anything of a similar description"*. The variation was sought in order to pave the way for operating the premises as a lap-dancing club. Representations were made objecting to the nature of the proposed variation, particularly in the light of the proximity of the premises to St Ebbe's Church.

6. On 10th December 2009, Greene King Retailing Limited's application for a variation of the licence for the Pennyfarthing Place premises was granted. On 23rd December 2009 a notice of appeal against the grant of the licence was lodged by the Reverend Vaughan Roberts, the Rector of St Ebbe's Church. This was subsequently dismissed by a District Judge at Oxford Magistrates' Court on 30th June 2010 after a three-day hearing.

Lap-dancing starts at Pennyfarthing Place in February 2010

7. On 10th February 2010, Oxford City Council then granted a licence to the Claimant specifically for the operation of Pennyfarthing Place premises as a lap-dancing club. The Lodge ran as a lap-dancing club continuously from this date until March 2011 when renewal of the licence was refused (see below).

Adoption of new licensing regime in April 2010

8. On 19th April 2010, Oxford City Council resolved to adopt the new licensing regime in relation to lap-dancing clubs under the amended Schedule 3 to the LGMPA 1982 (see above). Paragraph (c) of the Council's Resolution was in the following terms:

> *"(c) That "Sexual Entertainment Venues" are not generally appropriate near or in locations or areas containing any of the following:*
> *(i) Historic buildings or tourist attractions*
> *(ii) Schools, play areas, nurseries, children's centres or similar premises*
> *(iii) Shopping complexes*
> *(iv) Residential areas*
> *(v) Places of Worship"*

9. Oxford City Council brought the new regime into force on 10th June 2010. This meant that, the Claimant had to apply for a licence under the new regime to enable The Lodge to continue to operate as a lap-dancing club at Pennyfarthing Place. On 9th December 2010, the Claimant duly lodged an application for a SEV licence under Schedule 3 to the LGMPA 1982 as amended in respect of The Lodge at Pennyfarthing Place.

Oxford Mail in 2011

10. On 6th January 2011, the Oxford Mail published an article under the headline *"Church objects to lap-dancing club"* which quoted Reverend Roberts:

> *"We believe that lap-dancing clubs demean women, undermine marriage and depersonalise God's good gift of sex, so we would not be in favour of a club anywhere.*
> *We feel that the location of the Lodge is particularly inappropriate as it is right next to the Westgate Centre and car park, which is a gateway to our historic city for may visitors.*
> *It is near a number of residential properties, as well as being just a few yards down from St Ebbe's Church, which holds not only church services but also a thriving toddler group and clubs for children most days of the week."*

11. The Oxford Mail article 6th January 2011 also contained reference to a brief interview with Councillor Cook:

> *"City councillor Colin Cook said last night: "Before the new law, we did not have power over licensing of sexual entertainment venues, but now we have those extra powers."*
> *He declined to comment further on the application, but said that the proximity to the church "may be a factor in the decision."*

12. On 19th January 2011, the Claimant's solicitors, Messrs Berwin Leighton Paisner LLP, wrote to Oxford City Council raising concerns about the risk of apparent bias on the part

of Councillor Cook. On 9th February 2011, Oxford City Council's Head of Law and Governance's delegated solicitor, Mr Daniel Smith, wrote in response stating that Oxford City Council did not believe that Councillor Cook's reported comments created an obvious risk of apparent bias. He said that the Licensing and Registration Sub-Committee would comprise Councillor Cook, Councillor Mike Gotch and Councillor Rae Humberstone, together with one reserve.

Licensing hearing on 2nd March 2011

13. On 2nd March 2011, the hearing of the Claimant's application for an SEV licence for The Lodge at Pennyfarthing Place took place before the Licensing and Registration Sub-Committee, comprising Councillors Cook (Chair), Gotch and Humberstone. The Claimant attended, together with his business partner, Mr Opher, and was represented by a solicitor, Mr Baylis. Various objectors also attended, including Reverend Roberts and other representatives from St Ebbe's Church and representatives from St Aldate's Church.

14. Mr Baylis invited Councillor Cook to recuse himself on the grounds of apparent bias. Councillor Cook declined to do so and the minutes record him giving the following explanation for not doing so:

> "*Councillor Cook explained that his comments on activities in nightclubs made in 2008 were made in response to an enquiry from the Oxford Mail, and in his roles as Chair of a licensing committee at that time, he believed that the activities would breach City Council licensing conditions in force at that time. The personal relationship referred to Oxford City Council occurred 10 years ago and was related to complaints made about another licensed premises. He did not believe that any reasonable person would infer that he had any personal grudge against the applicant as a result of this. Therefore, he would continue in his role at the meeting.*"

15. Mr Baylis then made submissions to the Sub-Committee in support of the Claimant's application for a SEV licence for The Lodge at Pennyfarthing Place. The objectors also made submissions.

Pennyfarthing Place closes in June 2011

16. The Sub-Committee declined to grant an SEV licence for The Lodge at Pennyfarthing Place. On 1st April 2011, the Claimant lodged a claim for judicial review of the Sub-Committee's refusal to grant an SEV licence for The Lodge at Pennyfarthing Place. The Pennyfarthing Lane premises were closed on 10th June 2011. The application for judicial review was subsequently discontinued on 22nd September 2011 following the grant of the Oxpens Road SEV licence (see below).

Application for lap-dancing at Oxpens Road

17. The Claimant decided to move The Lodge lap-dancing club to a new location on Oxpens Road in Oxford, in place of a bar there called The Coven. On 19th May 2011, the Claimant filed a fresh application for an SEV licence for these new premises on Oxpens Road located about half-a-mile due west of Pennyfarthing Place and about three-quarters of a mile from the centre of Oxford, St. Giles and the High Street.

Licensing hearing on 12th July 2011

18. On 12th July 2011, the hearing of the Claimant's application for an SEV licence for new premises on Oxpens Road took place before the Licensing and Registration Sub-Committee, comprising Councillors Clarkson (Chair), Brundin and Coulter. The Sub-Claimant heard from Mr Gerald Gouriet QC, representing the Claimant, and from Mr John Payne, solicitor for St Luke's Church and the Christian Legal Centre Reverend Roberts and from a number of other objectors. At the meeting, Mr Gouriet QC applied for the sexual entertainment licence to start at 23:00 hours rather than 21:00 hours. This was noted by the Sub-Committee.

Decision of 18th July 2011 granting SEV licence for Oxpens Road

19. On 18th July 2011, the Sub-Committee published their decision granting the Claimant an SEV licence for the premises at Oxpens Road for a year. It is necessary to set out the 2011 Reasons in full:

"Decision and reasons of the Licensing Registration Sub Committee

1. *The Sub Committee examined all the documents submitted and considered all the representations made at the hearing. It had particular regard to the written objections concerning the location of the premises and the Council resolution of 19/04/2010 (The Resolution) concerning generally inappropriate locations for sexual entertainment venues.*

2. *The Sub Committee noted that government guidance and case law made clear that moral objections to sexual entertainment were not relevant to consideration of the Application. With this in mind the Sub Committee disregarded any passages within the representations received which expressed moral concerns.*

3. *The Resolution states that* "sexual entertainment venues are not generally appropriate near or in locations / or areas containing any of the following:
   - Historic buildings or tourist attractions,
   - Schools, play areas, nurseries, children's centres or similar premises,
   - Shopping complexes,
   - Residential areas,
   - Places of worship,"

4. *The Sub Committee noted that relevant locality is not defined in The Resolution nor in the applicable legislation or government guidance. Without a full assessment of the entire area The Sub Committee felt that it had insufficient information to allow it to define the dimensions of an exact area as the relevant locality, nor to reach a decision on the appropriate number of sex establishments in such an area.*

5. *However, for the purposes of deciding the Application the Sub Committee found that the relevant area in this case is the area near to the proposed premises. It further found that the only buildings sufficiently near the proposed premises to engage The Resolution, and which could fall within the categories set out, are the Oxford Ice Rink and Oxford and Cherwell Valley College. Neither fall squarely within any of the categories but the College is similar to a school and the Ice Rink does attract many children and tourists.*

6. *Despite the location of the College and Ice Rink the Sub Committee were satisfied that with the amended hours of operation at the proposed premises the College would be*

closed and public skating sessions over well before any sexual entertainment began. There was evidence that private skating sessions tool place after 23:00 but the Sub Committee found the risk of these sessions bringing children or vulnerable people into contact with the Premises was very low.

7. *The Sub Committee noted the representations concerning proximity of the proposed premises to residential and shopping areas but found that whilst the premises are between the residential areas of St Ebbes and St Thomas's they could not reasonably be considered to be in or sufficiently near them to engage The Resolution. Nor are they sufficiently near the Westgate shopping centre.*

8. *The Sub Committee also considered the representations concerning incompatibility of the proposed premises with planning policy aspirations for the west end of Oxford City. However, the Sub Committee had to base their view on the character of the relevant locality and nearby premises at the time of application and not as it may develop in the future. If granted any license would in any event require annual renewal which would take into account the character of the locality at the relevant time.*

9. *The Sub Committee noted the Applicant had the benefit a good track record in operating a sexual entertainment venue (SEV) at a similar Oxford premises and that Thames Valley Police did not object to the application. It was significant that the Applicant appeared willing and, from his track record, able to operate premises discretely, anonymously and with no external indication as to the nature of entertainment taking place. Given the location of the Ice Rink, the College and coach parking area the Sub Committee found it particularly important that any SEV in the proposed location have no external indication of the type of premises or entertainment being carried on.*

10. *In considering The Resolution the Sub Committee focused on the harm it seeks to address or objectives it aims to achieve. In the absence of any specific detail in the Resolution on these points the Sub Committee found that among the primary concerns should be the welfare of children and prevention of nuisance and crime. With appropriate conditions the Sub Committee felt that the premises could operate without aggravating these aims.*

11. *Taking all these factors into account the Sub Committee found that whilst The Resolution was engaged at a low level in relation to the Ice Rink and College there were good reasons to believe the premises would not be inappropriate in the proposed location and an exception to the general position should be made in this case.*

12. *The Sub Committee found that in order to ensure the proper running of the premises it is necessary to attach conditions to the license. The Licensing Authorities Standard Conditions for Sexual Entertainment Venues should apply together with all conditions on the Applicant's existing premises licence at The Lodge so far as they relate to the carrying on of sexual entertainment, also the additional conditions offered by the Applicant during the hearing. These conditions should be combined in one clear schedule avoiding any duplication.*

13. *The Sub Committee had regard to the Human Rights Act 1998 and European Convention on Human Rights as well as its duty under the Crime and Disorder Act*

1998. However, it found that it had heard no evidence that any persons human rights would be infringed by granting the application nor sufficient to convince it that any significant crime and disorder would be caused by the grant.

***Decision:** The Application as amended is **granted** subject to the conditions set out on the attached Schedule."*

20. On 22nd September 2011, the Claimant was also granted extended Premises Licence hours for the supply of alcohol to coincide with the terminal hour for the SEV licence.

Lap-dancing starts at Oxpens Road in November 2011

21. On 17th November 2011, The Lodge opened as a lap-dancing club on Oxpens Road. Lap-dancing continued there happily for the next twelve months without incident. By July the following year, it was necessary for the Claimant to apply to renew the licence and he lodged the necessary application with the Oxford City Council.

Hearing of renewal application on 24th September 2012

22. On 24th September 2012, the hearing of the Claimant's application for a renewal of an SEV licence for The Lodge at Oxpens Road took place before a differently constituted Licensing and Registration Sub-Committee comprising three members who had not been party to the 2011 grant, Councillor Cook, Councillor Royce and Councillor Gotch, and one member who had, Councillor Coulter (Chair).

Claimant's representations at the hearing

23. The Sub-Committee heard from Mr James Rankin of Counsel, representing the Claimant. Mr Rankin submitted there had been a detailed examination of the appropriateness of the area in July 2011 and there had been no change of circumstances since. He also made the following points (as recorded in the minutes):

- *"What was the motivation behind objectors' representations? Were the local residents expressing their concerns or groups putting forward their views? There was no hard evidence from local people that this club caused any detriment to them.*
- *Most people would not know that the club even existed in its current location. It was completely innocuous;*
- *The advertisement hoarding by the railways station showed only a women's face and could not be said to be offensive, even more so when the hoarding next to it (for skin cream) showed a naked woman;*
- *No-one from Thames Valley Police had made any representation against local area – had this happened, it might give more weight to arguments about a change of circumstances;*
- *There was no evidence of a correlation between the opening of the club and an 18% rise in references to the sexual violence support group – this could have been caused by a host of other factors;*
- *No-one has complained that the club is badly run;*
- *The Council decided a year ago that the area was appropriate – to say otherwise now would be perverse."*

24. The Claimant's representatives provided information in answer to questions from the councillors and interested parties. Dancers worked on a self-employed basis. Dancers were paid a 'house fee' of £20 to dance. Each dance did cost the customer £20 of which the club received £7 'commission'. There were no fines for dances who dressed incorrectly or who did not attract enough customers.

Objectors' written and oral representations

25. A dozen objectors were present, including a representative of the 'St Ebbe's New Development Residents' Association'. The Sub-Committee also had before it a significant number of written objections to the application. Objections were focussed on the Lodge's proximity to the following four establishments or areas:

    (1) The Ice Rink. There was evidence that this was approximately 85 metres away. One interested party noted that it *"has night-time sessions which are much used by student sporting groups"*. Another noted *"it is a family facility and it is not acceptable for it to have a sex establishment cheek-by-jowl"*. One objector in her oral representations made a point about the Ice Rink being open *"late at night"* and said: *"The presence of the club makes women afraid to walk the streets alone, and it does not help improve the general attitude towards women."*

    (2) Oxford & Cherwell Valley College. There was evidence this was 78 metres away, had a nursery attached and held classes in the evening. The Chair of the St.Ebbe's New Development Residents' Association recorded it was open for use by its pupils until 22:00 hours.

    (3) The Oxpens Car and Coach park. There was evidence this was less than 100 metres away. It was referred to as a place *"where visitors arrive from all over the world to visit Oxford"*.

    (4) Residential accommodation. One objector stated that *"this area consists overwhelming [sic] in residential accommodation…"*. Another referred to the Lodge being *"close to a large number of residential properties"*. Two others referred to private houses in Woodbine Close and in Thames Street.

Objections generally

26. The general thrust of the objections can be gleaned from the following representations.

    (1) A lecturer at Oxford Brooke's University wrote objecting on, *inter alia,* the following grounds:

    "The site of this club is not appropriate. It is sited near a college which has a nursery attached and thus young people cannot help but come into contact with it. It is also next to the ice rink which by its very nature attracts young people and families. The fact that this club is next to a coach park which brings tourists to Oxford sends out far from the right message about the City of Oxford when the first thing in view is a so-called 'gentleman's club'."

    (2) A member of the City Council wrote objecting on behalf of some of his constituents on, *inter alia*, the following grounds:

    "[T]he granting of such a renewal would frustrate the four licensing objectives adopted by the Council in line with the national legislative requirements. The

provision of a sexual entertainment venue at this unsuitable location close to the city centre, to housing and to major tourist and leisure facilities, will jeopardise the prevention of crime and disorder, public safety, and the prevention of nuisance. The proximity of such an establishment to two distinct quiet residential areas also risks clear and egregious conflict with all four objectives, most critically, the fourth objective to secure the protection of children from harm because of the nature of the sexual entertainment to be provided."

(3) A member of the City Council wrote on behalf of some of his constituents, complaining about the very large advertisement for the Lodge on a bill board at Oxford Railway Station which *"…leaves no doubt in visitor's minds that the City has a full scale sex entertainment place. Is this unfortunate as the City tries to establish the idea that Oxford is a world heritage site?"*. The letter continued:

"[M]y objection to the Lodge is the place where it is situated. Such places – if Oxford is prepared, as it appears to be, to allow such places – should be in areas where their presence is well away from residential areas, educational areas and places where normal sporting activities take place."

Objections about the effect on the local area

27. Some 108 responses were said to have been received in a survey of local residents. The Oxford Feminist Network conducted a survey of women regarding their views and experiences following the advent of The Lodge in the local area, which included the following:

(1) *"I go to midnight ice hockey every Wednesday and have to walk past The Lodge. [...] I have frequently felt uncomfortable walking past it and have on two separate incidents been harassed by individuals in the street who have left the club."*

(2) *"Having lived on the same road as The Lodge, I felt very threatened if I ever had to walk/cycle home at night. The street makes you feel very isolated when the only other people there are men either pumped about going to such a venue or worse who are leaving, probably more excited and with more skewed views towards women than when they went in."*

(3) *"Just walking past The Lodge I have had cars stop and ask if I am offering "business" (i.e. engaged in prostitution) and have had other cars wind down their windows to shout sexual expletives at me. This hasn't happened anywhere else in town, it's specific to that part of Oxpens Road (and therefore The Lodge). I try to avoid that area, especially after dark as I fear one day the problem will escalate from verbal abuse to something else."*

(4) *"In a doorstep consultations with residents, members of Oxford Feminist Network heard stories from residents about men leaving the club (5am) shouting sexually explicit epithets whilst walking down the street…"*

Moral objections

28. There were also some objections expressed in pure moral terms:

"Such entertainment debases and degrades women and legitimises a view of women as existing for men's sexual appetite."

Summary of objections

29. The gravamen of the objections is perhaps best summed up by the following written objection from the Chair of St Ebbe's New Development Resident's Association (emphasis added):

> *"The Oxpens location is most inappropriate for entertainment of this sort. It is immediately opposite The Oxford and Cherwell Valley College, which is open for use by its adolescent pupils until 10.00 pm. It abuts onto the coach park which is used regularly and frequently by school parties of all nationalities. It is about 100 yards from the Ice Rink which has night-time sessions which are much used by student sporting groups. It would be hard to find a place in Oxford more full of impressionable young people to be intrigued by advertisement and present in the vicinity during the hours of operation of the club."*

Decision of 24th September 2012 refusing renewal of SEV licence for Oxpens Road

30. On 24th September 2012, the Sub-Committee published their decision refusing to renew the SEV licence for the premises at Oxpens Road. It is necessary to set out their decision and reasons in full since the Claimant raises a 'reasons' challenge:

> ***"Decision and reasons of the Licensing Registration Sub Committee***
>
> 1. *The Sub Committee examined all the documents submitted and considered all the representations made at the hearing. The Sub Committee had particular regard to the written objections concerning the location of the premises and the Council resolution of 19/04/2010 concerning generally inappropriate locations for sexual entertainment venues.*
>
> 2. *The Resolution of 19/04/2010 states that* "sexual entertainment venues are not generally appropriate near or in locations / or areas containing any of the following:
>
>   - Historic buildings or tourist attractions,
>   - Schools, play areas, nurseries, children's centres or similar premises,
>   - Shopping complexes,
>   - Residential areas,
>   - Places of worship,"
>
> 3. *The Sub Committee found that the relevant locality for the purposes of deciding the application is the area near to the premises.*
>
> 4. *Taking into account the ground of refusal at paragraph 12 (d) of Schedule 3 of the Act the Sub Committee found that renewal of the license would be inappropriate having regard to the character of the relevant locality or use to which premises in the vicinity are put.*
>
> *The Sub Committee reached this conclusion for the following reasons:*
>
> - *[1] The premises are near to Oxford Ice Rink, Oxford and Cherwell Valley College and the Oxpens car and coach park. The Ice Rink is a facility which attracts many children, young people, families and tourists and the College is similar to a school. The Sub Committee therefore felt the Resolution*

of 19/04/2010 on generally inappropriate locations was engaged in respect of the Ice Rink and College.

- *[2] The Oxpens car and coach car park, whilst not an 'attraction' in itself, nevertheless brings many tourists, visitors and local residents into the area of the premises at all hours. The operation of a sexual entertainment venue in the locality was therefore not appropriate.*
- *[3] The Oxpens road is a busy transport link and pedestrian route for visitors and residents living in the St Thomas and St Ebbs areas, a sexual entertainment venue was not appropriate in such a well used location.*
- *[4] The increasing concentration of student accommodation in the area, including development of student housing at Luther Court, Mill Street and Park End St, meant an increased use of the locality by young and possibly vulnerable students as a route to and from their accommodation.*
- *[5] Many of the representations received indicated there had been a negative change in the character of the vicinity brought about by the opening of the premises.*
- *[6] Many of the representations received indicated that the operation of premises had created a hostile atmosphere in the locality and a heightened fear of the risk of sexual violence. Whilst acknowledging there was no evidence of any violent incidents attributable to the operation of the premises, the Sub Committee gave weight to the representations and felt the heightened fear reported was at least in part due to the existence of the premises and the type of entertainment it operated. The Sub Committee were mindful of the Council's duty under section 17 of the Crime and Disorder Act 1998 to take reasonable steps to prevent crime and disorder.*
- *[7] Of particular concern were reports contained in the representation of Louise Livesey concerning incidents of harassment by users of The Lodge toward a user of the Ice Rink. Whilst recognising these reports were both anonymous and hearsay and accordingly carried limited weight the Sub Committee nevertheless took some account of them.*

The Sub Committee recognised that its findings were a departure from the Council's decision to grant the license in July 2011 but found that as a differently constituted Sub Committee with the benefit of evidence concerning the operation of the premises over the last year they were entitled to reach a different conclusion.

The Sub Committee were aware of the human rights considerations as set out in paragraphs 26 and 27 of the Head of Environmental Development's report, but found that the Applicant's right to protection of his license was not a right so significant as to override their own calculation of the public interest.

***Decision**: The Application is **refused** on the grounds that a sexual entertainment venue at the Premises would be inappropriate, having regard to the character of the relevant locality and the use to which other premises in the vicinity are put."*

THE CLAIMANT'S CHALLENGE

31. On 12th October 2012, the Claimant issued the present judicial review proceedings challenging the lawfulness of Oxford City Council's decision of 24th September 2012 refusing to renew the SEV licence for Oxpens Road.

32. In his evidence, the Claimant explained his frustration at the decision. He could not continue to operate the Oxpens Road premises other than as a lap-dancing club. The move of the lap-dancing club business from Pennyfarthing Place to Oxpens Road involved significant investment. The detailed reasoning of the Sub-Committee when granting the SEV licence in 2011 had given the business the assurance and confidence to make the investment. He had carried out a substantial refurbishment of the Oxpens Road property when he took it over. The public dance floor had been taken out and replaced with a stage and pole for use by the performers, a changing room for the performers, 12 VIP seating areas and 14 private dance booths constructed. New CCTV had been installed so that all areas could be monitored, including the private booths. The refurbishment costs were £102,283 including rent of £47,650. The club employed 23 members of staff, including cleaners, bar staff, waitresses, reception, DJs and managers. They would all have to be made redundant. On any one night, the club would have up to 35 performers and in any one week between 75 to 110 different performers would be working at the club. They would have to find work elsewhere. The nearest other lap-dancing club was thought to be in Banbury. Since opening the club at Oxpens Road in November 2011, the average net weekly profit had been £12,023.94. This substantial income would be lost. The club had operated perfectly properly and without complaint from the authorities in the previous 12 months. There had been no any material change in the locality in the previous 12 months. A refusal to renew was not justified.

Stay and rolled up hearing ordered

33. On 24th October 2012, Mr CMG Ockleton sitting as a Deputy Judge of the High Court granted a stay of the decision until final determination of the judicial review proceedings. On 24th January 2013, Ms Belinda Bucknall QC ordered a 'rolled-up' hearing.

Summary of Grounds of Challenge

34. The Claimant challenges the Oxford City Council decision of 24th September 2012 on three grounds:

    (1) **Insufficiency of reasons.**

    (2) **Taking into account irrelevant and/or inaccurate considerations.**

    (3) **Apparent bias in a member of the sub-committee.**

35. It is convenient to consider Ground (3) first.

GROUND (3): 'APPARENT BIAS'

36. The ground of 'apparent bias' was directed at one of the members of the refusing Sub-Committee, Councillor Cook. The Claimant submitted that Councillor Cook should have recused himself from sitting on 24th September 2012 because of (i) a previous dispute in 1999 when he complained about noise from a bar then operated by the Claimant in Oxford near to his flat, namely the 'Thirst Bar' in Park End Street; (ii) comments by him reported in the Oxford Mail in 2008 expressing negative views about licensing *"fetish shows"* in Oxford; and (iii) the (very limited) comments by him reported in the Oxford Mail on 6th January 2011 regarding the present licensing application (set out above).

Ruling

37. At the start of the hearing, I was invited by Mr Ranjit Bhose QC, Counsel for Oxford City Council, to make a ruling dismissing the Claimant's apparent bias ground *in limine*. He submitted that bias had not been raised by the Claimant at the relevant meeting on 24th September 2012 or at any relevant stage in the run up to the meeting, the Claimant had waived the right to rely upon it. Following argument from both sides, I ruled in Mr Bhose QC's favour and dismissed the Claimant's apparent bias ground.

38. The reasons for my ruling were briefly as follows. The Claimant had raised the bias allegation at the earlier SEV licensing hearing on 2nd March 2011 when Councillor Cook refused to recuse himself. It then featured in the grounds of appeal against the Defendant's refusal to grant an SEV for the Pennyfarthing Place premises. The judicial review was discontinued on 21st October 2011. At no stage thereafter, however, was bias raised, or even adverted to, by the Claimant. In my judgment, the Claimant's complete silence on the matter in the period preceding the 24th September meeting and the Claimant's failure to raise any question of apparent bias at the 24th September 2012 meeting itself (despite being represented by distinguished Counsel) was fatal to this ground. It is exactly the sort of mischief which Lord Bingham identified in *Locabail (UK) Limited v. Bayfield Properties* [2000] QB 451 at [69], namely, that by keeping silent the Claimant *"wanted to have the best of both worlds. The law will not allow [him] to do so"*. Accordingly, I dismissed Ground (3)

39. If I was wrong about the above, I would in any event have dismissed the Claimant's apparent bias ground on the merits. I would have held that no fair-minded and informed observer, apprised of the facts, would have concluded that there was a real possibility that Councillor Cook was biased for three reasons:

    (1) First, the 1999 noise dispute was ancient history and appears to have been a minor spat. It took place some 13 years ago and was not evidence of any discernable current *animus* by Councillor Cook towards the Claimant.

    (2) Second, Councillor Cook was not declaring in 2008 (*ex rel* the Oxford Mail) that he was against all lap-dancing for all time, but merely expressing a somewhat dim view about Oxford having regular licensed *"fetish shows"* involving such things as *"topless dancing"*, *"topless KY jelly wrestling"* and *"fetish snake shows"*, the latter reportedly starring *"a 12 ft albino python"*.

    (3) Third, the comments by Councillor Cook when interviewed by Oxford Mail on 6th January 2011 were appropriately guarded and neutral. In my view, the reasons that Councillor Cook gave on 2nd March 2011 for not recusing himself were justified (see above).

40. I next turn to consider Grounds (1) and (2) of the Claimant's challenge. It is necessary first, however, to set out the relevant legislation and statutory background and the general principles.

THE STATUTORY BACKGROUND

Local Government (Miscellaneous Provisions) Act 1982

41. The licensing of *"sex establishments"* was first introduced in 1982 by the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("LGMPA 1982"). The definition of *"sex establishments"* was limited at this stage to either a *"sex cinema"* or a *"sex shop"*. It did not include other sexual entertainment venues, such as strip clubs or lap-dancing clubs. The operators of such clubs had to apply to the relevant public entertainment licensing authorities for waivers from the standard conditions ('Model Rules of Management') which prohibited displays of nudity or stripping. This was not easy where their policies contained presumptions against waiver.

Licensing Act 2003 regime

42. A single licensing regime for all *"licensable activities"* was introduced by the Licensing Act 2003 ("LA 2003") which came into force on 24th November 2005. The definition of *"licensable activities"* included all sexual entertainment venues. The LA 2003 permitted control by reference to four licensing objectives, namely (i) the prevention of crime and disorder, (ii) public safety, (iii) the prevention of public nuisance, and (iv) the protection of children from harm. This meant that licensing authorities were somewhat hamstrung because it was not open to them to refuse applications for sexual entertainment licences by reference to wider concerns to do with the locality (*viz. e.g.* the residential character of the area in which the premises was located, or the proximity of schools, places of worship or other community facilities *etc.*) unless the evidence demonstrated that the proposed use would not promote one of the four stated licensing objectives, even with the imposition of conditions. It was only if there were no efficacious conditions which could be imposed was the authority be entitled to refuse. The Government undertook a consultation exercise with local authorities in the light of concerns that the LA 2003 regime that did not give local communities sufficient powers to control where lap-dancing clubs were established. In September 2008, following the consultation, the then Home Secretary announced the Government's intention to give local people a greater say over the number and location of lap-dancing clubs in their area.

Policing and Crime Act 2009

43. In 2008, the Government signalled that it would bring forward new legislation which reclassified lap-dancing clubs as *"sexual entertainment venues"* and brought them within the same licensing regime as a *"sex cinema"* or a *"sex shop", i.e.* under Schedule 3 of the LGMPA 1982. Section 27 of the Policing and Crime Act 2009 ("PCA 2009") amended the definition of *"sex establishment"* in paragraph 2 to Schedule 3 of the LGMPA 1982, to include a *"sexual entertainment venue"* ("SEV"). A *"sexual entertainment venue"* is defined by paragraph 2A as any premises at which *"relevant entertainment"* is provided before a live audience for financial gain of the organiser or the entertainer. *"Relevant entertainment"* is defined as *"any live performance or any live display of nudity which it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)"* (paragraph 2A(2)). It is common ground that the definition of a *"sexual entertainment venue"* in paragraph 2A includes lap-dancing clubs such as The Lodge.

Home Office Guidance to 'Sexual Entertainment Venues'

44. In the Ministerial Foreword to the Home Office's March 2010 'Sexual Entertainment Venues' Guidance, Alan Campbell MP, Parliamentary Under-Secretary of State for Crime Reduction explained that the new measures, if adopted by local authorise, would give local people *"a greater say over where and how many lap-dancing clubs open and operate in their neighbourhoods"*. The Home Office Guidance continued:

> *"1.3 Section 27 gives local authorities more powers to control the number and location of lap-dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap-dancing clubs and similar venues in their area."*

45. Local authorities had the option of adopting Schedule 3 as amended so as to give effect to the new regime in their area. By a resolution passed on 19th April 2010, Oxford City Council resolved to adopt the amended Schedule 3 to the LGMPA 1982. Accordingly, persons wishing to operate an SEV within the city bounds had henceforth to apply for a licence under the LGMPA 1982, and not the LA 2003 regime.

46. Previously, under the LA 2003 regime, licences had been of indefinite duration. Under the LGMPA 1982, however, in common with other *"sex establishments"*, licences for lap-dancing clubs can only be granted for a maximum of a year and therefore have to be renewed at least annually. Paragraph 9 of Schedule 3 provides:

> *"9(1)…[A]ny licence under this Schedule shall, unless previously cancelled ...or revoked…, remain in force for one year or for such shorter period specified in the licence as the appropriate authority may think fit."*

Statutory grounds for grant or renewal or refusal

47. Paragraph 8 of Schedule 3 gives appropriate authorities the power to grant or renew SEV and draws no distinction between fresh applications and renewal applications. The statutory grounds for grant or renewal or refusal are set out in paragraph 12 of Schedule 3. Paragraph 12(2)(a) provides that the authority may refuse an application for the grant or renewal of a licence on one or more of the grounds specified in paragraph 12 (3) which provides as follows (emphasis added):

> *"(3) The grounds mentioned in sub-paragraph (2) above are—*
>
> *(a) that the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;*
> *(b) that if the license were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;*
> *(c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined in 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
(b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment."

48. The Home Office Guidance stated that *"the relevant locality"* does not have to be a clearly pre-defined area and local authorities were free to conclude that it simply refers to *"the area which surrounds the premises"* (paragraph 3.36).

49. By virtue of the provisions of paragraph 27 of Schedule 3, a distinction is drawn as regards appeals between (i) refusals on the grounds specified in paragraph 12(3)(a) and (b) above which are subject to appeal to a magistrates' court and then a crown court and (ii) refusals on the grounds specified in paragraph 12(3)(c) and (d) above are subject only to review by the High Court. In my judgment, Mr Bhose QC is right to suggest that the differing appeal treatment flags up Parliament's intention to give local authorities a wide discretion under grounds (c) and (d) without unnecessary supervisory interference of the courts.

THE GENERAL PRINCIPLES

50. The following general principles can be derived from the authorities regarding the licensing of *"sex establishments"*:

(1) Local authorities are granted a very wide statutory discretion to decide whether or not a licence should be granted (*per* Collins J in *R v Newcastle Upon Tyne City Council ex p. The Christian Institute* (unreported), 5th September 2000) at [17].

(2) Local authorities can take into account *"any strong body of feeling in the locality"* which objects to the existence of a sex shop there (although this does not include moral objections to its activities) (*per* Collins J in *The Christian Institute (supra)*, at [21].

(3) The legislation expressly contemplates that the circumstances in which a license has been granted or renewed may change and there can be no expectation of annual renewal (*per* Turner J in *R v LB Wandsworth ex p. Darker Enterprises Limited* (1999 WL 478089)).

(4) Local authorities have *"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"* (under criteria (d)(i)). This imports *"a significant evaluative power"* at two levels: first, in assessing whether the grant or renewal of the licence would be *"inappropriate"* (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) (*per* Sales J in *R (KVP ENT Limited) v South Bucks District Council* [2013] EWHC 926 (Admin), at [12].)

(5) There is no radical conceptual divide between the first two criteria under sub-paragraph (d), *i.e.* (i) "*the character of the relevant locality*" and (ii) "*the use to which any premises in the vicinity are put*". Criteria (i) is a concept calling for "*a compendious and general evaluative judgment to be made by the authority*", having regard to a range of factors which may be relevant to that question, including not least the use to which properties within the relevant locality happen to be put. Criteria (ii) simply provides an additional ground for refusal if, *e.g.*, it cannot be said that it would be inappropriate to grant a licence given the *general* character of the locality, but the use of particular premises within the vicinity does give cause for concern, *viz. e.g.* a church, or primary school (*per* Sales J in *KVP ENT Limited,* at [21] and [23].)

(6) Considerations inherent in paragraph 12(3)(d) were intended by Parliament to be considerations for the local authority's *own* evaluative judgment, subject only to this court's supervisory jurisdiction on a claim by way of judicial review (*per* Sales J in *KVP ENT Limited* at [15]). This follows from the omission of a statutory right of appeal to the magistrates in relation to sub-paragraph (d) (see above).

51. The strength of the new regulatory regime and the wide discretion afforded to local authorities regarding the licensing of lap-dancing clubs may be one reason why the Claimant's main ground of challenge is confined to a 'reasons' challenge, which I turn to consider next.

GROUND (1): 'REASONS' CHALLENGE

52. There is a statutory duty to give reasons when refusing a license under Schedule 3. Paragraph 10(20) provides:

> *"10(20) Where the appropriate authority refuse to grant, renew or transfer a licence, they shall…. give him a statement in writing of the reasons for their decision."*

Claimant's submissions

53. Mr Gerald Gouriet QC and Mr Jeremy Phillips, Counsel for the Claimant, submitted in summary that: (i) The 2012 Sub-Committee were under a duty to explain their reasons for departing from the reasoning given by the 2011 Sub-Committee on the "*principle important controversial issues*" (a phrase used by Lord Brown in *South Buckinghamshire District Council v Porter (No. 2) [2004] UKHL 33* at paragraphs [35]). (ii) The 2012 Reasons were inadequate and left the Claimant in the dark as to why renewal of the license was refused and what the Claimant had to do in the future to get another licence. (iii) The case was on all fours with *Dunster Properties Ltd v. The First Secretary of State* [2007], a planning case where Court of Appeal held that a planning decision was deficient for failing to explain its departure from the reasoning given in an earlier planning decision. (iii) The well-known *dictum* of O'Connor LJ in *R v Birmingham City Council*

ex parte Sheptonhurst Limited [1990] 1 All ER 102 *"[i]f the reasons given are rational, that is to say properly relevant to the ground for refusal, then the court cannot interfere"* is not germane since in that case there was no reasoned previous decision from which to depart, merely an unreasoned grant. Mr Gouriet QC submitted that his client was understandably bemused and at a loss to understand why his application for an SEV licence in relation to Oxpens Road was granted in 2011 but not renewed in 2012.

Claimant's specific complaints

54. Mr Gouriet QC submitted that there was no proper engagement by the 2012 Sub-Committee with the reasons given by the 2011 Sub-Committee. He did not go as far as contending that the 2012 Sub-Committee were obliged to conduct a particularised point-by-point analysis of the 2011 Sub-Committee's Reasons. He did, however, submit that the 2012 Reasons were deficient in that they failed to deal with *"principal important controversial issues"* and, in particular, the following-mentioned in paragraphs 6 and 9 of the 2011 Reasons: (i) the Claimant's agreement to later hours of opening of The Lodge, *i.e.* 23:00 hours rather than 21:00 hours, (ii) the risk of children and young people coming into contact with the premises being said to be *"very low"*, (iii) the good track record of the Claimant in operating a SEV in Oxford, (iv) the Claimant's willingness to operate *"discretely"*, (v) the Claimant's willingness to operate *"anonymously"*, with no external indications as to the nature of the entertainment taking place.

Analysis

55. I turn first to consider the authorities on reasons relied upon.

Ex parte Sheptonhurst Limited [1990]

56. The main question of law for determination in *R v Birmingham City Council ex parte Sheptonhurst Limited* [1990] 1 All ER 1026 was whether the discretion to refuse to *renew* a licence was different from the discretion to refuse to *grant* a licence. The applicants argued that the renewal of a licence could not be refused on ground 3(d)(i) unless there had been some change in character of the relevant locality. Mann LJ sitting at *nisi prius* (as an additional judge of the Queen's Bench Division) held that it was not perverse to refuse to renew a licence where there had been no change in the character of the relevant locality or in the use to which any premises in the locality are put. Mann LJ observed (at page 8):

> *"The legislature must be taken to have known that a local authority is a body of changing composition and shifting position, 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."*

57. The Court of Appeal (O'Connor, Croom-Johnson and Balcombe LJJ) agreed with Mann LJ and held that local authorities are entitled to take *"a fresh look"* at the matter. Accordingly, it is open to a local authority to refuse to renew a licence even where no change in the character of the relevant locality or in the use to which any premises in the locality are put.

58. The following propositions emerge from the key passage in the judgment of O'Connor in *ex p. Sheptonhurst Limited (ibid)* (at pages 10-11):

(1) Parliament has drawn no distinction between grant and renewal of licences and provided that a licence shall not last for more than a year; and it follows there is no fetter on the discretion of the local authority in the case of renewal.

(2) There is, however, a distinction between applications for grant and renewal in 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.

(3) 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.

(4) If the reasons given are rational, that is to say *"properly relevant to the ground for refusal"*, then the court cannot interfere.

(5) The requirement to give reasons, is the true protection for a licence holder applying for renewal against a wayward and irrational exercise of discretion.

(6) The fact that in previous years the licensing authority did not choose to invoke those reasons for refusing to grant or renew the licence does not make the reasons irrational.

Dunster Properties Ltd v. The First Secretary of State [2007]

59. Mr Gouriet QC relied upon *Dunster Properties Ltd v. The First Secretary of State* [2007] EWCA Civ 236. This was a planning case. It concerned an application for planning permission for a house extension which involved enclosing a gap above the house in question. The local authority objected on the grounds that eliminating the gap would have eroded the contribution by a neighbouring terrace to the conservation area. At the first planning application in 2002, the planning officer dismissed the objection on the grounds that it was a sympathetic extension and would not erode the contribution by a neighbouring terrace to the conservation area. At a second planning application in 2005, however, a second planning officer effectively upheld the objection and said the gap must be preserved, but refused when requested to give any reasons for differing from the previous decision on the point. The Court of Appeal (Chadwick, Lloyd and Burnton LJJ) held that the second planning officer had failed to grasp the *"intellectual nettle"* of the disagreement with the first planning officer which was needed if he was to have *"proper regard"* to the previous decision and quashed the second decision (see Lloyd LJ at pages 8-9).

60. In my judgment, *Dunster Properties* is of limited assistance in the present case. First, because it was a pure planning case and not a licensing case. In the planning context, the importance of consistency in planning decisions is self-evidently important (*c.f.* the citation by Lloyd LJ in *Dunster* at [12]). Whereas, in the sexual entertainment venue licensing context, local authorities are entitled to take a *"fresh look"* at the matter and effectively entitled to change their mind from one year to the next (see above). Second, because it was a decision on its own peculiar facts. It involved a positive refusal by the second planning officer to give any reasons for differing from the previous decision notwithstanding a specific request at the time to do so. Third, because it involved a static matter - namely, the aesthetic significance of retaining a gap above a house. The present

case, in contrast, involves consideration of dynamic matters, namely, the appropriateness of licensing a lap-dancing club in a particular locality and its impact on that community.

South Buckinghamshire District Council v Porter (No. 2) [2004]

61. There is no particular magic or complication about the scope of the duty to provide reasons. As Sales J said in *R (KVP ENT Limited) v South Bucks District Council (supra)* at [69], the basic principles in relation to the obligation to provide reasons generally are set out in the speech of Lord Brown in *South Buckinghamshire District Council v Porter (No. 2) [2004] UKHL 33* at paragraphs [35] and [36] (a planning case), where Lord Brown said this:

> *"35. It may perhaps help at this point to attempt some broad summary of the authorities governing the proper approach to a reasons challenge in the planning context. Clearly what follows cannot be regarded as definitive of exhaustive nor, I fear, will it avoid all need for future citation of authority. It should, however, serve to focus the reader's attention on the main considerations to have in mind when contemplating a reasons challenge and it generally its tendency is to discourage such challenges I for one would count that a benefit.*
>
> *36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."*

Decision on 'reasons' challenge

62. In my view, there is no substance in the Claimant's reasons challenge. In my judgment, when read (a) fairly, (b) as a whole and (c) against the background of the representations made at the hearing by the parties, the 2012 Reasons were intelligible, adequate and enabled the informed reader to understand the principal important controversial issues and why the application for renewal had been refused, when previously a licence had been granted. Furthermore, in my judgment, the 2012 Reasons were also "*properly relevant to the ground for refusal"* (*i.e.* rational in the *Sheptonhurst* sense above) and cannot be interfered with.

Analysis of 2012 Reasons

63. A fair reading and analysis of the 2012 Reasons is as follows. The ground for refusal is to be found in paragraph 5: *"…renewal of the license would be inappropriate having regard to the character of the relevant locality or use to which premises in the vicinity are put"*, i.e. the ground of refusal at paragraph 12(d) of Schedule 3). Seven separate reasons for reaching this conclusion are set out by the 2012 Sub-Committee in the bullet points (see above). The following observations are pertinent to each bullet point:

    (1) It is clear from the first bullet point in the 2012 Reasons that the differently constituted 2012 Sub-Committee came to a different conclusion from the 2011 Sub-Committee when concluding that "*the Resolution of 19/04/2010 on generally inappropriate locations was engaged in respect of the Ice Rink and College*". The members of the 2012 Sub-Committee were entitled to take a fresh look and a different view of the matter. As Mr Bhose QC points out, had the 2012 Reasons ended there without more, the Claimant's might have had some reason to complain. But the 2012 Reasons went on to give six further reasons (see below).

    (2) The proximity of the Oxpens car and coach car park only merited a glancing reference in the 2011 Reasons (paragraph 5). In contrast, however, the second bullet point in the 2012 Reasons made the point that the Oxpens car and coach car park brought *"many tourists, visitors and local residents into the area of the premises at all hours"* and the 2012 Sub-Committee clearly regarded this factor as significant enough to justify their view that a SEV in the locality was therefore "*not appropriate*".

    (3) The 2011 Reasons expressed the view that the residential areas of St Thomas and St Ebbe's were not sufficiently proximate to engage The Resolution (paragraph 7). In contrast, however, third bullet point in the 2012 Reasons made the practical point that the Oxpens Road was *"a busy transport link and pedestrian route for visitors and residents"* living in the St Thomas and St Ebbe's areas and the 2012 Sub-Committee clearly regarded this factor as significant enough to justify their view that a SEV was *"not appropriate in such a well used location"*.

    (4) The 2011 Reasons make no mention of any increase in student accommodation in the area. In contrast, however, the fourth bullet point in the 2012 Reasons expressly referred to the fact that the development of student housing at Luther Court, Mill Street and Park End Street and the fact that this meant *"an increased use of the locality by young and possibly vulnerable students as a route to and from their accommodation"*. (The Claimant brings a separate challenge in respect to this evidence – see further below).

    (5) The fifth bullet point in the 2012 Reasons highlighted the 2012 evidence regarding the change in the character of the vicinity *"brought about by the opening of the premises"*.

    (6) The sixth bullet point in the 2012 Reasons highlighted the 2012 evidence that operation of the lap-dancing club had created *"a hostile atmosphere in the locality"* and *"a heightened fear of the risk of sexual violence*". The 2012 Sub-Committee went on to express the view that, whilst there was no evidence of any actual violent incidents, the heightened fear reported was at least *"in part"* due to the existence of the lap-dancing club and they were *"mindful"* of the Council's duty to take reasonable steps to prevent crime and disorder.

(7) The seventh bullet point in the 2012 Reasons referred to the 2012 anonymous and hearsay evidence of incidents of harassment by users of The Lodge toward a user of the Ice Rink and took *"some account"* of them.

64. It should be noted that bullet points (2) to (7) were new or substantially new matters, and bullet points (4) to (6) related to entirely fresh factors or circumstances, namely the reported effect of the operation of the club on the area in the previous 12 months. Individually, they each represented significant, relevant, stand-alone considerations militating against an SEV licence. Cumulatively, in my judgment, they represented a reasonable, comprehensive and comprehensible catalogue of reasons explaining objectively a change of heart from the 2011 decision and a refusal to renew in 2012. The 2012 Sub-Committee expressly acknowledged that its findings were *"a departure"* from the Council's decision to grant the license in July 2011 but found that as a differently constituted Sub-Committee *"with the benefit of evidence concerning the operation of the premises over the last year"* they were entitled to reach a different conclusion.

65. There was no reason why the 2012 Reasons needed to comment *seriatim* on the 2011 Reasons, let alone dissect the individual points in paragraphs 6 and 9 relied upon by the Claimant. The 2012 reasons for refusal were clear, stand-alone and essentially new reasons, including evidence about the adverse impact of The Lodge on the area in the preceding 12 months. I reject Mr Gouriet QC's submission that the Claimant was entitled to be non-plussed as to the reasons for refusal of his SEV licence in 2012. Applying Lord Brown's test in *South Bucks District Council v Porter (No. 2) (supra)*, in my judgment, the 2012 Reasons were intelligible and enabled the Claimant to understand why the renewal was decided against him and what conclusions were reached on the principal important controversial issues (see my analysis above).

66. In my judgment, the Claimant can have no complaint about the sufficiency of the 2012 Reasons. I dismiss the Claimant's challenge under Ground (1)

GROUND (2): IRRELEVANT AND/OR INACCURATE CONSIDERATIONS.

67. Mr Gouriet QC submitted on behalf of the Claimant that the 2012 Sub-Committee erred in taking into account an *"increasing concentration of student accommodation in the area"* because (i) incomplete developments were not relevant to assessing the present character of the area, and (ii) there was insufficient evidence to justify such a finding and any developments were 0.5 to 0.8 miles away. I reject both submissions on the law and the facts.

68. As to the law, licensing decision-makers are entitled to take into account both the present and future *"character"* of an area. There is no reason to limit the reference to *"character"* in paragraph 12(3)(d) only to the present character of the area. Indeed, it would make no sense to do so in the context of prospective licenses which were to be granted for 12 months in the future. Prospective licenses required a prospective view. The fact that an area is developing and in a continued state of change is a relevant consideration to why renewal might be inappropriate. By way of example, the Court of Appeal in *Sheptonhurst (supra)* noted in relation to the *Norwich* case that the area in question been subject to substantial change in the recent past and *"it was anticipated that*

improvement in housing would continue [and] there was potential for further shopping in the Magdalen Street area" (emphasis added) (at page 11).

69. As to the facts, there was ample evidence before to justify the conclusion the 2012 Sub-Committee reached. The fourth bullet point in the 2012 Reasons referred to *"[t]he increasing concentration of student accommodation in the area, including development of student housing at Luther Court, Mill Street and Park End St…"*. I accept the evidence of Mr Daniel Smith, that there were a number of student accommodation developments in train in the area at the time. A mixed used development at Luther Street/ Thames Street was agreed by an Oxford City Council planning committee a fortnight later on 7th November 2012. An application for a student study room development at Mill Street had been received six months before, in February 2012. A student accommodation development to in Park End Street had been submitted in 2011 (and was granted in February 2013). Construction of an extension of student accommodation at Pembroke College had been begun in 2010 or 2011 and was occupied in October 2012.

70. For these reasons, I reject the Claimant's Ground (2).

CONCLUSION

71. In the result, I dismiss the Claimant's challenge on all Grounds.