

Item No. 5	Classification: Open	Date: 18th June 2007	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – RICHWALL LTD T/A 4T4, 44 CAMBERWELL CHURCH STREET, LONDON, SE5 8QZ	
Ward(s) or groups affected:		Premises are within: BRUNSWICK PARK	
From:		Director of Environment and Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by RICHWALL LTD for a Premises Licence to be granted under the Licensing Act 2003 in respect of the premises known as: 4T4, 44 CAMBERWELL CHURCH STREET, LONDON, SE5 8QZ
2. **Notes:**
 - a) *This application forms a new application for a Premises Licence, under Section 17 of the Licensing Act 2003. The application is subject to representations from interested parties and is therefore referred to the Sub-Committee for determination;*
 - b) *Paragraphs 12 to 16 of this report provide a summary of the application for a Premises Licence under consideration by the Sub-Committee (A copy of the full application is provided at Appendix A)*
 - c) *Paragraphs 17 to 20 of this report deals with the representations received to the Premises Licence application. (A copy of the relevant representations are attached at Appendices B-F)*

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) The provision of late night refreshment
4. Within Southwark, this Council wholly administers the licensing responsibility.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are
 - a) The prevention of crime and disorder;
 - b) The promotion of public safety
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to

- a. The Act itself;
 - b. The Guidance to the act issued under Section 182 of the Act;
 - c. Secondary regulations issued under the Act;
 - d. The Licensing Authority's own Statement of Licensing Policy
 - e. The application, including the operating schedule submitted as part of the application
 - f. Relevant representations
7. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing Justices Licences, Public Entertainment Licences and Night café Licences were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licences into the relevant licences under the new system. Licences that were so converted were converted on existing terms, conditions and restrictions. The 6 August date having now passed operators are still able to apply to secure the new licences before the date upon which the new licensing regime comes into being – 24 November 2005 – but must now apply for new licences.
 8. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.
 9. Although applications submitted after 6 August 2005 no longer carry "grandfather" conversion rights, licensing authorities are directed that applicants do have an "added protection" under the law. Where an applicant seeks a Premises Licence intended to cover the retail sale of alcohol and that premises operation is currently covered by a Justices Licence, the licensing authority concerned cannot apply conditions restricting the hours at which alcohol is sold at present unless there has been a material change in the circumstances since the Justices Licence was granted, or the Police have made representations in connection with the prevention of crime.

MATTERS FOR CONSIDERATION

The Premises Licence Application

10. On the 26th of March 2007 RICHWALL LIMITED applied to this Council for the grant of a new Premises Licence in respect of the premises known as 4T4, 44 CAMBERWELL CHURCH STREET, LONDON, SE5 8QZ.
11. The proposed licensable activities are:
 - The retail sale of alcohol of all descriptions for consumption on the premises.
 - The provision of regulated entertainment.
 - The provision of late night refreshment.

Summary of the application

12. A copy of the application for the Premises Licence is attached to the report as Appendix A.
13. The application is summarized as follows:

- a. To permit live music, recorded music, performances of dance, anything of a similar description to that falling within parts (e), (f) or (g) in the application operating schedule, provision of facilities for making music, provision of facilities for dancing, provision of facilities for entertainment of a similar description to that falling within (i) or (j) in the application operating schedule between 11.00hrs and 01.00hrs the following morning on Sunday – Wednesday, and 11.00hrs to 03.00hrs the following morning on Thursday - Saturday.
 - b. To permit the provision of late night refreshment between 23.00hrs and 01.00hrs the following morning on Sunday – Wednesday, and 23.00hrs to 03.00hrs the following morning on Thursday - Saturday.
 - c. To permit the sale and supply of alcohol to be consumed on the premises between 23.00hrs and 01.00hrs the following morning on Sunday – Wednesday, and 23.00hrs to 03.00hrs the following morning on Thursday - Saturday.
 - d. The proposed opening hours of the premises are between 11.00hrs and 02.00hrs the following morning on Sunday – Wednesday, and 11.00hrs to 04.00hrs the following morning on Thursday - Saturday.
14. The Premises Licence application form provides the applicant's operating schedule. Parts E, F, G, H, J, K, L, M and O set out the proposed operating hours in full, with reference to the four licensing objectives as stated in the Licensing Act 2003.
15. Part P of the variation application provides any additional steps that are proposed by the applicant to promote the four licensing objectives, as set out in the Licensing Act 2003. In the event that the Sub-Committee should approve the application any proposals stated here must become licence conditions.

Designated Premises Supervisor

16. The proposed designated premises supervisor (DPS) as per the application is Mr ADEWALE OGUNYOMADE. Mr OGUNYOMADE holds a Personal Licence issued by Croydon Council

Representations From Interested Parties

17. There are five representations lodged by interested parties.
18. Copies of the representations are attached as Appendices B – F.
19. The representations are primarily concerned with the possibility of noise nuisance and anti social behaviour arising from the premises, and state that such matters are a problem for the local vicinity in general due to the number of similar establishments already in operation.

Representations From Responsible Authorities

20. The Councils Noise and Air Quality Team (N+AQ) had raised a representation in respect of the application. Consequent to discussions with N+AQ the applicant agreed to conditions proposed by N&AQ. Therefore the representation was withdrawn and the matter is considered conciliated. For information purposes only a copy of the representation and documentation confirming the conciliation in respect of the representation is included as Appendix G.

The Local Vicinity

21. A map of the local vicinity is attached at Appendix H. The premises is identified as a black diamond at the centre of the map. For the purposes **of scale only** the circle on the map has a 100-metre radius. The following licensed premises are also shown on the map, each premises is licensed for the supply of alcohol and either the provision of regulated entertainment and / or late night refreshment to the following hours:

- **The Castle P.H**, 65 Camberwell Church Street, London SE5 (Mon – Thurs - 00.30; Fri & Sat - 03.00 & Sun – 00.30)
- **Bar Room Bar P.H.** 26 Grove Lane, SE5 (Mon – Thurs & Sun – 23.00; Fri & Sat - 00.30)
- **Funky Munky P.H**, 25 Camberwell Church Street, London SE5 (Mon-Wed & Sun - 00.30 Thurs - Sat - 02.30)
- **Dark Horse P.H**, 16 Grove Lane, SE5 (Mon – Thurs & Sun - 00.30, Fri & Sat - 01.30)
- **The Cube - Basement Club**, 58a Camberwell Church Street, London SE5 (Mon – Wed, 09.00-01.00;Thurs 09.00 - 0200; Fri & Sat, 09.00 - 03.00; Sun 09.00 -23.00)
- **The Hermits Cave P.H**, 28 Camberwell Church Street (Sun-Wed 10.00-00.30; Thurs-Sat, 10.00 - 02.30; Sun, 10.00 - 1.30)
- **Miura Bar & Kitchen**, 54 Camberwell Church Street, (Sun – Wed, 11.00 – 00.00, Thu – Sat, 11.00 – 01.00)
- **The Vineyard**, 3 Camberwell Grove, London, SE5 8JA (Mon – Sat, 11.00 – 00.00, Sun, 12.00 – 23.30)
- **The New Dome Hotel**, 51 Camberwell Church Street, SE5 8TR (Mon – Sat, 10.00 – 00.00, Sun, 10.00 – 23.30)
- **Camberwell Oriental**, 49 Camberwell Church Street, SE5 8TR, (Mon – Sat, 10.00 – 23.00, Sun, 12.00 – 22.30)
- **Safa Restaurant**, 22 Camberwell Church Street, SE5 8QU (Mon – Sat, 10.00 – 00.30, Sun, 12.00 – 00.00)
- **Camberwell Superstore**, 34 Camberwell Church Street, SE5 8QZ (Mon – Sat 08.00 – 23.00, Sun 10.00 – 22.30)
- **Hoa Viet**, 42, Camberwell Church Street, SE5 8QZ (Mon – Sat, 11.00 – 00.30, Sun, 12.00 – 23.30)

Shown on the map and licensed to operate solely as Late Night Refreshment premises are:

- **Kentucky Fried Chicken**, 35 Camberwell Church Street, SE5 (Sun – Sat, 23.00 - 02.00)
- **Morley’s Fast Food**, 56 Camberwell Church Street, SE5 (Mon – Thurs, 23.00 - 02.00 and Fri & Sat, 23.00 - 03.30)
- **Patty Island**, 40 Camberwell Church Street, SE5 (Tues – Sat, 23.00 - 02.00)
- **Rumeli Fish & Chips**, 27 Camberwell Church Street (Sun – Wed, 23.00 – 02.00, Thur – Sat, 23.00 – 03.00)

Recent operation of the premises

22. There are no records in regards to the recent operation of the premises.

Additional information on the past operating history of the premises

23. The premise has had no licence granted to it under either the Licensing Act 1964 (repealed) or the Licensing Act 2003.

Noise and Air Quality

24. There are no records in respect of noise and air quality in regards to the operation of the premises.

Southwark Council Statement of Licensing Policy

25. Council Assembly approved the Southwark Statement of Licensing Policy on 8 December 2004. Sections of the Statement that are considered to be of particular relevance to this application are
- a. Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
 - b. Section 5 which sets out the Council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
 - c. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
 - d. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
 - e. Section 8 provides general guidance on ensuring public safety including safe capacities
 - f. Section 9 provides general guidance on the prevention of nuisance
 - g. Section 10 provides general guidance on the protection of children from harm.
26. The purpose of Southwark's Statement of Licensing Policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the Sub-Committee when considering the applications. However, the Sub-Committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

RESOURCE IMPLICATIONS

27. A fee of £190.00 has been paid by the applicant in respect of this application being the statutory fee payable for a premises within non-domestic rateable value Band B.

CONSULTATIONS

28. Consultation has been carried out in respect of this application in accordance with the Licensing Act 2003. A public notice was published in the 'South London Press' and a similar notice exhibited at of the premises as per the stipulations of the Act.

EQUAL OPPORTUNITIES IMPLICATIONS

29. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

CONCURRENT REPORT BY THE BOROUGH SOLICITOR – LEGAL ISSUES

30. The Sub-Committee is asked to determine the application for a Premises Licence under Section 17 of the Licensing Act 2003.

31. The principles that Sub-Committee members must apply are set out below.

Principles for making the determination

32. The general principle is that applications for Premises Licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

33. Relevant representations are those which

- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn or not, in the opinion of the relevant licensing authority, frivolous or vexatious.

34. If relevant representations are received then the Sub-Committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to

- Add to, omit, and/or alter the conditions of the licence or,
- Reject the whole or part of the application for variation

Conditions

35. The Sub-Committee's discretion is thus limited. It can only modify the Conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.

36. The four licensing objectives are

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of nuisance; and
- d. The protection of children from harm.

37. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.

38. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.

39. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

40. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

Hearing Procedures

41. Subject to the Licensing Hearing regulations, the Licensing Committee may determine its own procedures. Key elements of the regulations are that:

- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations
- Members of the authority are free to ask any question of any party or other person appearing at the hearing
- The committee must allow the parties an equal maximum period of time in which to exercise their rights to
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
- The committee shall disregard any information given by a party which is not relevant
 - To the particular application before the committee, and
 - The licensing objectives.
- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

42. This matter relates to the determination of an application for a Premises Licence under section 17 of the Licensing Act 2003. Regulation 26(1)(a) requires the Sub-Committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the Licensing Sub-Committee

43. Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
44. Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct

themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

45. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
46. The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
47. Members will be aware of the Council's Code of Conduct that requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

Guidance

48. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Background Papers		Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.		The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748
Lead Officer	Gill Davies, Director of Environment & Housing		
Report Author	Wesley McArthur, Licensing Enforcement Officer		
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER			
Officer Title	Comments Sought	Comments included	
Borough Solicitor & Secretary	Yes	Yes	
Executive Member	No	No	
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