

Item No.	Classification: <b>Open</b>	Date: <b>13 October 2003 on</b>	Meeting <b>Licensing Committee</b>
Report title:	<b>Wicked Night Club Bar &amp; Restaurant, 4 Tooley Street, SE1</b>		
Ward(s) or groups affected:	<b>Riverside</b>		
From:	<b>Director of Environment and Leisure</b>		

## **PURPOSE**

1. To consider various public entertainments related applications (detailed below) made by Brian and Caroline Sheridan in respect of the premises known as the Wicked Night Club Bar and Restaurant at 4 Tooley Street, SE1.

## **RECOMMENDATIONS**

2. Firstly, that the Committee considers whether to grant
  - (a) The application for the transfer of the premises annual weekday and Sunday public music and dancing licence; and
  - (b) The application for the renewal of the same licence for the period from 1 April 2003 through to 31 March 2004.
3. Secondly, that subject to the Committee's approval to the matters under 2 (a) and 2(b) above, the Committee considers whether to grant the following applications
  - (a) For a waiver of the Council's standard public entertainment licence additional condition SX so as to allow striptease or similar entertainment involving nudity to take place upon the premises;
  - (b) For a partial waiver of the Council's standard public entertainment licence additional condition GO relating to the keeping of good order upon the premises, so as to allow consenting adult customers to participate in sexual intercourse upon the premises; and
  - (c) For a Sex Establishment Licence.
4. *Notes: The premises are currently licensed to provide public music and dancing entertainment on each of the days Monday to Saturday through to 6am on the day following and on Sunday through to 3am on the day following.*
5. *Six local businesses, the Dean of Southwark Cathedral, the Chief Executive Officer of London Bridge Hospital, and the Metropolitan Police oppose the matter of the transfer application under 2(a) above.*
6. *The matter of the renewal application under 2(b) above is opposed by six local businesses, the Dean of Southwark Cathedral, the Chief Executive Officer of London*

*Bridge Hospital and as the Metropolitan Police have objected to the transfer there is the implication that they are opposed to the renewal also.*

7. *The matters of both the waiver applications under 3(a) and 3(b) above are opposed by 9 local businesses, the Dean of Southwark Cathedral, the Chief Executive Officer of London Bridge Hospital, The Bishop of Woolwich, the Diocese of Southwark, the Metropolitan Police and 76 other objectors who are signatory to a pro-forma letter.*
8. *All objectors to the waiver applications under 3(a) and 3(b) above have been taken to be opposed to the application for a sex establishment licence at 3(c) also.*
9. ***In considering any application for a public entertainments licence the Committee must consider each case on its merits. In doing so, the Committee will take into account all relevant considerations including: -***
  - i) ***Noise emissions from the premises in the event that a licence is granted;***
  - ii) ***Likely disturbance of residents caused by patrons leaving the premises;***
  - iii) ***Fitness of the applicant to hold a licence;***
  - iv) ***Suitability of the premises and its location; and***
  - v) ***Any other relevant matters, as appropriate.***

## **BACKGROUND INFORMATION**

10. The premises, originally operating under the name of "The Dragons Lair", was first licensed by the Council for public music and dancing entertainment in August 1996. The premises were originally licensed for public music and dancing on each of the days Monday to Wednesday to 1am on the day following, on Thursday to 2am on the day following and on Friday & Saturday to 3am on the day following
11. In October 1998 the licence was transferred to a Mr Richard Becker (who currently retains an interest in the business) and one other.
12. In January 2001 there was a further transfer of the licences to the Company, Robot City Limited. Mr Becker was among the Directors of Robot City Limited.
13. The premises operating hours under the licence were extended to the current licensed hours as set down in paragraph 4 in June 2001. The application was not opposed although additional management controls were imposed upon the licence at this time at the request of the Police.
14. The licences were renewed, without opposition, through to March 2002.
15. However, an application by Robot City Limited for renewal of the premises licence for the year April 2002 to March 2003 was opposed by six local businesses, the Dean of Southwark Cathedral and the Chief Executive Officer of London Bridge Hospital. The grounds of opposition related to 'environmental damage, noise and litter, anti-social behaviour, crime and disorder, parking problems, and disregard for licence conditions in the operation of the premises'.

16. The Council's conciliation service was utilized but was not successful in reaching a negotiated conclusion between Robot City Ltd and objectors. The application was set down for hearing by the Council's Licensing Committee on 2 December 2002.
17. However, a letter was received from Brian and Caroline Sheridan on 21 November 2002 informing the Council that Mr Sheridan had leased the premises from Mr Becker. Mr & Mrs Sheridan also requested that the meeting of 2 December 2002 be postponed and rearranged for a later date. Given the change of ownership of the premises this request was granted. All parties were informed accordingly. Mr Becker retains an interest in the premises and has indicated that should Mr Sheridan's transfer application be refused he will wish to renew the licence.
18. On 28 November 2002, a meeting was held between the new owners, Southwark Police and the Licensing Service. Mr and Mrs Sheridan spoke of their future intentions for the club and stated that they would be relaunching the venue, having dispensed with all music promoters previously connected with the operation of the club. Mr and Mrs Sheridan stated that the new operation would include the staging of fetish nights. The Sheridans were informed that they would need to apply for transfer of the premises public entertainment licence into their name and that in doing so they would inherit the ongoing application for renewal and the objections to it. Mr and Mrs Sheridan were offered the opportunity for a further stage of conciliation based on the change in circumstances. This was not taken up at the time as the applicants wished to discuss the matter with their Solicitor, Poppleston Allen.
19. On 18 December 2002 the Licensing Service were advised by a local resident that Cynthia's was being advertised on the internet and that the premises had been renamed as Club Wicked. It was further stated that the web site advertised a 'masked ball' for the New Years Eve suggesting that the evening was to be a themed 'fetish night'.
20. On 24 December 2002 the Licensing Unit received an email from the Solicitors acting on behalf of several of the objectors advising that Mr Sheridan had been attempting to contact the objectors individually. We were also advised that the objectors had invited Mr Sheridan to attend a meeting at Southwark Cathedral on 10 January 2003 and that an officer from the Licensing Service was also invited.
21. At this meeting Mr and Mrs Sheridan looked to introduce the new operation of the premises. At the conclusion of the meeting, the objectors present advised that they would be continuing with their objections to the renewal of the licence and that the original grounds of opposition remained. They also advised that they would be presenting new evidence which suggested that Mr and Mrs Sheridan were not 'fit and proper' to hold an entertainments licence.
22. Accordingly, the matter was set down for hearing by the Council's Licensing Committee on 18 February 2003.
23. An application to transfer the premises public entertainments licence to Brian and Caroline Sheridan was submitted to the Licensing Service on 23 January 2003.
24. The Commissioner of Police for the Metropolis opposed the application for transfer of the premises licences on the grounds that the applicants are not fit and proper persons to hold a licence. Other existing objectors to the renewal of the licence added their opposition.

25. On 3 February 2003 documentation was received from the Solicitor acting for various of the local community, Winckworth Sherwood, giving evidence in support of the objections to the transfer and renewal. Copies of the documentation were forwarded to Mr & Mrs Sheridan and Poppleston Allen. Poppleston Allen requested that the meeting of 18 February 2003 be postponed to a later date in order to consider the documentation which included new evidence. In the interests of natural justice the request was granted.
26. The hearing of the applications and related opposition was then set down for hearing by the Licensing Committee on 24 March 2003.
27. During the day of 18 February 2003 officers from the Licensing Service met with Mr and Mrs Sheridan for the purposes of holding a new licensee induction meeting. During the course of the meeting further applications for various consents were discussed including the possibility of applying for a sex establishment licence.
28. On 20 February 2003 advice was received from Poppleston Allen that they were no longer acting as representatives for Mr and Mrs Sheridan. Poppleston Allen were replaced by Jeffrey, Green & Russell.
29. On 6 March 2003 Mr and Mrs Sheridan submitted a letter providing further information in support of their applications for the information of objectors. This was circulated to all objectors but did not result in the withdrawal of any objections.
30. On 7 March 2003 the Council received a written request from the Police asking for a delay of the hearing set down for 24 March 2003 on the basis that relevant matters were still being investigated and that this prevented all necessary paperwork from being submitted at this time and that Police legal representation was still being arranged. Jeffrey Green Russell did not object to a further postponement and the meeting was cancelled.
31. On 14 March 2003 several applications were made to the Council by the Sheridans. These comprised: -
  - (a) An application for renewal of the premises public music and dancing licences for the year commencing 1 April 2003;
  - (b) An application for a films licence to exhibit BBFC / Council certificated films only;
  - (c) An application to extend the licensed area to take in arches adjoining the premises (but not to include the licensed capacity at this stage);
  - (d) An application to part waive the licence condition GO relating to the keeping of good order upon the premises (upon its introduction as part of the terms of the premises public music and dancing licence as of 1 April 2003). The partial waiver applied to customers engaging in sexual intercourse upon the premises; and
  - (e) A draft application for a Sex Establishments Licence in respect of the premises so as to allow both striptease and similar entertainment and to enable a fetish fair to be staged at intervals upon the premises.
32. Public consultation on the applications concerning the partial waiver of the good order condition and the sex establishments licence were not undertaken immediately.

Payment of fees was not made immediately and discussions on the applications continued. Before consultation took place the venue management decided to drop the proposal to hold fetish fairs at the premises. As the provision of striptease and other similar entertainment can be covered under the premises public music and dancing licence by a waiver of the additional condition SX the application for the sex establishments licence was withdrawn and was replaced with a second application for a waiver in respect of the SX condition.

33. As March 2003 passed the undetermined application for renewal of the premises licence for the year 1 April 2002 to 30 March 2003 was superseded by the application for renewal of the licence for the year commencing 1 April 2003. Objections to the first renewal of the licence were then applied to the renewal of the licences for the current year.
34. The applications for the waivers of licence conditions were advertised in accordance with the Council's normal procedures. The applications for a films exhibitions licence and for the extension of the licensed area were not widely consulted upon as these do not impact upon the local community. Opposition to the waiver applications was attracted from some 91 objectors detailed in paragraph 7. The grounds of opposition were considered not to be ones that could be conciliated upon and the matters were added to those awaiting determination by the Council's Licensing Committee and were set down for hearing on 20 May 2003.
35. This date also was cancelled. Winckworth Sherwood notified that their Counsel was not available and the Police submitted that the hearing of matters by the Licensing Committee should be postponed until after an opposed liquor licence application in respect of the premises had been considered by the Licensing Justices at Camberwell Magistrates Court. No date for conclusion of this matter could be provided and it was estimated that it would be several months before the matters were determined. While the meeting set down for 20 May 2003 was cancelled the Council could not accede to the Police request for an indefinite postponement. A commitment was given to look to stage the hearing before the end of July 2003.
36. On the 25 June 2003, a pre-hearing meeting took place at Southwark Legal Services between the representatives for the applicant, the police; the objectors and the Licensing Service. The aim of this was to agree a procedure and an exchange of information that would clarify the applicant's and objectors' cases so as to ensure a focused and comprehensible hearing. It was agreed that a four day hearing would be scheduled for September or October and if possible this hearing would run on consecutive days and take place during the day.
37. The hearing dates were set for 13, 14, 16 and 20 October 2003. A timetabled schedule was agreed outlining the exchange of documentation between the parties. Under the timetable the applicant would submit legal submissions, witness statements, and disclose all documents to be relied upon during the hearing along with skeleton arguments to be sent to the objectors and Constitutional Support on the 26 September 2003, 17 days prior to the hearing. All the objectors who wish to make oral submissions to the committee in support of their letter of objection were to file witness statement to Constitutional Support by 1 October 2003. The representatives for the objectors, namely, the Metropolitan Police and Southwark Cathedral, to submit legal submissions, skeleton arguments and disclosure of documents to be relied upon during the hearing to be sent to each other the applicant's representative and Constitutional Support by 3 October 2003. At the time of writing of this report there is some slippage in the timetable and further documentation will be circulated separately to this report.

38. On 3 September 2003, a further meeting was held between Mr Sheridan and officers from the Council's Licensing and Legal Services at which Mr Sheridan gave further detail on the current and future proposed operation of the premises. Subsequent to this meeting Counsel's advice was sought by the Council. It was decided that in order that full consideration can be given by the Committee to the range of licensable activities proposed at the premises, an application for a Sex Encounter Establishment Licence should be re-submitted. This application was consequently made by Mr Sheridan on 8 September 2003. For the purposes of expediency, it has been taken that all parties who are opposed to the grant of waivers of the Council's Good Order and Striptease conditions are also opposed to the grant of a sex encounter establishment licence and on the same grounds.

## **KEY ISSUES FOR CONSIDERATION**

### **The Operation of the Premises**

39. The premises, which are situated at 4 Tooley Street, SE1, comprise a number of inter-connecting railway arches located directly under London Bridge. The Main entrance / exit to / from the premises is located on Tooley Street, with alternative emergency escape provision being provided from the rear of the premises back onto a separate exit located on Tooley Street and also into Cathedral Courtyard. The premises features a reception area / cloakroom, lounge area, bars with dance floor, 48 seat restaurant and sanitary accommodation. The interior of the premises can not be viewed from the street. Layout plans of the premises will be exhibited at the meeting.
40. A copy of the letter provided by Mr and Mrs Sheridan on 6 March 2003 (referred to in paragraph 31) for the benefit of objectors is attached at **Appendix A**.
41. The premises provides a mixed programme of music and dancing entertainment for a broad audience. The venue's programme for October 2003 (taken from the premises web site) is provided at **Appendix B**.
42. One of the regular nights run at the premises is the "Club Champagne" events. Club Champagne is run as a Members-Only Club for "Swingers". The application for waiver of the Council's "Good Order" condition particularly relates to activities taking place on the Club Champagne nights. A copy of the club's culture & rules and membership application forms are provided as **Appendix C**.
43. It is understood that in the event that consent is given by the Council for striptease and similar entertainment involving nudity to take place upon the premises, part of the premises will eventually be developed to provide the basis for a table-dancing club. This operation does not take place currently. It is further understood that in the event that a table-dancing club is developed the premises would then have a dual operation. The table dancing operation would be confined to one half of the premises and separated from this. The other half of the premises would be given over to stage a mixed range of events as currently.
44. As this intended operation remains some way off in the future, proposed conditions for the control of a table-dancing facility are not made at this stage. Any consent for striptease and like entertainment should be made on the basis that suitable operating conditions are negotiated between the applicant, the Licensing Service and the Metropolitan Police in due course. However, a schedule of "Model Conditions for Table Dance Venues" is attached as **Appendix D**. This gives an indication of the type

of controls that might be imposed should consent be given. A further report on conditions would be made to the Committee.

45. The premises was last visited by the Licensing Service “during operation” at approximately 01.20 on the morning of Saturday 2 March 2003. Upon arrival at the premises officers found that the front doors were closed and monitored internally by door staff. Officers were admitted to the premises having been informed that the premises were being used for a private party. Inside some 100 customers were present in various fetish wear. Within the public entertainment licensed portion of the premises very low level recorded music was being played. A few customers danced. In additional arches not currently included under the licensed area (but intended for future inclusion by the applicant) there was an arrangement of props (i.e. a cage, a bench and some seats) and limited sexual activity. The inspection found a couple of matters in need of attention in the arch forming the premises rear exit route -
- (a) that some partial obstructions were posed by the situation of some small tables and chairs, a piano and cables in this area; and
  - (b) doors from the arch forming the premises rear escape into adjoining areas were open providing a potential breach of the fire separation of this area.

#### **Current Licence Conditions**

46. As stated in paragraph 6 the premises are currently licensed for Weekday and Sunday Public Music and Dancing Entertainment. The premises licence is made subject to compliance with the Council’s Standard Public Entertainment Licence Conditions in their entirety and to the following special operating conditions –
- (a) That the search arch installed at the premises main entrance on Tooley Street shall be maintained in good working order and all persons admitted to the premises shall be required to pass through the arch before admission is granted;
  - (b) That the CCTV system installed upon the premises shall be maintained in good working order. A 31 day library of CCTV recordings shall be maintained and made available for inspection at any time by the Council’s Officers or by the Police;
  - (c) That the secure (fixed) amnesty bin for drugs / weapons situated near the search arch shall be opened only under the supervision of the Police, who will then remove and dispose of any items;
  - (d) That a door supervisor, registered with Southwark Council, shall be employed and provided with a suitable counting device at the entrance of the premises to ensure that the premises accommodation limit is not exceeded; and
  - (e) That the total number of persons that may be accommodated within the premises at any one time shall not exceed three hundred (300).

#### **Technical Suitability of the Premises**

47. The licensed area of the premises meets with the Council’s Technical Regulations 2003 in full. The Council’s District Surveyor has surveyed the additional arches intended by the applicant for inclusion under the premises licence and has provided a schedule of works which is included as **Appendix E**. Before this area can be included

under the premises licence and licensable public entertainment provided within this area all specified works must be completed to the Council's satisfaction. The completion of specified works in the additional arches does not automatically provide for an increase in the premises permitted accommodation limit. However, the survey has established that subject to the provision of suitable exit and sanitary facilities the premises could be suitable for up to 600 persons. If this additional capacity is required by the applicant then a separate application for an increase in the premises permitted accommodation will be necessary and this will be required to be consulted upon in accordance with the Council's normal procedures. It is understood that future development of the premises is intended to extend into the premises basement area.

### **Sound Containment Observations**

48. The Council's Environmental Health Noise Team have no observations to make in respect of this application and premises.

### **The Grounds of Opposition**

49. Copies of the objections to the various applications are attached under the banner of **Appendix F**.
- (a) Appendix F1 provides copies of the initial objections lodged against the renewal of the premises licences for the year April 2002 to March 2003 then held by Robot City Ltd. These objections were later "inherited" by Mr and Mrs Sheridan when they took over the operation of the premises. Matters raised within relate to the operation of the premises in its previous incarnation as "Cynthia's" but remain to be dealt with;
  - (b) Appendix F2 provides copies of the objections lodged to the transfer of the licences from Robot City Ltd into Mr and Mrs Sheridan's names (paragraph 25). The objection from the Metropolitan Police is made on the basis that Mr and Mrs Sheridan are not "fit and proper" to hold a licence. The basis of the objection relates to 2 covert operations undertaken at the premises at which, it is alleged, the premises "was used for open sex between large numbers of persons during normal licensing hours whilst the premises was promoting a "fetish" evening". Other objectors used this opportunity to update their initial objections to the renewal of the premises licence on the grounds that the nature of the venue was inappropriate to the local area;
  - (c) Appendix F3 provides copies of the objections lodged to the applications for waivers of the conditions GO and SX (paragraph 33(d) and 34). To save repetition only one of the 88 copies of the pro-forma objection received is reproduced herein. However, a list of the signatories to this objection is included under this Appendix for the purposes of completion. Objectors to these applications have been deemed to be objecting to the grant of the Sex Encounter Establishment Licence also (paragraph 40). Again it is raised within these objections that the nature of the venue is inappropriate to the area and would have a detrimental effect on its regeneration. Various other grounds of opposition are raised, however, ranging from concerns over fears of the safety of people in the local community to anti-social behaviour by customers to moral concerns.



## **The Legislative Background**

50. As this is an extraordinary and complex application it is felt that some further explanation of the legislative background to sex related entertainments would be helpful. Further information is provided at **Appendix G**.

## **The Local Vicinity**

51. A map of the local vicinity to the premises is attached as **Appendix H**. As stated the premises is situated on Tooley Street within a series of railway arches under London Bridge. Other public entertainment licensed premises within the area covered by the map are
- (a) Southwark Cathedral in Montague Close which holds a Weekday Public Music Licence with no extended hours operation;
  - (b) Los Arrieros on the ground floor of 1 Duke Street Hill which holds a Provisional Weekday and Sunday Public Music and Dancing Licence with extended hours operation to 2.a.m. on Friday nights; and
  - (c) Sagittarius on the first floor of 1 Duke Street Hill which holds a Weekday Public Music and Dancing Licence with extended hours operation to 2.a.m. on Friday and Saturday nights.

## **EQUAL OPPORTUNITIES IMPLICATIONS**

52. All applications are required to be considered upon their own merits with all relevant matters taken into account.

## **RESOURCE IMPLICATIONS**

53. A total of £4214 has been paid in licensing fees in respect of these applications. The fees contribute toward the costs of maintaining the licensing process. In the event that the applications are refused the applicant is entitled to a refund of fees less costs incurred to date.

## **CONCURRENT REPORT BY THE BOROUGH SOLICITOR – LEGAL IMPLICATIONS**

54. The report recommends that the Licensing Committee considers a number of related applications in respect of the premises known as the Wicked Night Club and Restaurant at 4 Tooley Street, SE1. These applications are listed at paragraphs 2(a), 2(b), 3(a), 3(b) and 3(c) of the report.
55. In hearing all five applications, the Committee must consider them on their merits and in accordance with the rules of natural justice. Any decision must be one which is not incompatible with a convention right under the European Convention on Human Rights and must accord with the provisions of the Human Rights Act 1998. The decision must be based on evidence, material which tends to show logically 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 Committee must also give fair consideration to the evidence and arguments put forward by objectors and others entitled to make representations to the Committee.

56. In considering the applications related to public music and dancing (applications 2(a), 2(b), 3(a) and 3(b)) the Committee have a duty to ensure the health and safety of all citizens and residents in the borough, which will include the normal uses of premises and residences around and within the area of the application premises. The Committee are entitled to consider the suitability of the applicants and the premises including their locations and impact upon the environment in the surrounding area and upon amenity issues.
57. In considering the application for a Sex Establishment Licence (application 3(c)) there are additional factors which should be taken into account in reaching a decision because of the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 12(1) of Schedule 3 sets out the circumstances in which a licence shall not be granted. It is not thought that any of these circumstances apply in the present case.
58. Paragraph 12(3) provides that a local authority may refuse an application on the following grounds: -
  - (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 licence were to be granted...the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he applied himself;
  - (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality (this number may be nil);
  - (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.
59. It is anticipated that further legal issues may arise as a result of the submissions made on behalf of the applicants and the various objectors. If this is the case further advice will be made available to members either in writing in advance of the start of the hearing, if time permits, or during the course of the hearing.

Background Papers Title	Held at	Contact
Schedule 12 to the London Government Act 1963	The Licensing Service, The Chaplin Centre, Thurlow Street, SE17	Jane Dyer 020 7525 5733
Various papers on the case file LU/Club Wicked	The Licensing Service, The Chaplin Centre, Thurlow Street, SE17	Jane Dyer 020 7525 5733

Lead Officer	Director of Environment & Leisure	
Report Authors	Richard Parkins (Licensing Unit Manager) & Jane Dyer (Principal Licensing Officer)	
Version	Final	
Dated	1 October 2003	
Key Decision	No	
Consultation With Other Officers / Directorates / Executive Member		
Title	Comments Sought	Comments Included
Borough Solicitor and Secretary	Yes	Yes