

APPENDIX B

Your reference: .



Our reference: MD/21/1802/09

Date: 29th July 2009

The Licensing Office
The Chaplin Centre
Thurlow Street
London
SE17 2DG

Metropolitan Police Service
Licensing Office
Walworth Police Station,
12-28 Manor Place,
LONDON,
SE17 3RL

Tel: 020 -7232 – 6210 Fax6282

Dear Sir/Madam

R n B Nightclub 12A Station Way SE15 4RX

I write in respect of an application submitted this day by Police under Section 53A Licensing Act 2003, where Police are seeking an expedited review of the Premises Licence following recent and continued incidents of serious crime and disorder associated with the above premises. The Licensing Act 2003 requires the London Borough of Southwark Licensing Committee to consider the application within 48 hours of its submission and I understand that a committee has been arranged for Friday 31st July 2009 at Southwark Town Hall.

I confirm that I have sent notification of this application to Mr Frederick Gayle, the Premises Licence Holder and Designated Premises Supervisor and advised him to contact your office as a matter of urgency.

If you need clarification of any points raised in this letter then please contact me on the numbers shown below.

Paul Compton PC294MD
Licensing Officer (Southwark North)

Phone: 0207 232 6210

Mobile: 07595011458

Fax: 0207 232 6282

E-mail: paul.compton@met.police.uk

Mail: Licensing Office, Walworth Police Station,
12/28 Manor Place Walworth London
SE17 3RL



Certificate under Section 53A(1)(b) of the Licensing Act 2003

Working together for a safer London

Metropolitan Police Service
New Scotland Yard
8-10 Broadway
London
SW1H 0BG

I hereby certify that in my opinion the premises described below are associated with:

both serious crime and serious disorder

Premises (include business name and address and any other relevant identifying details):

1 B Nightclub 12A Station Way, Peckham SE15 4RX

Premises licence number (if known): 8162

Name of premises supervisor (if known): Mr Frederick Alexander Gayle

I am a Police Superintendent1 in the Metropolitan Police Service.

1Insert rank of officer giving the certificate, which must be superintendent or above.

I am giving this certificate because I am on the opinion that other procedures under the Licensing Act are inappropriate in this case because2:

The premises have been associated with serious incident of crime & disorder over an extended period.

I am of the opinion that the use of Section 53A, Expedited Review, is necessary to prevent further incidents of serious crime & disorder taking place either within the premises or the local vicinity. The management are failing to adhere to the current comprehensive list of conditions stipulated on the Premises Licence, therefore there are no additional conditions that could be added onto the Premises Licence that would prevent a continuation of incidents of serious crime & disorder.

Police are requesting that the local authority suspend the Premises Licence pending a full review hearing with immediate effect.

The alternative options under the Licensing Act 2003 are not considered to be viable: there is no imminent disorder, therefore Section 161 is not an option and if a standard review were to be submitted the premises would remain open for several months pending the conclusion of the process and it is very likely that there would be continued incidents of serious crime associated with the premises.

2Give a brief description of why other procedures such as a standard review process are thought to be inappropriate, e.g. the degree of seriousness of the crime and/or disorder, the past history of compliance in relation to the premises concerned.

Signed: [Signature] Supt ZORIOS

Date: 29.07.2009



Working together for a safer London

Form for Applying for a Summary Licence Review

Form 693

Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime, serious disorder or both)

Insert name and address of relevant licensing authority and its reference number:
London Borough of Southwark

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. **Use additional sheets if necessary.**

I Superintendent S Deehan
on behalf of the chief officer of police for the Metropolitan Police area apply for the review of a premises licence under section 53A of the Licensing Act 2003.

1. Premises details

Postal address of premises, or if none or not known, ordnance survey map reference or description:
R n B Nightclub, 12A Station Way,

Post town: Peckham

Post code (if known): SE15 4RX

2. Premises licence details

Name of premises licence holder (if known): Mr Frederick A Gayle

Number of premises licence holder (if known): Mr Frederick Alexander Gayle

Certificate under section 53A(1)(b) of the Licensing Act 2003 (Please read guidance note 1)

I confirm that a certificate has been given by a senior member of the police force for the police area above that in his opinion the above premises are associated with serious crime or serious disorder or both, and the certificate accompanies this application.

Please tick the box to confirm:

4. Details of association of the above premises with serious crime, serious disorder or both (Please read guidance note 2)

The premises has a history of being associated with serious crime and disorder & gang related culture.


Police intelligence indicates that firearms, knives and drugs are taken to the premises and it's environs on a regular basis and the premises is regularly used by persons with affiliations to recognised gangs.

Police engaged with the management of the club after serious disorder in July 2008 when a number (7) persons were assaulted with knives and a meat cleaver. The premises remained closed on a voluntary basis but since re-opening incidents of crime & disorder have continued.

On 25th July 2009 three customers received life threatening stab injuries immediately after vacating the club, one of the victims is only 17 years of age. Management of the premises have failed to act upon previous advice of Police and have not assisted fully with the current investigation.

RESTRICTED

Signature of application:

 SWR 203103

Date: 29.07.2009

Capacity: Police Superintendent

Contact details for matters concerning this application

Address: Walworth Police Station, 12/28 Manor Place, Walworth, London SE17 3RL

Telephone number(s): 0207 232 6210

Email: paul.compton@met.police.uk

Notes for guidance

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.
Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:
 - conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
 - conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.Serious disorder is not defined in legislation, and so bears its ordinary English meaning.
2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both.

WITNESS STATEMENT

CJ Act 1967, s.9; MC Act 1980, ss.5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Statement of **Paul Compton PC294MD** URN:

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Age if under 18 **Over 18**..... (if over 18 insert 'over 18') Occupation: **Police Staff**

This statement (consisting of: **5**..... pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: **Paul Compton PC294MD** Date: **28th July 2009**.....

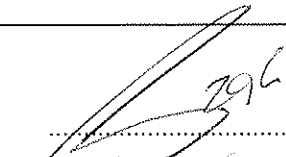
Tick if witness evidence is visually recorded (supply witness details on rear)

I am Paul Compton PC284MD/176623 and currently posted to the Police Licensing Office at Walworth Police Station, 12/28 Manor Place, Walworth, London, SE17 3RL. I am authorised to represent the Metropolitan Police in all issues connected to Licensed Premises located within the London Borough of Southwark.

Following an incident that occurred outside the R n B Nightclub, 12A Station Way, Peckham, SE15 4RX on Saturday 25th July 2009, which resulted in three customers receiving serious stab injuries, I have been tasked with researching incidents of Crime & Disorder associated with the premises in order that consideration can be given to seeking an urgent review of the current Premises Licence.

The premises is a first floor nightclub that has been granted extensive licensing hours with a capacity of 100. It has historically been linked to serious incidents of crime & disorder, often involving weapons. Police intelligence system (Crimint) and crime reporting systems (Cris) contain a significant number of entries indicating that those attending the premises are often in possession of knives, firearms and illegal drugs. I have dealt with the owner and Designated Premises Supervisor, Mr Frederick Alexander Gayle, over a number of years, in particular when incidents of Crime & Disorder have come to my attention, which has resulted in the premises being requested periodically to remain closed by police.

Cris: 3026760/09; on 20th July 2008 at 0440am, an incident was captured by London Borough of Southwark CCTV outside the premises involving customers all of whom had just vacated the club. A number of males aged 18-25 years were seen to engage in a running street battle with each other during which a number of knives and a meat cleaver were clearly seen and a number of persons were seen to receive stab injuries. However this event

Signature:  Signature witnessed by:

Continuation of Statement of **Paul Compton PC294MD**.....

was not brought to the attention of Police either by the victims or staff at the premises at the time of the incident and was identified at a later date when a Police officer was viewing CCTV footage. No suspects have ever been identified and the matter remains as an undetected crime. Regrettably the CCTV for the premises only has a two week record & retain facility and therefore potential evidence that could have identified the suspects was lost. It is worthy of note that the premises licence has a condition requiring the CCTV to be maintained in good working order with a 31 day tape record/retain facility.

Following this incident an urgent meeting was arranged with Mr Frederick Alexander Gayle to attend Walworth Police Station on 30th July 2008 where he met with Chief Insp. M Antil and me. Recent incidents of crime & disorder, in particular the incident of 20th July 2008 were discussed and Mr Gayle was requested not to open the premises pending him returning to the Police station at a later date, when Police would expect him to be in a position to suggest an action plan containing measures he would put in place to prevent any re-occurrences. However Mr Gayle agreed to remain closed with the exception of opening on a Friday night up to twelve midnight for a "Fish Supper Night", an event described by Mr Gayle as an event aimed at the elderly members of the community. The second meeting was not held with Mr Gayle and no action plan has been received, as events had dictated intervention by the London Borough of Southwark Planning Department who issued a Planning Contravention Notice in October 2008. I will address this issue in greater depth later in this report.

Police arranged for a free site survey to be conducted by the Crime Prevention Officer attached to Operation Trident who would look at all the security measures adopted by the club management and produce a report. This was conducted on 13th August and I attach a copy of the final report to this statement. The most salient points are the unsuitability of the front door design and the inadequate CCTV system, which requires urgent updating. To date I cannot confirm if these issues have been addressed. I wrote to Mr Gayle on 20th August 2008 and supplied him with a copy of the Operation Trident report and highlighted the most pressing issues identified. A copy of that letter has been attached to this report.

The premises is often operated other than in accordance with the premises licence. On 27th July 2008 I visited the premises on numerous occasions as a direct result of serious disorder that had occurred at the premises the previous weekend. I initially visited at 01.00am and spoke with Mr Gayle and informed him that he should operate in accordance with the current premises licence. However numerous visits throughout the night and following conversations with Mr Gayle at every visit I found the premises not complying with licensing conditions of no new entry after 02.00am. Despite point this breach out to Mr Gayle on each occasion customers were still entering at 04.40am. The matter was fully recorded on crimint MDRT00563610.

Signature:

Signature witnessed by:

Continuation of Statement of **Paul Compton PC294MD**.....

Cris: 3024466/09; On 25th July 2009 at 0430am a number of customers had vacated the premises and outside the club and in surrounding streets a number of suspects repeatedly stabbed three victims, who had just left the club. One victim received multiple stab injuries, one of which punctured his lung. The second victim received a single stab injury resulting in a collapsed lung and the third victim received a stab injury to the forehead. Police have information linking some of the victims to other incidents of serious violence which is gang related. One of the victims was also the victim of a previous stabbing only seven days before and on this occasion he refused to assist police with the investigation. One of the victims is only 17 years of age and statements obtained during the course of the investigation indicate that the youth had been inside the premises prior to being assaulted and had been supplied with alcoholic drinks. The investigating officer for the 25th July incident has reported that the staff and in particular the owner/Designated Premises Supervisor, Mr Frederick Gayle, has not assisted fully with the investigation and supplied contradictory accounts of the events. Initially he stated that the incident had not occurred and that he had no knowledge. However London Borough of Southwark CCTV clearly shows Mr Gayle struggling with some of the suspects directly outside the club. The investigating officer has requested the club CCTV but has been informed by Mr Gayle there was no CCTV operating at the time of the incident as the system was away for repair. This is a clear breach of the current premises licence and is reminiscent of the situation that was in place on 20th July 2008 when again serious violent crime and disorder was associated with the premises.

In addition to the two events detailed above, research of Police reporting systems contain numerous entries linking the premises to serious violence, weapons including knives and firearms, gang related issues and drugs. Reports indicate that individuals attend the premises on a regular basis are often in possession of knives and firearms and in particular on Fridays and Saturdays evenings, often the entries indicate that those attending the premises have known links to gangs and the associated violence. Reports also indicate that suspects attend the premises at weekends in possession of illegal controlled drugs with the intention of supplying such items.

Crimint entries:

- MDRT00574975/09 firearms & drugs being taken into the club.
- MDRT00578372/09 Shopkeepers in Rye Lane complaining about anti-social behaviour & harassment.
- MDRT00581558/09 Members of Peckham Young Guns (PYG) gang known to have left premises on 25.07.09 and been actively involved in the triple stabbing.
- MDRT00581556/09 Firearms believed to be regularly taken into club without being stopped by door

Signature:

Signature witnessed by:

Continuation of Statement of **Paul Compton PC294MD**

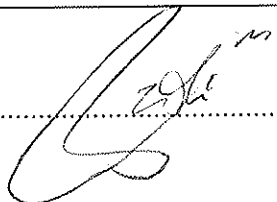
staff.

- MDRT00581554/09 Known drug dealer known to frequent the premises to supply illegal drugs.
- MDRT00563303/08 Female collapsed inside club. Police in attendance found strong smell of cannabis and discarded “spliffs” and rizzla papers on the floor of the club.
- MDRT00563310/08 Large group attempting to gain entry, far exceeding the club capacity. Many of those attempting to enter the club were underage and were known members of a gang known as “Shower Chicks”.
- MDRT0000563535/08 Knives & Firearms taken into club
- MDRT00563373/08 Gangs members frequent club.
- MDRT00562567/08 Peckham gangs frequent club armed with knives.
- MDRT005588/08 Gangs members attend club.
- MDRT0056304/08 Information that a shooting was to take place inside the club.

On 15th October 2008 The London Borough of Southwark Planning Department issued an enforcement notice against the premises as the premises had not applied for the necessary planning consent that would permit its use as a nightclub. The Enforcement Notice was due to take effect from 15th November 2008 provided Mr Gayle did not appeal the notice. However Mr Gayle did appeal and this was heard on at an appeal inquiry on 28th May 2009. The appeal was dismissed in its entirety and therefore the premises have no planning permission to operate as a nightclub. I understand that Mr Gayle has until the end of August 2009 to cease operating as a nightclub and to remove any items that are used for that purpose. Relevant paperwork attached.

On 29th July 2009 Police Superintendent Steve Dechan issued a certificate under Section 53A Licensing Act 2003 as the premises are associated with serious incidents of crime & disorder and the action was necessary to prevent continuance of such incidents. I served a copy of that certificate on the London Borough of Southwark Licensing Department and on Mr Frederick Gayle and will be seeking revocation of the Premises Licence at the

Signature:



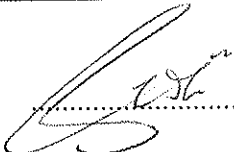
Signature witnessed by:

Continuation of Statement of **Paul Compton PC294MD**

review hearing.



Signature:



Signature witnessed by:



R n B Nightclub
12A Station Way
London
SE15 4RX
Telephone – 0207 635 7299

Security Review conducted 13th August 2008

Carried out by DC Steve Sharkey – Trident Crime Prevention officer
In company with PC294 Paul Compton, Southwark Licensing officer.

Designated Premises Supervisor – Frederick Gayle, 63 Chadwick Road,
London SE15 4PU.

Opening Hours – This premises is currently under a closure order until
September, but when in operation opens at 10.00pm and closes at 05.00am
on Fridays and Saturdays.




Capacity – 100

Description of Premises

The R n B Nightclub is situated halfway along a small alleyway built into the railway arch and is part of a small shopping area. The premises are situated over a number of small shops a few yards from Peckham Rye railway station and the junction with Rye Lane. Access to the establishment is obtained by a set of 19 stairs up to the club.

Recommendations, concerns and recognition of good practise.

The traffic light signals denote –

-  Major Concern
-  An area of concern
-  Good Practise

These premises are in a run down condition with various leaks and other faults visible.

Entrance, search procedures and security

■ The door supervisors are key to any initiative at increasing safety at a venue. Good door supervisors will be well trained, aware of their powers and responsibilities and able to manage access to the building effectively. Poor door supervisors will allow drugs and weapons to enter the venue, fail to identify unwanted issues at an early stage and at worst will be actively involved in the organised criminality going on at the premises. All door supervisors must be licensed with the Security Industry Authority (SIA). Individuals who are not so authorised commit an offence, as do those who employ them. There will also be implications for the venues public liability insurance and lease, both of which could lead to closure of the premises.

- The SIA licenses need to be physical removed from any holder and carefully examined. There are a number of forgeries available to purchase. The signature on the authorised license **must** be laser marked into the license and not signed in ink.
- The venue must have a robust search policy. This will include prominent signage, orderly queues, sterile area for searching, policy for dealing with drugs and weapons seized. It is important to note that there must be an adequate number of female door supervisors to search female customers.

■ The construction of the front door is rather weak and really needs to be enforced. If there were to be an organised attempt by a number of individuals to gatecrash the facility the current door would not be strong enough to prevent such an attack. This form of attack against clubs is becoming more and more prevalent especially in the south London area.

- The club employs one male and one female door supervisors, who are primarily used at the entrance to the premises for the purposes of searching customers. I would advise that the security staff be increased to at least three, ideally four. This would then provide staff for deployment inside the club as well as cover availability at the time of any incident.
- The door to the premises is old and not very secure. I would recommend replacing the door with a much more robust product. My suggestion would be for a steel hinged steel door that opened outwards I would also recommend the installation of a non transparent metal shutter that could easily and quickly be deployed in the event a number of troublemakers attempting to rush the door staff and gain illegal entry.

- The barrier system currently used is of a plastic construction and is not very secure. Originally the club used a couple of metal crowd control type barriers but these were removed by the council as they had been left outside. I recommend returning to that type and finding a method of securing them when not in use.

Lighting and interior environment



- The level of lighting within the club is quite dim and would need to be brighter should any incident occur within the premises that would require investigation, such as a serious assault.
- The lighting on the stairwell needs to be increased as this could give rise to an accident.

Fire Exits


The premises has only one fire exit situated next to the gents toilets. This is unlocked when there is a function and leads to some steps that exit in the street. This fire exit needs to be alarmed so that if it is used to allow unsupervised access it will become apparent to the staff that it has been opened.

CCTV System


- The CCTV system deployed by the club is somewhat antiquated and needs to be updated. There appears to be a total of three cameras and this needs to be increased to at least four. Currently the dance/bar area has two cameras. One is focused on the dance floor and one on the bar staff. There needs to be another camera on the main room focusing on a different angle to the one currently in place.
- The other camera is utilised at the entrance to the club. This is positioned incorrectly and needs to be moved to the other side of the entrance door to enable a good head and shoulders image to be obtained as the customers enter.

- There needs to be a large sign at the entrance explaining the use of CCTV and that the images are recorded and will be provided to police in the event of an incident.
- There also needs to be much more signage inside the club referring to the use of CCTV. At present there is none.
- The duration of recorded images appears to be approximately two weeks and this capability needs to be expanded to 30 days as a matter of urgency.

Customer Care

- 
 - The club does not provide safety devices to prevent drinks from being spiked. I would recommend giving the customer the option of being able to purchase such a device from behind the bar along with their drinks. There has been a marked increase in numbers of drinks being spiked, a lot of which goes unreported. The duty of care provided by the club should give the customer the option.

Good Practise

- 
 - Position a small podium of about two feet high to be stood on by a member of the internal security staff. This would give the staff member good vision over the heads of the customers and makes them look more imposing.
 - Have a member of the security staff walk the queue looking for signs of drunkenness, agitation or drug symptoms.

Metropolitan Police Requirements for Digital CCTV systems

This section offers guidance to users of digital CCTV systems, where the pictures are intended to be used by the police or are likely to be used in an investigation. For CCTV recordings to be effective in detecting and investigating crime they must be fit for the purpose and easily accessible by police investigators.

For digital CCTV there are four main areas that must be considered:

QUALITY – are the pictures good enough?

STORAGE – are the pictures stored appropriately?

EXPORT – can the pictures be easily exported from the system?

PLAYBACK – can the pictures be easily viewed by authorised third parties?

By ensuring that your digital CCTV system is capable of meeting a few simple requirements, the potential evidential value of the pictures can be greatly increased and the time taken by police to access and process them greatly reduced.

QUALITY – What Resolution? What Compression? How many Pictures per second?

1. Specify your requirement – decide what you want to see and where.
2. View the recorded pictures or print out, not the live screen to assess the system performance.
3. The system clock should be set correctly and maintained (inc GMT & BST).
4. Picture quality should not be reduced to fit the available storage capacity of the system.
5. Regular maintenance should be conducted on all aspects of the system.

STORAGE – What should I keep? How should I keep it?

1. The system should be operated and recorded pictures retained in a secure environment.
2. Electronic access controls, such as passwords or encryption should not prevent authorised access to the system or recordings.
3. The system should have sufficient storage capacity for a minimum of 31 days good quality pictures.
4. The system should be capable of securing relevant pictures for review or export at a later date.

QUALITY – Are the pictures good enough?

Right from the outset you should have a clear idea of what you want your CCTV system to achieve and how it should perform. This should include exactly what you want to see and where, e.g. recognise the face of someone walking through a doorway, read a vehicle registration number or record a particular type of activity such as walking across a room, exchange of money or an assault.

More detailed guidance on how to do this can be found in PSDB publication 17/94 CCTV Operational Requirements Manual. This is available for free from the Home Office website

http://scienceandresearch.homeoffice.gov.uk/hosdb/publications-2/cctv-publications/17-94_CCTVOperationalRequir2.pdf?version=1

Terrorism and the Night time economy

Lessons can be learned from the 2002 Bali bombing which occurred on October 12th 2002 in the tourist area of Kuta on the Indonesian island of Bali.

The attack killed 202 people, 164 of whom were foreign nationals. A further 209 were injured.

The attack involved the detonation of three bombs: a backpack mounted device carried by a suicide bomber, a large car bomb, both of which were detonated in or near popular nightclubs; and a third much smaller device detonated outside the US Consulate causing minimal damage.

The Attack

At 23.05 on the 12th October 2002 a suicide bomber in the nightclub Paddy's Bar detonated a bomb inside his backpack. This caused a large number of the patrons with or without injuries to flee out into the street. Fifteen seconds later, a second and much more powerful car bomb hidden inside a white Mitubishi van, was detonated by remote control outside the Sari Club, located opposite Paddy's Bar. Damage to the densely populated residential and commercial district was immense, destroying neighbouring buildings and shattering windows several blocks away. The car bomb explosion left a one meter deep crater.

The Lessons to be learned.

In these days of heightened tensions around terrorism it is vital that the night time economy steps up their security. Of course it is essential that weapons and drugs are prevented from being carried into what is a highly volatile environment. But security staff must be aware of other devices that could cause catastrophe in or outside a nightclub. Something as small as a vial containing a highly dangerous substance could be dropped inside a club causing the deaths of many people. As seen by the Bali incident a car was parked outside the nightclub and deliberately detonated when the first bomb forced the people out into the path of the second.

So for a nightclub the security must include the perimeter and nearby surroundings of a club. All suspicious vehicles must be checked.

I believe it is only a matter of time before a nightclub on the UK mainland is the target of a terrorist attack. The consequences are appalling when you consider the numbers of people who crush into these establishments at the weekend.

A heightened level of security is required in these tension filled days and all nightclub security staff must raise their level of awareness to prevent the worst from happening.

Report Concludes

PLEASE NOTE

It is the public function of the Metropolitan Police Service ('MPS') to prevent and detect crime and to promote measures, which further that function. The advice/guidance given is given in accordance with that function and is to an assurance that crime will be prevented. Nor does the giving of advice create a legal relationship with the MPS and its recipient. As such the MPS will incur no liability for any loss or damage (of whatever nature) occasioned to

the recipient of the advice its employees agents or customers, or any other person arising directly or indirectly from the giving of the advice.

The inclusion of any company names with this report is NOT a recommendation of the product and is merely for your information. Should you wish to use any of the products; the MPS will accept no liability thereafter. This survey/advice is based on information supplied by yourself and observations at the time of the survey and current crime trends in the area concerned. The recommendations given are those of the officer conducting the survey, which in their opinion may reduce the risk of crime but do not offer or imply a guarantee of crime reduction



Appeal Decision

Inquiry held on 28 May 2009

by **Derek Thew** DipGS MRICS

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email-enquiries@pins.gov.uk
ov.uk

Decision date:
9 June 2009

Appeal Ref: APP/A5840/C/08/2090095

12A Station Way, Peckham, London, (known as the RnB Night club)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Frederick Gayle against an enforcement notice issued by the Council of the London Borough of Southwark.
- The Council's reference is TP/2765-12.
- The notice was issued on 15 October 2008.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the land from a restaurant use (A3) to a night club use (sui generis).
- The requirements of the notice are:
 - 1) Cease the use of 12A Station Way, London, SE15 4RX as a night club
 - 2) Remove from the site all fixtures, fittings, equipment and machines that primarily relate to the use of the premises as a night club.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)[d] and [f] of the Town and Country Planning Act 1990 as amended.

Procedural Matters

1. All evidence at the inquiry was given on oath

The Appeal on Ground D

2. For the appeal to succeed on this ground it needs to be demonstrated, on the balance of probability, that the change of use of the notice land to use as a nightclub commenced 10 years or more before the date on which the notice was issued and that the use subsisted thereafter for a period of 10 years. The notice was issued on 15 October 2008 and, accordingly, it needs to be shown that the material change of use occurred on or before 15 October 1998.
3. Mr Gayle's evidence is that Mr Fitzgerald Brown, in March 1993, changed the use of the first floor to a nightclub that he, Mr Gayle, used to frequent. Subsequently, in August 1997, Mr Brown's lease was assigned to Mr Ronald and Mrs Beverley Williams, who continued the nightclub use up until 31 July 2000. Mr Gayle entered into an underlease for the first floor at 12A Station Way on 1 August 2000 and his evidence was that thereafter he used the premises as a nightclub and private function suite.
4. In support of his case the appellant submitted a statutory declaration made by Mr Keith Baker, a past director of the former freehold owners of the premises. Amongst other things this declaration states that the premises were used as a restaurant pursuant to planning permission granted on 11 September 1984,

SCANNED ON

12 JUN 2009

PLANNING (IO)

and that around November 1997 the then sub-lessee "extended the use of the Premises to include use as a nightclub and such use continued uninterrupted up to 31 July 2000". The declaration then states that between 1 August 2000 and 4 December 2007 (the date on which Mr Baker's company disposed of its interest in the premises), Mr Gayle used the premises as a restaurant and nightclub; and it concludes with the words:

"To my certain knowledge, information and belief throughout the period from November 1997 and up to 4 December 2007 the Premises were used continuously as a restaurant and nightclub".

5. However, rather than supporting the evidence of Mr Gayle, this declaration contradicts it in two important respects. First, Mr Gayle claimed the nightclub use started in March 1993 but Mr Baker states the use did not start until November 1997. Secondly, to Mr Baker's "certain knowledge, information and belief" until December 2007 the premises were in a mixed use including use as a restaurant, but this is contrary to Mr Gayle's claim that since August 2000 he has used the premises only as a nightclub.
6. In the light of these inconsistencies it is difficult to place substantial weight upon either the evidence of Mr Gayle or the statutory declaration of Mr Baker.
7. Turning to the evidence for, and submissions made on behalf of, the Council, a number of factors point towards the use of the premises changing to that of a nightclub well within the last 10 years:
 - (a) In April 2000 the premises were registered for business rates purposes as a restaurant and premises, and that description has not subsequently changed.
 - (b) The underlease that Mr Gayle entered into, with effect from 1 August 2000, refers to the use of the premises as a restaurant but makes no mention of use as a nightclub.
 - (c) A planning application (ref.01-AP-1380) was made on the 21 July 2001 for the change of use of the premises from restaurant to nightclub with ancillary restaurant use. (This application was withdrawn by the applicant and no documentation remains).
 - (d) An application for a public entertainment license (under s.182 of the Licensing Act 2003) was first made by the appellant on 14 January 2002.
 - (e) The response to a planning contravention notice, completed by the landlord on 22 May 2008, states that use of the premises as a nightclub started on 1 August 2000.
8. I am not able to pinpoint precisely when the material change of use of the premises to a nightclub occurred. But evidence given at the inquiry by a local resident, Mrs Casey, identified that night-time disturbance in the area appeared to increase during late 2001. And this perception, coupled with the above factors (a) to (e), suggest that the material change of use occurred sometime after the premises were acquired by Mr Gayle in August 2000.
9. In conclusion, having regard to all of the evidence before me and on the balance of probability, I am satisfied that the material change of use of the

notice land to use as a nightclub did not commence 10 years or more before the date on which the notice was issued. The appeal on ground [d] therefore fails.

The Appeal on Ground F

10. The notice requires the cessation of the nightclub use and the removal from the land of all associated nightclub items. For the appeal to succeed on this ground it needs to be shown that these requirements exceed what is necessary to remedy either the breach of planning control or any harm to amenity caused by that breach.
11. The nightclub use is unauthorised and in part the notice appears to have been issued to remedy that breach of planning control. In addition, objections from local residents and the written evidence of the Council identify that the nightclub is a source of noise and disturbance to those living nearby, and the notice also appears to have been issued to remedy that harm to amenity. It is possible such harm might be overcome by the imposition of restrictions on the operation of the nightclub. But to vary the requirements so as to allow the use to continue subject to limitations would be tantamount to granting a planning permission for the development. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered; and an appeal on ground [f] should not be used as a back-door method to obtain a permission that cannot otherwise be granted.
12. At the inquiry Mr Gayle stated he thought the matter of harm to amenity had been fully addressed at the time when his application for a public entertainment license was being considered by the Council. However, the objectives behind the licensing system are the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children from harm. And it is possible for a use to be a source of noise and disturbance to those living nearby (and thereby materially harm amenity) without being a public nuisance or without offending any of the other objectives of the licensing system. On this basis, I do not accept that the impact of the use upon the amenity of those living nearby would necessarily have been fully considered under the licensing system. Furthermore, just because a license has been granted under the Licensing Act 2003 does not remove the need for a planning permission under the provisions of the Town & Country Planning Act 1990.
13. Mr Gayle did not suggest any alternative requirements to those set out in the notice and, in the light of my observations in the preceding paragraphs, I am not aware of any that I might reasonably impose. The appeal on ground [f] therefore fails.

Formal Decision

14. I dismiss the appeal and uphold the enforcement notice.

Derek Thew
Inspector

DOCUMENT SUBMITTED AT THE INQUIRY

- 1 Appeal Decision APP/Y1945/A/06/2026479

Ref: LEG/PL/128328/GB

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

MATERIAL CHANGE OF USE

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the PLANNING AND COMPENSATION ACT 1981)

ENFORCEMENT NOTICE

ISSUED BY: SOUTHWARK LONDON BOROUGH COUNCIL

TO:

The Occupier 12a Station Way London, SE15 4RX	Freddiek Gayle 63 Chadwick Road, London SE15 4PU	Valentine Otagwa C/o RnB Nightclub 12a Station Way London, SE15 4RX
Al Ekber Bulut 10,12 and 12a Station Way London, SE15 4RX	Ropehold Limited 29/30 Fitzroy Square London W1T 6LQ	HSBC Bank PLC Sheffield Processing Centre PO Box 3924 Sheffield S1 9BD
Network Rail Limited KINGS PLACE 80 YORK WAY LONDON N1 9AG		

- 1. THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the Notice and the enclosures to which it refers contain important additional information.
- 2. THE LAND TO WHICH THE NOTICE RELATES**
Land at 12a Station Way, London, SE15 4RX, known as the RnB Nightclub, including the first floor and staircase accessing it, shown edged red on the attached plan.
- 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**
Without planning permission, change of use of the land from a restaurant use (A3) to a night club use (su1 genera).
- 4. REASONS FOR ISSUING THIS NOTICE**

OPEN 0311
70/2765-12

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The unauthorised use results in unacceptable harm to local amenity through increased noise, nuisance and social disturbance detrimental to the amenity of surrounding residential occupiers and the railway station site, contrary to policies 1.7 'Development Within Town and Local Centres', 3.2 'Protection of Amenity' and 7.1 'Peckham Action Area' of the Southwark Plan 2007.

The Council do not consider that planning permission should be given for the current night club use in its current form.

5. WHAT YOU ARE REQUIRED TO DO

- 1) Cease the use of 12a Station Way London, SE15 4RX (the land) as a night club
- 2) Remove from the site all fixtures, fittings, equipment or machines that primarily relate to the use of the premises as a night club.

6. TIME FOR COMPLIANCE

3 months after this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 16th November 2008, unless an appeal is made against it beforehand.

Dated: 16th October 2008



Signed:

Deborah Collins - Director of Legal and Democratic Services
on behalf of the London Borough of Southwark
Town Hall, Peckham Road, London, SE5 8UB

EXPLANATORY NOTE

YOUR RIGHT OF APPEAL

You can appeal against this notice but any appeal must be received, or posted in time to be received, by the Planning Inspectorate before the date specified in paragraph 7 of the Notice. The enclosed booklet "Making Your Enforcement Appeal" sets out your rights. You may use the enclosed appeal forms.

- (i) One is for you to send to the Planning Inspectorate if you decide to appeal, together with a copy of this Enforcement Notice.
- (ii) The second copy of the appeal form should be sent to the Council.
- (iii) The third copy is for your own records.

If you are appealing under Ground (a), that you believe planning permission should be granted for what is alleged in the enforcement notice, you are required to pay a fee of £335.00. Of this amount, half is payable to the London Borough of Southwark and should be sent to the Planning Department, Chiltern House, Portland Street, London SE17 2ES together with a copy of your appeal form. You must send the remaining half, payable to the Department for Communities and Local Government, to the Planning Inspectorate, PO Box 326, Bristol BS99 7XF with a copy of your appeal form.

You must submit with your Appeal Form, or within 14 days from the date the Planning Inspectorate notifies you, a statement in writing specifying the grounds of the appeal and state briefly the facts on which you are relying to support those grounds.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the Notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 5 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

Enclosures:

- "Making Your Enforcement Appeal" booklet issued by the Planning Inspectorate
- 3 x Appeal Forms
- Spare copy of Enforcement Notice

12 Station Way SE 16 ARX

Fig. 215/2028

Signature
Control



Scale - 1/2" = 1'-0"

Your reference: .



Our reference: MD/2008

Date: 20th August 2008

Mr F. Gayle
63 Chadwick Road
Peckham
London SE15 4PU

Metropolitan Police Service
Licensing Office
Walworth Police Station,
12-28 Manor Place,
LONDON,
SE17 3RL

Tel: 020 -7232 – 6210 Fax6282

Re; R & B Nightclub Station Way SE15 4RX

Dear Mr Gayle

Following on from the site survey by the Crime Prevention Officer from Operation Trident on 13th August, please find attached the completed report. You will note that there are number of issues that require urgent attention prior to the premises opening up to the public. I have listed below the more salient issues:

- Construction of the existing front door requires strengthening.
- The security barriers currently used are inadequate.
- Augmentation of the door staff
- Up grading of the CCTV system
- Internal lighting in main club areas and entrance stairs.
- Fire exit

The above is to be regarded as a précis, please refer to the full report for clarification.

As discussed at the meeting held at Walworth Police Station on 31st July 2008 and prior to the premises re-opening, a further meeting is to be arranged where Police would be seeking evidence of how you intend to prevent further incidents of Crime and Disorder being associated with the premises.

If you require further information then please contact me at the number shown above.

Paul Compton PC294MD
Licensing Officer (Southwark North)

☎ Phone: 0207 232 6210

☎ Mobile: 07990901483

 Fax: 0207 232 6282
 E-mail: paul.compton@met.police.uk
 Mail: Licensing Office, Walworth Police Station,
12/28 Manor Place Walworth London
SE17 3RL

Your reference: .



Our reference: MD/2007

Date: 20th August 2008

The Licensing Unit
The Chaplin Centre
Thurlow Street
London SE17 2DG

Metropolitan Police Service
Licensing Office
Walworth Police Station,
12-28 Manor Place,
LONDON,
SE17 3RL

Tel: 020 -7232 – 6210 Fax6282

Re; R & B Nightclub Station Way SE15 4RX

Dear Sir/Madam

As you are aware Police have concerns over how the above premises is being managed and the apparent prevalence of it being associated with incidents of Crime & Disorder. A number of meetings have been held with Mr. Frederick Gayle and in the short term he has agreed to temporarily close the premises until early September when a further meeting will be held it is anticipated he will give assurances of how the premises are to be managed in the future and what measures he will introduce to prevent further incidents of Crime and Disorder.

As part of this process, I arranged for a free site visit by the Crime Prevention Officer from Operation Trident who conducted a thorough evaluation of the security measures currently employed at the premises. I have attached a copy of that report, which includes a number of recommendations as to how the security should be augmented. I have also attached a letter to the owner & DPS, Mr. Gayle, which indicates that Police would require all of the recommendations mentioned in the report to be acted upon prior to the premises re-opening.

During my visit on the 13th August 2008 when the security site survey was conducted, I requested that the CCTV footage that covered the 19th & 20th July concerning a serious incident of violence involving up to twenty persons using weapons occurred. Regrettably the CCTV record facility only has capacity for 2 weeks and therefore potential valuable evidence has been lost. The inadequacy of the CCTV is raised in the main body of the attached report.

To follow is a copy of my original E Mail sent on 31st July 2008 to LBS Licensing detailing actions:

Following on from recent incidents of crime & disorder associated with the premises and in particular events on 19th & 20th July 2008 the owner of the club, Mr. FREDERICK GAYLE, was requested to attend MS Police Station on 30th July and speak with Ch. Insp ANTIL and PC 294MD COMPTON Police Licensing Officer.

The recent incidents were discussed and Mr. GAYLE was informed that further occurrences of crime and disorder would not be accepted and the likely outcome would be Police seeking a review of the premises license. Police sought assurances that Mr. GAYLE would address the situation as a matter of urgency.

A second meeting was arranged for 31st July at MS were it was expected that Mr. GAYLE had an action plan to offer. Mr GAYLE has agreed to temporarily close the premises with immediate effect up to at least the 1st September 2008, with the exception of Fridays between 11.00am and 00.00 as he has a commitment to host a community based "fish restaurant". He gave an undertaking that the premises would not open other than for this event.

A site visit by the CPO from Operation Trident has been arranged for Wednesday 13th August were a thorough survey of the clubs security measures will be undertaken and a report made. Mr GAYLE stated that he would not open the club until he has consulted further with the Police, as it is his intention to change in the direction & focus of the club including music policy.

If you require further information then please contact me at the number shown above.

Paul Compton PC294MD
Licensing Officer (Southwark North)

 Phone: 0207 232 6210
 Mobile: 07990901483
 Fax: 0207 232 6282
 E-mail: paul.compton@met.police.uk
 Mail: Licensing Office, Walworth Police Station,
12/28 Manor Place Walworth London
SE17 3RL

WITNESS STATEMENT

(CJ Act 1967, s.9; MC Act 1980, ss.5A(3)(a) and 5B; MC Rules 1981, r.70)

Statement of Aiveen MCMANUS URN: [] [] [] []

Age if under 18 Over 18 (if over 18 insert 'over 18') Occupation: Police Staff

This statement (consisting of: ... 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: Date:

Tick if witness evidence is visually recorded [] (supply witness details on rear)

On SATURDAY 19th JULY 2008 at around 0500 hours I was on duty in full uniform in a marked police vehicle call sign M4 in the company of PC 754 MD CARR. The CCTV control room alerted us to a large group of males congregating outside the R & B club RYE LANE. This was the only information. We made our way and saw a large number of mostly males hanging around the club. They were also in the surrounding area. There was nothing untoward although we decided to stay in the area. Whilst driving along RYE LANE an LAS crew turned up having received a call to a woman having a diabetic episode at the club. We thought it wise to go inside with him. We entered the club sometime after 0500 hours. There are steps leading up to the main club area. There were no door staff on the downstairs door or upstairs. As we went up the stairs some guests were coming out passed us. At the top of the stairs there was a young man smoking what I believed to be cannabis. It smelled of such. On appearance I believe that he was under - 18. As we went around into the club it appeared that many were under age and the smell of cannabis was rife. More important at this time was the fact that we had to get to the unconscious woman in the toilets. The club appeared over crowded as we had to struggle through to get to her. She was unconscious and wrapped around a toilet bowl. Nonetheless there were women trying to walk over her to try and get to the other toilet. The paramedic dealt with the lady. Whilst this was going on my colleague noticed orange tablets down the toilet. An ambulance had to be called. Throughout the treatment of this woman the guests were hostile and more units had to be called to enable the safe treatment of the woman. When it was possible I went and spoke to the licensee Frederick GALE. I explained my concerns to him. I asked where his door staff were and he said he sent them home at 0510 hours. I explained that this was not very sensible given that the club was still after 0530 hours. I asked him about his licence and he told me that it ran until 0500 hours. I asked him to clear the venue as clearly it was passed his licensing hours. When the club was emptied there were many spliffs and rizla papers on the floor.

Signature: Signature witnessed by: