

LICENSING SUB-COMMITTEE

**Thursday 30 April 2009
(Re-convened from 19 March 2009)**

Present: Councillors Woodward (Chairman), Herriot and Tompsett

APPLICATION FOR A REVIEW OF A PREMISES' LICENCE – DAVINCHI'S, 46-50 HIGH STREET, TUNBRIDGE WELLS

LSC12/08 The Council's Legal Advisor read out a statement from Councillor Mrs Herriot regarding an observation that had been made at the last meeting that Councillor Mrs Herriot had closed her eyes on several occasions during the proceedings on 19 March 2009. The statement claimed that Councillor Mrs Herriot had closed her eyes due to a headache which she was trying to overcome, and due to the pain which she suffered if sat in the same position for more than an hour. The statement confirmed that Councillor Mrs Herriot did not ask for the hearing to be suspended as she was fit enough to continue, completely aware of what was being said and did not miss anything that was said.

The Senior Licensing Officer explained that it had been necessary to adjourn the meeting on 19 March due to insufficient time to complete the business. She advised that Mr Hurrell, a local resident who had registered to speak, had not addressed the Sub-Committee at the last meeting due to the time restraints and therefore would be speaking at this meeting. In addition, Mr Morgan had also registered to speak, but he was unable to attend.

She advised that, at the Chairman's discretion, Councillor Hall had been given permission to speak and, in light of this, Mr Hughes had been granted permission to call a further witness. He confirmed that he would be calling Mr Majid Javadi once again.

The Senior Licensing Officer concluded that all parties would then be given the opportunity to sum up.

Mr Javadi then addressed the Sub-Committee. He referred to several meetings that had been held with the Principal Environmental Health Officer, Mr McCullough, and confirmed that he had done everything in his power to discuss the issues, and maintained that actions had been carried out that were beyond what had been requested, having huge financial implications for the owners of the premises. He mentioned that two conditions proposed by Mr McCullough had not been agreed because they were not, in his opinion, practical. He explained that a 'no re-admission after midnight' policy had been tried, but it had not been successful due to the large crowds that gathered outside the premises.

With regard to the suggestion of an early closing time, Mr Javadi stated that this would have a devastating affect on the business. He explained that the nature of a night club was for late night entertainment; therefore if the premises closed earlier an entrance fee could not be charged, as it would become more likened to a pub.

Mr Javadi confirmed that he had a good relationship with the police and they were satisfied with the management of the club. He added that there was no dispute with the conditions agreed with the police.

The Sub-Committee was advised that Mr Javadi had, on numerous occasions, asked the residents to discuss their concerns with him, which he stated that he was more than happy to do.

He concluded by mentioning the Government's initiative to promote the night time economy, and suggested that most night clubs were situated in town centre locations.

The Chairman then invited any questions of Mr Javadi. In response to a question, Mr Javadi confirmed that the premises had always closed at 02.00 hours. A question was then asked regarding the no re-admission that had been trialed. Mr Javadi stated that it was not beneficial to prevent smokers leaving the premises after midnight and this had been demonstrated to the police. The police were satisfied that the barrier system that had been put in place worked sufficiently well. He added that if any of the patrons smoking outside did not abide by the rules then they were not allowed back in the premises.

The registered speakers were then invited to address the Sub-Committee. Mr Morgan was unable to be present at the meeting, therefore his statement was read out by the Chairman. He was concerned about the licensing objective – protection of children from harm, and advised the Sub-Committee of the problems associated with broken bottles in the street, drug taking and urinating in property doorways.

Mr Hurrell then addressed the Sub-Committee. He explained that, as a witness for the Environmental Protection Team he had spoken on public nuisance; however he was now focusing on the other three licensing objectives. He described the noise caused by large crowds emerging from the premises late at night, which he believed was unacceptable in a residential area, and spoke about the objectionable activities that took place in the area, i.e screaming and shouting, sexual acts and drug taking in residents' gardens.

He referred to several dates that noise was heard from police vehicles and ambulances and he stated that he was aware of five incidents of broken windows in the High Street. He mentioned that he had stopped keeping a log of the instances of urinating, as it was too excessive. The Sub-Committee was made aware of the clearing up process that Mr Hurrell and his neighbours had to go through in the mornings to remove the vomit and other debris left by patrons of Davinichi's from the previous night. He asked the Sub-Committee to be aware of how grave the situation was and the problems of lawlessness in the area.

Mr Hurrell agreed that before 02.00 hours, the situation on the High Street was acceptable, however after this time it was rowdy, with people drunkenly walking amongst the traffic, screaming and shouting. He mentioned that the door staff of Davinichi's did attempt to move patrons on, but this simply moved the problem further up the High Street. Mr Hurrell referred to an incident that morning at 01.15 hours, when twelve men exiting Davinichi's had been shouting, chanting and cheering for half an hour in the street. He claimed that no door staff were in sight and therefore the procedures that had been put in place by the club management were not effective. He concurred that the management of the club was professional, and honest attempts had been made to deal with the situation – but he did not believe that they were sufficient to address the residents' concerns.

Mr Hurrell concluded by asking the Sub-Committee to alleviate the noise nuisance earlier, he considered that it was not reasonable to expect people who had to work the next day to only get approximately four hours sleep.

No questions were asked of Mr Hurrell.

Councillor Hall addressed the Sub-Committee. He stated that the Members had been presented with a vast amount of evidence from both parties. He observed that the management of the premises was professional and was genuinely attempting to resolve the problems.

He accepted that the club was in a High Street location so some noise was to be expected, but he stated that there needed to be a balance and at the present time the balance was not in favour of the residents. He referred to the evidence which had identified that patrons of Davinchi's had been seen leaving the premises and carrying out anti-social acts. Councillor Hall gave examples of other clubs in the area that closed earlier than 02.00 hours, therefore he was not convinced that it would be detrimental to the business of the premises.

Councillor Hall considered that significant steps had been taken by the management of the premises to elevate the problems; however there was a need to get the correct balance and he urged the Sub-Committee to question whether the conditions agreed with the Premises' Licence Holders were sufficient to address the licensing objectives and achieve the desired results.

In response to a question, Councillor Hall identified those premises which closed earlier than 02.00 hours. However, Mr Javadi pointed out that those premises opened at lunchtime and sold food, so therefore were not comparable to his business.

The Chairman then invited all parties to sum up.

Mr Hurrell stated that he would like the Sub-Committee to consider closing the club earlier so the disturbance experienced by the residents was not so late, and a no re-admission policy introduced.

Mr Hughes stated that Mr McCullough, who had made the application for the review, had been very fair and a great deal of discussion had taken place with the Premises' Licence Holders. He added that Mr Javadi had been both responsive and reactive to the complaints received. He summarised that all but two conditions had been agreed. He referred to the dvd evidence shown at the previous meeting on 19 March 2009, which illustrated two contrasting scenes in the High Street. The second scene had been quieter after remedies had been put in place. He admitted that there would be some noise associated with the premises, but not sufficient enough for the police to have concerns.

Mr Hughes advised the Sub-Committee that Messrs Javadi had operated the premises as a night club since 1970 and had had a licence since 1981, emphasising the owners' commitment and dedication to the business. No serious incidents had occurred and the licence had always been renewed.

The Sub-Committee was advised that both the owners had a physical presence on the premises, taking direct responsibility for monitoring the activities of their patrons. Mr Hughes referred to the huge amount of local support that the premises had, which was evident from the letters included with the agenda paperwork.

He explained that crowds developed outside the premises due to the smoking ban and this had affected every licensed premises and offices. He maintained that the owners of the premises had established provisions to curtail those patrons smoking to an area at the side of the building and this was working satisfactorily.

Mr Hughes described all the measures to reduce the noise nuisance that had been implemented before the Review was called, including a well insulated lobby area, a double cashier system, and a quiet area to use mobile phones. It was noted that the bottling noise had in fact emanated from Cassidy's and not Davinchi's, and the notices that had been served for other noise nuisances had been complied with and therefore discharged. Mr Hughes also mentioned that conditions that had been agreed with the police to address the reduction of crime and disorder. He considered that Davinchi's was not responsible for all the unsociable activities that had been described by the residents, and it was not a problem premises, as confirmed by the police.

The Sub-Committee was presented with a list of the conditions that had been proposed by Mr McCullough. It was noted that most of them had been agreed and did address the issue of noise nuisance. Mr Hughes referred to condition (6), which addressed the designated smoking area, and invited the Sub-Committee to determine the area for this.

Mr Hughes maintained that his clients did not accept the earlier closing time because it was considered that all the other conditions agreed were sufficient to reduce the noise nuisance. In addition, this would have a significant financial implication on the premises. Mr Hughes also referred to the police concerns at this condition, as it would then tie in with the closing times of other licensed premises in the area.

Mr Hughes then went on to explain the reasons for the objection to the condition regarding no re-admission. He maintained that this would cause conflict outside the premises and would cause difficulties for the door and security staff. In addition, this could have implications for policing resources.

Mr Hughes referred to the residents who supported the club and spoke at the last meeting. He maintained that there was a tendency to blame Davinchi's for all the issues that occurred in the High Street, although there were other premises in the area contributing to the noise nuisance.

The Sub-Committee was advised that the security team at Davinchi's was successful in maintaining order and worked well to prevent any incidents outside the premises.

Mr Hughes concluded by recommending that the premises should be given the opportunity to work within the conditions agreed, and if they proved to be insufficient it could be considered by the Sub-Committee once again.

Mr McCullough then provided the Sub-Committee with his summing up. He agreed that the disputed condition may have an affect on the financial aspect of the business, however he considered that, without it, the problem of public nuisance would not be fully addressed.

Mr McCullough reminded the Sub-Committee that the club had been in operation for approximately 30 years with very few operating problems. He identified two issues which had resulted in complaints from the residents, namely the growth of the premises in 2005 (from a capacity of 500 people to 850) and the smoking ban in 2007.

He confirmed that the written submissions received held equal weight to those people who had attended the Sub-Committee and given oral evidence to the Sub-Committee.

With the agreement of the Chairman, the meeting then adjourned for a comfort break from 11.15 to 11.25am.

When the Sub-Committee re-convened, Mr McCullough continued with his summing up. He spoke about the dvd evidence that was played at the earlier meeting on 19 March 2009, and confirmed that a camcorder was not a calculated measure of noise, but it was indicative of the situation experienced by the residents of the High Street. He recapped that the first dvd showed people shouting and swearing, people sitting outside on the steps, queues forming, and patrons walking from the club in front of traffic. The second dvd showed a quieter scene, with the barrier system in place and the presence of the security staff. This provided evidence that the measures put in place were working and these conditions had been accepted voluntarily by the owners of the premises. However, Mr McCullough suggested that the activity was subject to seasonal variation and the situation could escalate again in the summer months. He confirmed that the break out of noise from the music within the club had been largely resolved; however the noise from patrons leaving the premises was still an issue; with residents, including children, being woken up at 02.00 hours. The Sub-Committee was reminded of the decibel readings referred to at the previous meeting.

Mr McCullough referred to the conditions that had been agreed with the police and mentioned that current closing time of 02.00 hours on Wednesday to Saturday was accepted by them because an earlier closing time would clash with the terminal hour at other licensed premises in the area that they had to patrol. Mr McCullough stressed that this factor should not be taken into consideration by the Sub-Committee when determining the application.

The Sub-Committee was advised that Mr McCullough had visited the premises the previous weekend and found very good organisation outside the club. Mr McCullough confirmed that Mr Javadi was present outside the premises, along with his security staff. However, there were still problems at closing time with taxis congregating outside, along with other vehicles waiting to give people lifts, and people wandering across the street. This continued until approximately 02.30 hours.

Mr McCullough went through the contentious conditions, i.e reducing the terminal hour to 01.00 hours, and the no re-admission policy. He maintained that, although initially patrons would resent the no re-admission policy, they would get used to the new rules and come to accept them. He added that the location of the designated smoking area still remained a problem. The Premises' Licence Holders had indicated that they would like this area to be situated to the front and side of the premises, however Mr McCullough stated that it should be only to the side of the building in order to suppress the noise and the patrons were then out of view of the residents' homes. He added that if this area were a little more cramped it would be more uncomfortable and therefore smokers would not stay there for long and return to the club quicker.

Mr McCullough concluded by stating that there had been significant problems with the operation of Davinchi's, although much had now been done to remedy these issues. However, there were still some measures that were needed to reduce the public nuisance element that was still causing residents a reduction in their quality of life.

Because Mr McCullough had raised new evidence in his summing up regarding the previous weekend, the Chairman allowed Mr Hughes the opportunity to respond. Mr Javadi informed the Sub-Committee that he had had a lengthy conversation with Mr McCullough on both occasions and had no further comment to make.

The Sub-Committee then retired to discuss the application in private. Upon reaching a decision, the Members of the Sub-Committee returned to the Council Chamber to announce that decision in public.

RESOLVED – That the application for a review of premises' licence in respect of Davinchi's, 46-50 High Street, Tunbridge Wells be determined as shown at Appendix 1 attached.

Also in Attendance:

Senior Licensing Officer:	Sharon Osborne
Licensing Officer:	Trevor Richardson
Legal Advisor:	Samantha Clarke
Committee Administrator:	Wendy Newton-May
Environmental Protection Manager:	Duncan Haynes
Principal Environmental Health Officer:	John McCullough
Barrister representing Davinchi's:	Gareth Hughes
Licensed Premises Holders:	Majid Javadi and Hamid Javadi
Supporters of the application for a review made by Environmental Protection:	Lorna Blackmore, Councillor Glen Hall, Trevor Hurrell, Eleanor Elston, Jason LaMotte and Gluditta Del Vecchio
Police representatives:	Garry Brimson, Chief Inspector Nyman and Katie Voce

LICENSING SUB-COMMITTEE**LICENSING PREMISES' REVIEW APPLICATION
THURSDAY 30 APRIL 2009****LICENSING SUB-COMMITTEE DECISION NOTICE****NAME AND ADDRESS
OF PREMISES:**

Davinchi's, 46-50 High Street, Tunbridge Wells

**NAME OF PREMISES
LICENCE HOLDERS:**

Mr Hamid Javadi and Mr Majid Javadi

**REASON FOR
HEARING:**

An application for a review was made by the Principal Environmental Health Officer, Mr McCullough, under the Licensing Act 2003, on the grounds of the third licensing objective of "the prevention of public nuisance".

The Environmental Protection Team had received a number of complaints from residents in the vicinity of Davinchi's regarding public nuisance and anti-social behaviour.

**DELIBERATION –
LICENSING
OBJECTIVES:**

The four licensing objectives were considered by the Sub-Committee:

1. Prevention of Crime and Disorder

A representation was received by West Kent Police, however the Sub-Committee was advised their objections had since been withdrawn as several conditions had been agreed with the Premises' Licence Holders.

However, it was noted that points were raised under this objective within representations made and were duly considered by the Sub-Committee.

2. Public Safety

No representations had been received regarding this objective. Whilst it was noted that a few residents had raised concerns under this objective, the Sub-Committee considered that these fell within the scope of Public Nuisance and Crime and Disorder, therefore considered the points raised within the scope of those licensing objectives (e.g see paragraph (3) iii and vi below).

3. The Prevention of Public Nuisance

The Sub-Committee considered the concerns of the Principal Environmental Health Officer, his witnesses and those residents that had made a representation to the Licensing Team regarding noise and disturbance late at night which they considered was caused by customers of Davinchi's.

Members noted that residential properties were being affected by the noise from the premises; particularly since the expansion of the premises in 2005, which increased the number of customers at the premises, and the introduction of the smoking ban in 2007, which had resulted in customers of the premises coming outside to smoke.

The Sub-Committee was advised that the Premises' Licence Holders at Davinchi's had implemented a number of measures in an attempt to reduce the noise nuisance and disturbance; namely:

- (i) extensive sound insulation works to the building and technical measures to reduce other noise from mechanical and musical sources of noise;
- (ii) increased number of door supervisors in high visibility jackets;
- (iii) traffic cones to prevent illegal parking;
- (iv) creation of a smoking area to the side of the premises;
- (v) introduction of two tills to prevent queuing; and
- (vi) barrier system to prevent customers crossing the road to sit on the steps opposite, directly under a resident's bedroom window.

However, written evidence provided by the witnesses and those that had made representations, and evidence provided at the meeting suggested that these measures had not reduced the noise nuisance to an acceptable level. When asked, the majority of speakers at the meeting indicated that they would like to see a reduction in the opening hours of the premises.

Members were made aware of conditions that had been drawn up by the Principal Environmental Health Officer, most of which had been agreed with the Premises' Licence Holders. Conditions not agreed to related to amending the opening hours of the premises to 01:00 hours, Monday to Sunday, and preventing readmission after midnight.

The Sub-Committee also heard evidence from supporters of the Premises' Licence Holders who stated that it should not be assumed that Davinchi's customers caused the noise nuisance, as there were several other licensed premises in the area.

4. Prevention of Harm to Children

Whilst references were made to this licensing objective, the Sub-Committee did not consider that there was substantial evidence that this emanated from the licensed premises in question.

FURTHER DELIBERATIONS:

Members accepted that the expansion of the premises, combined with the smoking ban, had caused an increase in public nuisance around the vicinity. Several conditions had been agreed between the police and the Principal Environmental Protection Officer to improve the situation, however two conditions had not been accepted by the Premises' Licence Holders, namely reducing the closing time and no re-admissions/ admission policies.

Members considered the suggested condition regarding a re-admission policy and agreed that it would not be appropriate to add this to the licence. However, it was considered that there should be no admission of new patrons to the premises one hour before the closing time, apart from Sundays. It was hoped that this would ensure that the area outside the premises did not have large crowds at an unsociable hour.

Members then considered the condition suggested by the Principal Environmental Protection Officer to amend the closing time of the premises to 01:00 hours. It was considered that, in order to protect residents from sleep deprivation during the working week, the closing time on Wednesday and Thursday be reduced to 01:00 hours, however the closing time on all other days remain the same.

DECISION MADE:

1. The closing time for all licensable activities on Wednesday and Thursday are reduced to 01:00 hours.
2. That the conditions detailed in Appendix A are placed on the premises' licence:

Additional notes made by the Sub-Committee to those present at the hearing -

- The Local Authorities Environmental Protection Team, the Premises' Licence Holders and any other person who made relevant representations have the right to appeal the decision of the Sub- Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.
- The Sub-Committee's decision will not have effect until either the end of the 21 day period given for appealing against the decision, or if the decision is appealed against, the time the appeal is disposed of.
- Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the 2003 Act.

Agreed with West Kent Police

1. CCTV to be fitted to a standard agreed to by the police that complies with The CCTV Code of Practice (2008 edition) produced by the Information Commissioners Office, with all public areas, including all access, egress and smoking areas covered. This is also to include any exit doors, alleyways or any other areas used by customers.
2. The CCTV system will be maintained and serviced annually and records kept to that effect.
3. CCTV shall be operational at all times that members of the public or staff are on the premises.
4. Images will be retained for a period of 28 days by whatever means the licence holder deems appropriate.
5. The Police or Local Authority will have access to these images at any reasonable time and in any case within 48 hours of the request for the image being made.
6. The Police or Local Authority will be allowed to take a recording by way of tape, CD Rom or any other means of the image within 48 hours on the initial request being made by either the Police or Local authority.
7. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who is able to provide a recording of any incident at the request of police or local authority.
8. All external smoking areas to be adequately lit.
9. Door supervisors will be employed at the premises from start of evening trading, until 30 minutes after close of trading.
10. A sufficient number of door staff will be employed at the premises to provide safety and security for the capacity. The recommended ratio for door supervisors is 1:100 customers. Plus the additional staff required for condition 20.
11. All security staff will wear a reflective jacket or tabard.
12. All security staff will display their SIA badges by way of a reflective armband.
13. A logbook will be kept detailing all incidents that occur at the premises. This will be a bound book which will detail the following:-
 - The day, date and time of the incident.
 - The member of staff making the entry.
 - All members of staff involved in the incident.
 - An account of the incident.
 - Details of any persons injured and the injuries sustained.
 - Any other details thought relevant.
14. A register will be kept of all security staff working at the premises for every time that the premises are open for trading. This register will be a bound book and it will contain the following information: -

- Day and date of entry.
 - Time that member of security staff starts and finishes work.
 - Full name.
 - SIA registration number.
 - Signature of the member of security staff.
15. No open vessels, bottles or other type of container will be allowed outside of the licensed premises.
 16. Glass drinking vessels to be toughened or polycarbonate.
 17. All staff will be fully trained in their responsibilities under the Licensing Act and the training will be fully auditable and available to any responsible authority on request.
 18. A personal licence holder will be present at all times that the premises are trading for the sale of alcohol.
 19. Wind down music to be played for 30 minutes prior to end of all Regulated Entertainment activities.
 20. On Friday, Saturday and other event nights a minimum of 2 security staff deployed to ensure that any people forming a queue at the entrance to the premises, or people temporarily leaving the premises, are orderly and supervised in such way so that they do not cause a nuisance to other nearby businesses, residents, passing pedestrians or traffic. On other occasions a minimum of 1 security staff.
 21. Smoking will only be allowed in the designated smoking area to the side of the premises (shown by the attached location plan).
 22. No persons under the age of 18 years will be allowed on the premises unless attending a private pre booked function or event.
 23. All staff will be fully trained in 'Challenge 21' and the training will be fully auditable and available to any responsible authority on request.
 24. Notices to advise customers that 'Challenge 21' is in force and notices will be prominently displayed in all areas to that effect.
 25. The only proof of age that will be accepted will be a passport, photographic driving licence or Home Office Issued National Identity Card.
 26. Install a temporary barrier system that will define the smoking area outside the Davinchi's exit.
 27. The barrier to be temporarily installed at all times that door supervisors are employed.

Conditions agreed with Environmental Protection Team at the Hearing

28. Music within the club will be reduced to a noise level (in dB) to be agreed with the Council's Environmental Protection Team fifteen minutes before the closure of the club.
29. A noise management plan to be produced which formalises how the club will deal with situations relating to noise issues.

30. No bottling to be undertaken outside the premises between the hours of 22:00 and 09:00.
31. An area will be provided that is suitable for the use of mobile phones.
32. Two cashiers to be operating at all times when customers are queuing outside.
33. Customers to be instructed not to go across the road when they leave the premises before the end of normal club opening hours. Customers who insist on crossing the road shall not be readmitted to the club.
34. At least one licensed door staff to supervise the Smoking area at all times whilst the smoking area is in operation.
35. Clearly displayed notices reminding customers leaving the premises that they are in a residential area and requesting them to leave quietly.
36. At the end of the night there will be an announcement made by the DJ to remind customers that the club is situated in a residential area and requesting that they treat the neighbours with respect by leaving the club as quietly as possible.
37. A telephone contact number for complainants to contact the club so that issues can be reported quickly and dealt with effectively when the problem is occurring. The phone must be located so that it will be answered by an official of the club whenever the club is operating.

Condition imposed by the Licensing Sub-Committee further to their deliberations:

38. No admission of new patrons to the premises one hour before closing time, apart from on a Sunday.

