

Town Clerk's Office
John Barradell
Town Clerk & Chief Executive



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Our ref GS/LIC

Date 7 June 2016

Dear Sir/Madam

Applicant:	Disappearing Dining Club Limited
Premises:	24-26 Newbury Street, EC1A 7HU
Date / time of Hearing:	Thursday, 2 June 2016 – 11.00am
Venue:	Committee Room 1, 2nd Floor, West Wing, Guildhall, London EC2P 2EJ

I write to confirm the decision of the Licensing (Hearing) Sub-Committee at the hearing held on 2 June 2016 in relation to the above-mentioned application. The Sub Committee's decision is set out below.

The Sub-Committee comprised of Peter Dunphy (Chairman), Deputy John Barker and Deputy Jamie Ingham Clark.

Ms Anna Mathias – a barrister representing the applicant and Mr Stuart Langley, Founder and Co-owner of the Disappearing Dining Club Limited, made submissions in support of the application.

Rachel Sambells (Environmental Health Department of the City of London), Mr Brendan Barns, Laura Daly, Peter Dennis, Julian Ingall and Kieran Thind appeared to oppose the application.

1. This decision relates to an application made by Disappearing Dining Club Limited, for a new premises licence in respect of the premises situated at 24-26 Newbury Street, EC1A 7HU.

The application originally sought to provide the following activities:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed</u>
Supply of Alcohol, Recorded Music, Anything	N/A	Mon - Wed 11:00 – 01:00

of a similar description to recorded music.		Thu – Sat 11:00 – 02:00 Sun 12:00 – 01:00
Late Night Refreshment	N/A	Sun – Wed 23:00 – 01:30 Thu – Sat 23:00 – 02:30

2. On 14 April 2016, the applicant sought an amendment to the application with an addition to the operating schedule and non-standard timings as follows:
 - ‘No Promoted Events’ to be added to the operating schedule.
 - The installation of a more intricate CCTV system to that described in the original operating schedule.
 - The licensing activities to be extended on New Year’s Eve to 03:00 only.

3. On 25th May 2016 the Applicant informed those making representations that it would be seeking a further amendment to the application to reduce the permitted hours for licensable activities as follows :-
 - A terminal hour of 22:00 on Sundays, 23:00 Mon-Thurs and 00:00 on Fridays and Saturdays, with a further 30 minutes at the end of these hours during which the premises will remain open to the public.

4. At this stage, the applicant also proposed the following further conditions in response to the concerns of Environmental Health and to those of residents:
 - Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
 - No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
 - Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
 - Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
 - All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
 - No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.

- No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
 - Before the premises open to the public, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where the premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
 - Any taxis called by staff to collect patrons shall be instructed to pick them up on the corner of Cloth Street and Long Lane.
 - Patrons shall be encouraged to wait inside the premises for any taxis that have been called to collect them to arrive.
 - Recorded music shall only be played in the basement and not in the ground floor entrance area.
 - A noise management policy shall be in place setting out measures to prevent noise break out from the premises affecting the residential premises.
5. The Sub Committee considered the application and carefully deliberated upon the representations submitted in writing and orally at the hearing by those making representations and the Applicant. The Sub-Committee also viewed additional photographs of waste and deliveries recently left outside the premises submitted at the hearing by those making representations. The applicant agreed to their submission.
 6. In reaching the decision the Sub-Committee were mindful of the provisions of the Licensing Act 2003, in particular the statutory licensing objectives, together with the guidance issued by the Secretary of State in pursuance of the Act and the City of London's own Statement of Licensing Policy dated January 2013.
 7. Furthermore, the Sub-Committee had regard to the duty to apply the statutory test as to whether an application should or should not be granted, that test being that the application should be granted unless it was satisfied that it was necessary to refuse all, or part, of an application or necessary and appropriate to impose conditions on the granting of the application in order to promote one (or more) of the licensing objectives.
 8. In determining the application, the Sub-Committee first and foremost put the promotion of the licensing objectives at the heart of their decision; in this instance the most relevant of those objectives being the prevention of public nuisance.
 9. The Sub-Committee heard representation's from the City of London's Environmental Health Officer who expressed grave concerns in respect of the application. She explained to the Sub-Committee that Newbury Street had very low

background noise levels compared with most other areas of the City meaning that there were no alternative noise sources (e.g. traffic) to mask any added sound.

10. Furthermore, the proposed licensed premises would change the acoustic character of the area with noise resulting from patrons leaving the premises, taxis collecting patrons on their departure from the premises and patrons gathering outside the premises to smoke and make telephone calls would likely cause nuisance to local residents. The nuisance would likely be exacerbated by the fact that the narrowness of the street and the construction of the buildings create a 'canyoning' effect when it comes to the transmission of noise.
11. The Environmental Health Officer also expressed concerns as to the "Noise Management/Dispersal Policy" put forward by the Applicant to address the concerns of those making representations against the application. She felt that the policy lacked sufficient detail to be able to provide a critical analysis of the proposals and how they were to be put into effect.
12. The residents who made representations against the application also submitted that the granting of a licence to the applicant would create a nuisance for those who resided in the vicinity. Particular concerns related to the departure of patrons late in the evening whether on foot or by taxi, patrons smoking outside the premises, the noise caused by waste collection either late in the evening and nuisance caused by deliveries to the premises.
13. The Applicant put forward a number of proposals to address the concerns raised by those making representations against the application.
14. With regards to the noise caused by taxis collecting patrons, the Applicant indicated that it would make arrangements with a local taxi firm to collect patrons with the collection point being in Long Lane as opposed to Newbury Street. This proposal was rejected by those making representations against the licence on the basis that the Applicant could not exercise control over patrons who chose to make their own taxi arrangements.
15. The Applicant also stated that it would discourage patrons from congregating outside the premises to smoke and would prohibit patrons from taking drinks out with them. It would also encourage patrons who wished to make telephone calls to do so in the ground floor foyer. Those opposing the application argued that the Applicant could not exercise control over patrons and their conduct once they left the premises.
16. With regards to waste collections, the Applicant stated that it would make arrangements with a private waste collector to ensure that the waste was collected between the hours of 18.00-23.00 and that waste would not be placed outside for collection until 30 minutes prior to collection.
17. In reaching its decision the Sub-Committee took into account its duty to promote the licensing objectives, particularly the duty to prevent public nuisance. In determining whether a public nuisance would arise the Sub-Committee relied upon the definition

of “public nuisance” contained in Halsbury’s Laws of England which defines public nuisance as “one which inflicts damage, injury or inconvenience on all the Queen’s subjects or on all members of a class who come within the sphere or neighbourhood of its operation...The character of the neighbourhood is relevant to determination of the question of whether a particular activity constitutes a public nuisance.”

18. The Sub-Committee took into account the somewhat unique character of the Street which is one of the few areas in the City of London which is relatively quiet. The Sub-Committee also took into account that the City of London Corporation could find no record of the premises being previously licensed and that, at present, there are no licensed premises at all on this residential street. The lack of background noise coupled with the canyon effect created by the buildings also made the area more susceptible to noise nuisance. The Sub-Committee found the concerns raised by those opposing the application convincing.
19. The Sub-Committee also considered the measures proposed by the Applicant to address the concerns raised. It found the Applicant to be genuine in its intentions, illustrated by the reduced hours of operation put forward in advance of this hearing. However, the Sub-Committee was not convinced that the measures put forward to reduce the potential of noise nuisance to local residents would be effective. The proposal relating to the Applicant arranging taxis on behalf of its patrons was not practical as it could not prevent patrons making their own arrangements with taxi companies.
20. The Sub-Committee concluded that the proposal to seek to restrict patrons smoking outside the premises was unenforceable as the Applicant would be unable to exercise any control over patrons once they left the premises.
21. The Sub-Committee found the Applicant’s “Noise Management/Dispersal Policy” to be weak. Whilst the policy expressed a willingness to engage with the Environmental Health Service it lacked any firm measures as to what was to be put in place to ensure that the risk of noise nuisance was minimised.
22. The Sub-Committee was satisfied that, due to the character of the area, there was a likelihood that there would be public nuisance should the application be granted. Furthermore, it was not convinced that the measures proposed by the Applicant would prevent such public nuisance. Accordingly, it decided that it was necessary and appropriate to refuse the application.

23. If any party is dissatisfied with this decision, he or she is reminded of the right to appeal, within 21 days of the date of this letter, to a Magistrates' Court. Any party proposing to appeal is also reminded that under s181 (2) of the Licensing Act 2003, the Magistrates' Court hearing the appeal may make such order as to costs as it thinks fit.

Yours faithfully,

Gemma Stokley

Clerk to the Licensing (Hearing) Sub Committee

Useful Numbers/Websites:

An 'Out of Hours' noise response service is available 24 hours a day by telephone:
0207 6063030

The City's Environmental Health Team can be contacted at:

publicprotection@cityoflondon.gov.uk

The City's Licensing Department can be contacted on: licensing@cityoflondon.gov.uk

Licensing Policy and Code of Good Practice for Licensed Premises:

<http://www.cityoflondon.gov.uk/business/licensing/alcohol-and-entertainment/Pages/Licensing-policy.aspx>

CC: Anna Mathias, Woods Whur 2014 Limited, Devonshire House, 38 York Place, Leeds, LS1 2ED