NORWICH CITY COUNCIL

NOTICE OF DETERMINATION

Date of Hearing: 7th February 2023

Application for the grant of a premises licence under the Licensing Act 2003

Address of premises: 1 Red Lion Street, Norwich, NR1 3QF

Applicant: Ibra Zaff Hospitality Ltd, company number 12231695.

Members of the Licensing Sub-Committee: Councillor Stutely (Chair), Councillor Brociek-Coulton and Councillor Kidman.

Other persons attending Committee: Zafer Arslandoc, director and applicant's representative; Jane Backhouse, objector; Gill Ward, objector; Nick Backhouse, objector; Alan Mitchell, objector; Patricia Arnup, objector; Graham Arnup, objector; James Close, objector; Blair Keen, objector; David Lowens, solicitor and legal advisor; Oliver Forster-Vets, apprentice solicitor; Rachel Bennett, Licensing Advisor; Leonie Burwitz, Committee Officer.

DETERMINATION

1. There were no apologies for absence.

2. There were no declarations of interest. There were no papers in addition to those within the agenda, except for two plans from the applicant dealing with the rooftop which were distributed to those present,

3. Rachel Bennett presented the report. She mentioned that the conditions proposed by the Norfolk Constabulary had been agreed, as had the conditions proposed by the Public Protection team. As a result, the Public Protection team had withdrawn their representation. The applicant company via their director Mr Zafer Arslandoc (hereafter "applicant") had withdrawn the request for the licensing of recorded music in advance of committee.

4. The applicant noted the small area marked in red on a new plan of the rooftop was intended to show the area sought to be licensed for the retail sale of alcohol and did not show the proposed area for any other licensable activity.

5. The applicant agreed that there was no intention for persons to consume alcohol only whilst seated and confirmed that as mentioned on the plan there were to be no loudspeakers outside the premises or on the rooftop terrace, which would not be used post 23:00.

6. The applicant addressed committee and explained the intention behind the application, which was to provide a relaxed cocktail type bar with limited live music. The intended roof terrace would be nothing like Gonzo's for example. Food would be provided on the first floor. It would be a drinking and dining experience. The applicant confirmed they had agreed the conditions proposed by the Norfolk Constabulary and the Public Protection team of the council.

7. Regarding the wording of the first bullet point of the police suggestions on page 32 of the agenda, it was agreed that wording was missing, and the paragraph should read as follows: Staff will be trained in relation to the sale of alcohol and a written record of this training will be kept at the premises and will be made available to Police or Licensing Authority on request.

8. The legal advisor detailed various parts of the application where clarification would be helpful and the applicant agreed that in respect of late night refreshment this would be indoors only, and in respect of live music this would also be indoors only. It was intended that there would be no use of the rooftop terrace beyond 23:00, and this included the clearing up after customers and suchlike auxiliary activities which would need to be complete by 23:00. In respect of the provision of live music the application was amended by the applicant to introduce a closing hour of 23:00 on Thursday, Friday and Saturday. Live music was sought only for the ground and first floors. Live music was intended to be a guitar, cello or similar. The legal advisor confirmed that in the absence of any condition dealing with the point any licensed activity of live music would be via any instrument. The police wish for a drinking up period was noted, and the applicant amended their sought hours for the supply of alcohol to cease at 00:45 AM on Monday to Wednesday (Tue to Thu early morning) and 2:15 AM on Friday and Saturday (Sat and Sun early morning).

9. The applicant confirmed that numbers in the premises would be controlled by door supervisors with counting devices, and this was offered as a condition.

10. Following discussion regarding the conditions proposed by the police, and those contained in the application papers, it was agreed by the applicant that proposed condition b)13 on page 20 should be deleted. Regarding condition d) on the first line, this was amended to "All customers leaving at closing time will be encouraged to leave quietly".

11. The legal advisor informed committee that the proposed wording "*Relevant noise insulation materials will be installed/fixed (soundproof plasterboards, rock-wool insulations along with noise absorbing plants throughout the premises) in order to keep the noise under control*" lacked sufficient certainty and detail to be acceptable as an enforceable condition in their view. Discussion via the Chair took place regarding the noise mitigation within the premises which the applicant described, as built, and as planned. The applicant did not wish to amend the wording proposed here as part of the operating schedule.

12. The applicant agreed in respect of proposed condition b) 14 that copies would be available to both the police and the licensing authority on request.

13. Discussion took place regarding noise from the proposed rooftop terrace. The applicant noted that there would be one door allowing access to the rooftop terrace and detailed the location on the photograph in the agenda papers. There would be loudspeakers on the first floor. There was no intended lobby to the stairs to the rooftop terrace, and thus between the first floor and the rooftop terrace. The applicant suggested most guests on the rooftop terrace would leave by 10:30. The applicant had not calculated what sort of sound waves would come from the first floor but believed that the plants placed on the rooftop would have high sound insulation properties. The applicant could not say whether the noise level would disturb persons in the flats or not.

14. Mr James Close addressed committee, noting his concern with noise nuisance and that the rooftop terrace, being surrounded by buildings, would act as an amphitheatre. A single door would not prevent the egress of noise.

15. Mr Nick Backhouse addressed committee, noting the location of Westlegate Tower 20 metres away where bedrooms overlooked the application premises together with other residential accommodation in the area. He was concerned regarding any noise leakage from the roof lights and concerned about disturbance from the noise from persons on the rooftop terrace talking and drinking. He suggested the premises, noting the hours sought to 2:30am, were more likely to be a night club type use and were inappropriate in this retail/residential area.

16. The applicant mentioned the rooflights were intended to be triple glazed in addition to having toughened glass. There would be no noise escape. The glass would be frosted/glazed and so there would be limited light escaping.

17. The applicant noted the layout shown was for illustration only, the expected capacity of the premises was 200 to 250 persons of whom 100-120 were expected to use the roof terrace which would also be used as a smoking area.

18. Mr Alan Mitchell addressed committee. He and others had balconies overlooking the rooftop area, with a direct line of sight. He was concerned about the noise from 120 persons so close to his accommodation and the disturbance and distress this would cause.

19. It was agreed that the photograph in the agenda bundle was from Apartment 9 on the tenth floor.

20. Mr Keen addressed committee, noting the likely mental health damage of sleep deprivation, and mentioning his experience with serious problems of noise nuisance in the past from the Pig and Whistle public house. He was concerned about the proposed hours of operation extending into the early hours of the morning and noted his eleven-year-old daughter's bedroom was close and she was likely to be disturbed by noise. He was aware of noise from the kitchen door of Bella Italia being used when staff were smoking in the

alleyway and thus expected to also hear noise from the rooftop terrace bar and to be disturbed by persons in the adjoining alleyway smoking.

21. Mr Close noted that restaurants in the area closed at around 23:00, and their operation did not cause nuisance, he was concerned that this was a nightclub application and concerned that his daughter whose bedroom overlooked the terrace and who worked shifts would be disturbed by noise. He believed there would be significant noise disturbance from chillers, glass collecting and such matters on the rooftop terrace, the running of a bar being a noisy activity.

22. The applicant mentioned the soundproofing in the building and then discussed matters relevant to the planning application. He was unable to say whether the individuals at committee would be individually affected or not by the proposed activities, he did not know their sensitivity to noise. He believed the area of Westlegate whilst it used to be quiet was now busy.

23. Mr Backhouse felt that no reassurance had been provided that the noise from 120 persons on the terrace was going to be acceptable.

24. The applicant repeated his reference to noise mitigation and the materials used in the roof lights. He noted that this was a city centre location and thus some noise should be expected by comparison to other locations. A noise impact assessment would be prepared but this awaited the planning application. He had investigated Harrods roof bar noise mitigation controls where most of the noise was managed via planting.

25. The applicant was happy to introduce a condition that there would be no supply of alcohol to or on the roof terrace after 22:45 hours.

26. Cllr Kidman asked regarding the impact of noise from customers on the roof terrace and the live performances of music, the applicant intended this to be acoustic and agreed that the proposal was for live music only on the ground and first floors and noted the closing time for live music had been reduced to 23:00.

27. Cllr Brociek-Coulton asked regarding the time of bin collections and possible disturbance arising from those. The applicant noted that he could not control when his refuse was collected, but he was happy to introduce a condition that "There is to be no emptying of glass into external containers after 21:00". There was no proposed start time for the condition.

28. The applicant noted in closing that the premises did not wish to be a nuisance and that the applicant had done everything he could think of. It was agreed for clarity by the applicant that the proposed door to the roof terrace would not have a lobby and the opening was in direct line of sight to Westlegate Tower.
29. Members retired to consider their decision in private, the decision then being given in public together with notification of appeal rights.

DECISION OF THE LICENSING SUB-COMMITTEE

The application as amended, and with the agreed conditions introduced, was granted in part.

That part of the application seeking permission for the sale by retail of alcohol was refused in respect of the intended rooftop terrace.

A condition was imposed that there will be no public use of the roof terrace / roof area at any time.

A condition was imposed that the licensee will ensure that no more than six members of the public are permitted in the alleyway adjacent to the premises during the opening hours of the premises.

The hours for late night refreshment are amended as follows: 23:00 to 23:30 on Monday to Saturday. The application for late night refreshment for Sunday was refused, as it would conflict with the hours specified below regarding the opening of the premises.

The hours for the sale by retail of alcohol are amended as follows: 12:00 to 23:30 Monday to Saturday and 12:00 to 22:30 on Sunday.

The hours for the premises being open to the public are amended to a closing time to 24:00 on Monday to Saturday and 23:00 on Sunday.

REASONS FOR THE COMMITTEE'S DECISION

1. Under paragraph 8.47 of the s182 statutory guidance (Dec 2022 edition) an applicant is expected to provide the licensing authority with sufficient information to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. The council's local policy (Dec 2021 edn) in paragraph 3.4 requires applicants to provide evidence that suitable and sufficient measures, as detailed in their operating schedule, will be implemented and maintained relevant to the individual style, location and characteristics of their premises and activities. It is the committee view that the applicant has not satisfied these obligations in all areas of their application.

2. The premises is in a mixed retail and residential area, within the city centre, with limited background noise in the early hours.

3. The committee gives weight to the withdrawal of representations from responsible authorities.
4. The premises is located very close to residential accommodation, with bedrooms close to the proposed roof terrace. A noise impact assessment may be prepared for planning purposes but is not yet available. There is concern regarding any use of a rooftop location by the public, in that there is no lobby

suggested between the first and roof floors, there is direct line of sight between the roof entrance and the flats in Westlegate Tower (relevant to noise transfer) and noise transfer is inevitable. The noise from conversation between persons will likely be a nuisance and committee note the suggestion by the applicant that approximately 100-120 persons is the likely maximum on the roof terrace, which is felt to be a significant number and this number of customers are likely to produce a lot of noise. The lack of a lobby means noise from the first floor is also likely to be transmitted to some flats in Westlegate Tower during opening of the access door. No detailed noise mitigation strategy was available at committee, but it is noted that some flats appear to be located above the rooftop and thus it is unlikely that any planting will be of a height sufficiently to disrupt or mitigate noise transfer even if the planting can successfully mitigate the noise. The applicant has confirmed in his evidence that he could not say whether persons in the flats would be disturbed or not.

5. The committee has thus imposed a condition preventing use of any roof area by the public as that is appropriate to promote the licensing objective of the prevention of public nuisance.

6. Noting the location very close to residential accommodation, and noting existing uses in the area, committee has also reduced the hours for permitted licensable activities and has conditioned the closing times for the premises to be open to the public. The introduced hours are felt to be appropriate to promote the licensing objective of the prevention of public nuisance in the circumstances of this particular premises, noting also the experiences of residents explained at committee and within the representations received. Committee did not feel that the applicant had presented sufficient details of how noise nuisance in the immediate area of the premises would be mitigated with the early morning opening hours proposed. The committee is aware of the personal responsibility obligations upon members of the public when outside the control of the premises licence holder, as mentioned in the statutory guidance, but committee believes that with the original hours proposed there would be unreasonable noise from the smoking area, external, and from persons leaving. Loud conversations after consumption of alcohol would be likely in the early hours of the morning in an area with low background noise.

7. Committee felt that a period of 30 mins drinking up time was more appropriate to the promotion of the licensing objectives and should replace the proposed 15 minutes.

RIGHT OF A PARTY TO APPEAL AGAINST THE DECISION OF THE LICENSING SUB-COMMITTEE

The Applicant and any person who has submitted a relevant representation may appeal this decision at the Magistrates Court within 21 days of the date on which they are notified in writing of this decision in accordance with the following appeal provisions under Schedule 5 of the Licensing Act 2003: –

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of section 18,

they may appeal against the decision.

Dated 15 February 2023

Signed: …… (Chair, Licensing Sub-Committee)

15 February 2023