

Notice of Determination in respect of a hearing of the Licensing Sub Committee of Norwich City Council regarding an application for a premises licence for The Weir Café Bar, 64-66 Westwick Street , Norwich, Norfolk.

Committee dates – 1st July, 2nd July and 6th July 2021.

1st July – hearing evidence at the Council Chamber, City Hall, Norwich.

2nd July – considering evidence in private

6th July – notification of decision made under the Licensing Act 2003.

Members of committee present on all dates– Councillors Stutely (Chair), Maxwell and Youssef.

List of attendees/persons notifying the council of their attendance:

	Name	Role
1	Michelle Bartram	Police
2	Cllr Ian Stutely	Committee member
3	Cllr Marion Maxwell	Committee member
4	Cllr Nanette Youssef	Committee member
5	Graham Thompson	Objector
6	Marilyn Ayres	Objector
7	Roger Cortis	Objector
8	Joanna Smith	Objector
9	Christopher Reynolds	Objector
10	Ali Eady	Objector
11	Jason Watts	Objector
12	Jennifer Hartt	Objector
13	Sally Youll	Objector
14	Terry Youll	Objector
15	Cllr Osborn	Objector
16	Cllr Bogelein	Objector
17	Cllr Schmierer	Objector
18	Vincent Gaine	Objector
19	Celia Scott	Objector
20	Kevin Nutt	Supporter
21	Aidan Mahon	Applicant
22	Tim Cary	Applicant's solicitor
23	Nick Gooch	Applicant's witness
24	Ian Rees	Applicant's witness
25	Matthew Tucker	Applicant's witness
26	Amanda Nutt	Supporter
27	Claire Burridge	Applicant's witness
28	Grace Pierson	Applicant's witness
29	Dylon Hickman	Applicant's witness
30	Steve Barber	Applicant's witness
31	Leonie Burwitz	Officer
32	Tiffany Bentley	Officer

33	David Lowens	Solicitor, legal advisor
34	Sarah Scurr	Objector
35	Dan Grimmer	Press

Summary notes of 1st July hearing

There were no declarations of interest and no apologies for absence. The councillors confirmed that they had all signed the code of conduct for councillors.

It was confirmed that there were no additional papers to consider beyond those circulated in advance of committee in the agenda pack and the additional email from Adrian James Acoustics (Mr Ian Rees) dated 14 June 2021 regarding his inspection of the 12th June.

Tiffany Bentley presented the report. She mentioned that there was a revised plan reducing the area sought to be licensed and in addition the Public Protection Team would not be addressing committee as no relevant representation had been received from them.

Mr Cary on behalf of Mr Mahon, the applicant for the premises licence, addressed committee. The proposed conditions put forward by the police were acceptable to the applicant, with one change to deal with the reduced area proposed to be licensed and the removal of open containers of alcohol. The amended plan with a reduced area to be licensed was intended to reassure those concerned about possible music nuisance that the applicant did not intend to take advantage of the Live Music Act authorisations. It would be a properly run establishment. Mr Cary mentioned the Public Protection Team had visited the premises without raising any issues.

Mr Cary mentioned that the applicant was unaware of the level of public animosity, noting that he felt concerns had increased following a zoom meeting organised by a political group to which the applicant was not invited.

Last year there had been a premises licence application for the site with a completely different proposal, with sale of alcohol to 00:00 for example. That was withdrawn following significant local objections. The applicant had put together the current proposal and was surprised at the level of local opposition. It is an open site, covid secure, and is in the spirit of the legislation.

Mr Mahon mentioned that he'd had no interaction with any neighbour regarding the current application, no conversation had taken place with any member of the public.

Mr Cary said that the premises was in a mixed area with domestic and commercial uses, currently used as an office in part but mainly redundant space. The applicant was an experienced operator who has successfully run several ventures in Norwich who was aware of and would comply with his legal obligations. Last year had been an "all singing/all dancing" application, the current application was significantly different. The applicant does not seek any form of regulated entertainment, opening hours and days are limited, the proposal had been tested with the use of temporary event notices, it was a table service establishment with 30 tables and a capacity of

180 persons. Food was served and the applicant was keen to develop the food side of the business. If the application was successful a minor variation would follow to build a proper kitchen. This was not a business which was like those found in Riverside or Prince of Wales Road.

Mr Cary noted the large numbers of restaurants in St Benedicts, Pottergate and St John Maddermarket and noted the moves towards pedestrianisation. The premises could be part of this, being a relatively modest establishment, disabled friendly, selling food with alcohol. Tables are placed under a marquee in a secure area by the river, with access to the river protected by railings and a locked gate. It is intended as a family friendly venue. The police have visited twice and no issues of concern have been found, the same is true of public protection.

Mr Cary noted concerns from residents regarding noise and mentioned noise measurement had taken place, the relevant report was in the papers and the author of the report was present. The report mentions the minimal impact noise disturbance will have on the neighbours.

Mr Cary noted that few objections had been received from Watermans Yard, the closest residential block. No one from St Martins Housing Trust had contacted the applicant with concerns on the proposal, the applicant had spoken to the day and night managers neither of whom had raised issues of concern and Mr Cary noted that other licensed establishments were close, for example the White Lion in Oak Street.

Mr Cary noted that if the applicant was granted a licence and stepped out of line the review procedure was available.

In summary he said the objections were misconceived and issues of concern could be dealt with, the applicant's witnesses were present to answer questions regarding any concerns.

Mr Graham Thompson addressed committee. He had experience with the licensing trade. He felt the area was predominantly residential in nature and noted further residential accommodation was being built at the old British Telecom site.

Mr Thompson said he had heard music from the property coming through his wall, which caused disturbance. Voices were raised when people had drunk alcohol and voice noise was also a problem. He suggested that Watermans Yard had many occupiers on six-month tenancies who were less likely to complain and that those premises had a high turnover of occupiers. Property values would be affected if the Weir licence was granted.

Ms Marilyn Ayers addressed committee. The noise from persons drinking on the Weir site is disruptive and gets louder as more alcohol is consumed. The sound levels are invasive. The venue is unsuitable for this proposed use with the river buildings causing an echoing effect. She queried the need for the premises.

(The legal advisor noted that need was not a relevant consideration for the committee).

Mr Cary noted that the noise expert was available to deal with questions on noise, that there were other sources of noise in the area and that this was a city centre location. It was not a drinking den but a café bar with an emphasis on the service of food. The applicant would be happy to have a hotline for residents' concerns. No attempt had been made by residents to communicate with the applicant. The applicant had operated under TEN's for three full weekends without complaint from anyone, which compared favourably with the numerous complaints made regarding the Marquee proposal last year. Mr Cary noted that a flyer had been sent round by a political party regarding the application.

Ms Tiffany Bentley noted that no noise complaints had been made directly to the licensing team by residents that she was aware of.

Cllr Bogelein addressed committee. She was a ward councillor and wished committee to be aware of the funnelling effect of the river on noise. Residents could hear noise more due to the funnelling effect. The zoom meeting was mentioned.

Mr Ian Rees of Adrian James Acoustics addressed committee. He had measured noise levels from two positions on Saturday 1 May, as shown on the report. Position two was next to Watermans Yard. There was a constant masking noise from water over the weir. In terms of levels, it was difficult to distinguish music separately from conversation. The music level was generally below the conversation noise level. It did not strike him personally that it was at a level which would be considered disruptive to a lot of people. The second evening on 12 June he remembered as one with fewer customers, the background music was the same, but conversation was quieter. It had been raining and was a cold day. In response to questions Mr Rees noted that he had not done a headcount and could not say how many persons were present, but on 1 May the peak of activity was from 5pm to 7pm.

Mr Mahon responded that this was his second weekend of opening, a busy Saturday with perhaps 15 to 20 tables occupied.

Mr Roger Cortis addressed committee. He had spoken with Mr Rees on two separate occasions whilst he was carrying out the survey. Perhaps a dozen persons were present on site. He felt the noise report had little value if it was designed to tell committee what voice noise level was likely with all tables occupied.

Mr Rees confirmed that his firm had been contacted to do the noise survey at a particular time. During the evening it got quieter. The first monitoring was arranged for 3:30pm to 10:15pm at position one, 20:15 to 22:15 at position two on Saturday 1st May, the second monitoring on 12 June was 8pm to 8:45pm (second timings taken from email contents).

Mr Cortis repeated his view that on the first occasion there was practically no one at the tables. It was a quiet, wet day.

Mr Mahon mentioned that he had checked financial records and it was a good day from the point of view of takings.

Ms Claire Burrige for the applicant mentioned she had been there, 7 or 8 tables were in use, it was reasonable but not full. It was not completely quiet.

Mr Dylan Hickman for the applicant mentioned that he had worked every weekend and Saturday was one of their busiest days.

In response to a request from the legal advisor to assist committee with an explanation of noise measurement, Mr Rees mentioned that he was mainly dealing with music. Quantifying disturbance from voice was difficult as conversational voice noise varies greatly from one moment to the next. In his view the noise was commensurate with a typical pub beer garden.

In response to a request regarding whether background noise levels had been taken and recorded when neither conversational noise nor background music from the site were ongoing, Mr Rees noted that on 7 Oct 2020 noise levels on Riverside Walk, so position 2, had been measured at ambient background of about 50dBA. Constant noise from the weir occurred.

Mr Rees noted that whilst noise would generally decay (reduce) with distance travelled the river would mean there was a potential for the noise not to decay as rapidly.

Ms Jennifer Hartt addressed committee. She could hear noise from the site and mentioned an occasion of a loud drunken customer. She disputed Mr Rees' evidence and noted she had submitted a noise recording to the Public Protection section of the council.

Mr Rees responded that conversational noise can vary, and he would expect the masking effect from water at the weir to reduce further down the river.

Ms Celia Scott addressed committee. On several occasions over the last few months she had had to retreat indoors to avoid voice nuisance from persons spilling out of the Weir. Voices became louder as the evening went on.

In response to a query as to audibility, Mr Rees mentioned that at 55 dBA with a background of 50 dBA he would expect noise from the site to be audible above background noise. World Health Organisation standards were not available to measure short term levels against. When determining nuisance Mr Rees said things boiled down to the judgment of investigating Environmental Health Officers. He confirmed that in Oct 2020 when measuring background noise for the Marquee proposal this was around 50 dBA. On 12 June 2021 the background would be somewhere around 48 dBA and he did not expect much below that measurement unless the sluice was cut off. The area had the benefit of this constant masking noise which would go up and down a bit with rainfall and thus water level at the sluice/weir.

Mr Rees said in terms of masking the noise from the Weir premises the sluice/weir being a constant noise would help to mask individual voices, immediately opposite the premises the conversational noise would likely be a bit higher and that this was not a silent area though the shielding from buildings meant that traffic noise is muted. He mentioned the duty of the Environmental Health teams to investigate noise complaints and act in cases of statutory nuisance.

Ms Joanna Smith, office manager for Clive Lewis MP, addressed committee. She mentioned concerns regarding the vulnerable of Highwater House and the need to

look after residents. Whilst the constant hum of the river is not a problem persons shouting is disturbing. She was concerned regarding persons spilling out from the premises.

Mr Cary noted the lack of police objections and believed that worries regarding Highwater House occupiers was speculative in nature.

(Committee paused for lunch, reconvening at 2:05)

Mr Barker, SIA witness for the applicant, addressed committee. He responded to questions from Cllr Youssef regarding the incident on page 50 of the agenda, noted that he was not present on that date but that if persons were drunk and disorderly, they were asked to leave.

Mr Mahon said he was not aware of anyone being punched whilst the premises had been open.

Mr Barker noted that the number of SIA staff varied, between 1 to 3. In response to a question from the Chair as to handling levels of noise from customers Mr Barker said that SIA staff at the front of the premises would not always be aware of this, management and bar staff were more likely to deal with such customers.

Mr Mahon confirmed the premises had a security log. If someone had been punched it would be recorded. Decibel readings were taken. In response to a question from Cllr Maxwell Mr Mahon was clear that no one had been punched on the floor since he opened. He had eight CCTV cameras and footage was kept for 31 days.

Mr Mahon said that very few problems had been noted with Challenge 25, staff members were trained to recognise when adults were supplying alcohol to underage persons. Fights would be dealt with by careful words first, and persons threatened with the police if necessary.

Mr Mahon mentioned that regarding persons lingering on the road this was not within his jurisdiction.

Mr Cary said regarding off sales that whilst it was intended to stop persons leaving the premises with open containers of alcohol it was not known how the business would develop, so off sales were sought as part of the application.

Ms Sally Youll addressed committee. She lived directly opposite the premises, it was a quiet residential area with little city or traffic noise. Her experience was that noise from the Weir was intolerable. It was loud and jarring, problematic due to its nature. There were intermittent outbreaks of shouting and singing with some swearing. This was on top of background music. She was only 25 yards or so across the river. The noise penetrated her property even with windows shut and she believed the noise from the Weir was detrimental to her physical and mental health. She had no confidence in the applicant and felt his behaviour was intimidating. She had lived here for 14 years and felt that the noise from the Weir had ruined her enjoyment of her home.

Mr Mahon responded that he had never spoken with Ms Youll.

Cllr Schmierer addressed committee. He was a local resident and councillor and noted there was near unanimity in residents who lived locally opposing the application. Many supporters were not local to the premises. Residents had reported public drunkenness and anti-social behaviour to him. He noted public nuisance could be from noise, light, odour and anti-social behaviour and mentioned that many residents had told him that their wellbeing was being impacted upon. Light and litter were emanating from the premises. The area already suffered from anti-social behaviour. Residents of Highwater House were at risk with a party venue next door. Cllr Schmierer suggested the applicant had not addressed how the premises would be good neighbours, as required by the local licensing policy.

Mr Cary confirmed that whilst the premises had asked for an off licence there was no current intention to use it and suggested the description by Cllr Schmierer was not accurate as this would be a family run, table seated premises and if the applicant wished to expand then the applicant would need to return to committee with another application.

Cllr Osborn addressed committee. This site was not suitable for the proposed use, it was an open-air bar by the river, within a residential area. Forty flats were being built on the BT telecom site. A public spaces protection order to discourage public drinking was in effect in the area of the premises. Persons in Highwater House, perhaps recovering from alcoholism, needed protection. The councillor had received reports of the fight at the premises.

The applicant noted that he had spoken to staff, Ian and Jan at Highwater House, staff had been unaware that an objection had been submitted. The Weir donated food to St Martins on a regular basis.

(Following the Chair requesting a check of the records of the Public Protection section as to whether complaints about the Weir under TEN's had been received, Ms Bentley confirmed to the committee that ten households had complained since licensable activities under TEN's had taken place. Some may have complained more than once).

Mr Cary said that the application was not how it was painted by Cllr Osborn, there were no security issues and no evidence regarding littering. An objective view needed to be taken. An objective view is available from the police. Neither the police or public protection have lodged objections.

Mr Cary said regarding funnelling that there was no or no appreciable impact, noting the noise from the sluice/weir. He asked the committee to note what the responsible authorities have not said. This is a city centre venue, there are other licensed premises in the vicinity. There is no evidence that the premises would encourage problems at Highwater House. The premises were close to St Benedicts Street, with its licensed premises.

The Chair noted there were two off licensed premises in St Benedicts Street.

Cllr Osborn noted that it was unusual for this number of objectors to go through this process of objecting. A number of persons needed to close their windows; residents were not making things up. The area had a different feel to St Benedicts Street.

Mr Mahon mentioned that the Marquee in St Benedicts proposal of the previous year was wrong/ill-considered. Lots of objections were quickly received, that was not the situation with this year's proposal+. It was a radically different proposal with no live or recorded music.

Ms Jennifer Hart addressed committee and mentioned she had recorded the noise from a fight on her mobile phone, this took place on the 6th June. On the 13 June she had also noted children climbing on the railings by the river with no management intervention. She suggested the site being close to the river was a danger to children.

Mr Mahon disputed that a fight had taken place. No such matter had been logged.

Mr Cortis noted that most attendees at the premises were male, this was a male drinking establishment (with some females) on the river. Numbers of children were small. Regarding the noise measurement of the 1 May, the temperature was only five degrees and he did not see any persons on the tables by the river. He suggested the noise report in these circumstances could not help regarding likely noise when tables were occupied.

Mr Cortis said the effect of the premises was that residents could not use their balconies, due to the noise, and that sleep was damaged. Residents would be inconvenienced every weekend.

Mr Mahon responded that whilst the temperature may have been five degrees external heaters were in operation.

Mr Kevin Nutt addressed committee. He had not been in his home long, since last April, but supported the Weir. He had been present on the 1st May by the river with his wife and agreed it was not a very nice day but some people had been there. He felt sound levels were not too high. He could hear talking but it did not bother him. The use of the jetties by members of the public was more of a problem. Fishermen also drink and make a lot of noise. In response to a question from Mr Cary Mr Nutt mentioned that he was not directly on the front, like the Moorings, but he was not disturbed by the Weir. He was more disturbed by noise from the Junkyard.

Mr C Reynolds addressed committee. He felt that the licence if granted would potentially increase policing difficulties and that a site by a river was not a safe setting. He was a retired doctor and very aware of the vulnerability of those in Highwater House. He was concerned as to their health and safety should they visit the Weir. He had followed the work of St Martins for four decades. Regarding public nuisance Mr Reynolds thought nuisance from noise would increase if the application was granted.

Dr Vincent Gaine addressed committee, mentioning that anyone could become rowdy or noisy and the phrase "Prince of Wales crew" or type was not as contained as the term would suggest. The behaviour of the public could not be guaranteed.

The premises were in a residential area, problems had been caused and the management cannot be expected to control the type of persons who choose to enter the venue.

Mr Terry Youll addressed committee. He lived with his wife directly opposite the Weir. Activities under TEN's had been disastrous, the noise from the premises was jarring and shocking. They needed to close their windows and felt the noise was amplified by a canyon effect of the river and buildings on either bank. They could not sit on their balcony due to the noise disturbance and suffered from nuisance from lights and strong odours. They had made several complaints. He had not seen the fight on the 6th June. The creation of the bar meant they left the house on some weekends to avoid stress.

Mr Mahon mentioned that he'd met Mr Youll last year but had not met during the operation of the premises this year. He recollected Mr Youll was fuming regarding noise from the band, this year's application was completely different. Mr Mahon understood that he had got the Marquee very wrong. He denied the threatening words attributed to him in the written representation of Mr Youll, saying that this was totally incorrect and untrue.

Cllr Osborn mentioned that he had spoken to Mr Youll by telephone at about that time. His recollection was that Mr Youll was extremely distressed and the words alleged were also mentioned by Mr Youll to him in the telephone call, and also that Mr Mahon had needed to be restrained by his staff.

Mr Mahon mentioned that he had 21 years' experience as a licensee and had an impeccable record in dealing with the police and environmental health.

Ms Sarah Scurr addressed committee, stating that constant talking could be heard from the Weir with intermittent shouting and screaming. The open-air location could not be worse for residents.

Cllr Osborn read out comments from Sue Bevan who was unable to attend committee, mentioning that she could hear background music and noise from a party atmosphere including shouting. She needed to close windows and felt the noise intruded into her home.

Mr Cary read out a letter from Mr Mathew Tucker, undated, of DrawingConclusionsArt based in the Mathew Project in Oak St, in which he said the premises were well run and were not expected to have any negative impact on local vulnerable persons. The letter was copied and distributed to the parties.

Mr Dylan Hickman addressed committee. He was a member of staff. He was unaware of a lot of the concerns of the neighbours. He was keen to improve matters. The staff could not choose who comes into the pub. He emphasised the pub was disabled friendly, with no stairs.

Cllr Youssef asked questions of the applicant regarding the operating schedule, Mr Mahon confirmed there was internal staff training, a risk assessment was carried out and first aid was available. A lifebuoy was available and the gate to the river was locked.

(Discussion took place regarding noise app recordings being introduced. Consent was not given pursuant to regulation 18 of the 2005 hearing regulations, the applicant noting that their noise expert had left, and they could be prejudiced by this new data).

(There was a short break to 16:25)

Ms Michelle Bartram of the Norfolk Constabulary addressed committee. Looking specifically at the impact of this application under the crime and disorder licensing objective, and noting the TENS', she believed there had been no impact on crime and disorder. There were no reports of disorderly dispersal behaviour from the site this year. This year's application needed tweaking and so conditions were proposed as contained in the agenda papers. The removal of open containers of alcohol from the site would be a problem. Ms Bartram was unable to assist regarding noise but noted that other premises nearby are licensed.

The Chair referred to the written representation from Jan Sheldon and the proximity of these premises to those who may be suffering mental health issues.

Mr Cary said it was difficult to see how the Weir would be the only or sole cause of concern regarding the acquisition of alcohol, noting other premises in the area. Mr Mahon was happy to continue to work with St Martins and that organisation was a designated charity for the Weir. The applicant was at a loss as to what the St Martins required of the applicant other than not to open. Regarding flashing lighting at the Weir this could be easily dealt with – they could be turned off.

The Chair requested Dr Reynolds to provide more detail of his concerns about the residents of Highwater House. The doctor noted that these were often dual diagnosis patients, for example with substance dependency and psychosis. They were amongst the most vulnerable persons in the County and would be struggling with these issues all the time. They could of course obtain alcohol at a small supermarket or the White Lion, but the Weir was right next door and they could not avoid it when accessing their accommodation. They could easily land in hospital. This open-air setting would be very attractive to them.

Mr Cary was invited to provide the applicant's closing comments to the committee.

Mr Cary noted the committee had heard a lot of subjective evidence from persons with an axe to grind, but objective evidence had been provided by Ian Rees, noise consultant, who notes the existence of masking noise from the sluice/weir and who says the impact of noise from the premises will not be of any great significance. It is significant that nothing had been heard from the Public Protection team, they say nothing adverse and they are impartial, so this carries weight. Whilst the views of the public in the area was that the premises would cause a public order problem this was not the view of the police.

Mr Cary noted it was clear that residents did not want the bar in their vicinity, one witness had mentioned property values. There was a Pavlovian response with a barrage of lodged objections. The s182 guidance should be followed.

He suggested under crime and disorder that the original conditions together with those put forward by the police should be sufficient. There is no evidence the Weir will encourage or lead to enhanced criminality. Public safety is adequately dealt with in the way the premises is run, and the applicant struggled to see how danger would arise. Whilst the premises are next to the river there's railings and a lifebuoy. Regarding the protection of children from harm Challenge 25 is in operation and the premises were adequately staffed and staff were trained.

Mr Cary suspected the main issue was public nuisance. Loud music occurred last year but the current application was different in nature, with no music amplified or unamplified being sought. The area for service of alcohol had been restricted to take account of the permissions under the Live Music Act 2012 and Mr Rees' evidence was put forward as truthful and expert. Isolated incidents of bad behaviour by the public had taken place but there are very few current complaints and Mr Mahon's record speaks for itself.

Mr Cary said the applicant was happy to provide a telephone number for communicating concerns during opening hours from both the public and St Martins, there clearly needed to be better communication between the public and the business moving forwards. The premises were not comparable to the Junkyard and were not seeking to hold regulated entertainment, concerns regarding lighting could be dealt with by condition. The premises can be run properly without breaking any of the licensing objectives.

Mr Cary then said the application was now amended to be one of a fixed term of a year, to assist should the committee be not entirely convinced about the promotion of the licensing objectives and of the view that a trial period was appropriate.

(The evidence before committee being complete, the legal advisor to the committee then referred the committee to paragraphs 9.38, 9.43, 9.44, 2.15 and 2.16 of the s182 statutory guidance).

The legal advisor summarised the offered conditions, precise wording to be reviewed:

1. No live music will take place
2. No recorded music will take place other than background music
3. The police conditions are agreed, with the necessary change to mention removal of open containers of alcohol off-site is prohibited
4. There will be a reporting mechanism for St Martins and the public to report their concerns to the premises
5. Bottles will be disposed of between 10am to 12 noon only.

Decision of committee

The decision of committee is to reject the whole of the application, on the grounds that this is appropriate for the promotion of a licensing objective.

Reasons for the committee's decision

The committee has considered both its local policy and national guidance, the contents of the report, the limited additional papers and the evidence heard on the 1st July at City Hall.

The committee notes that its decision must be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve (para 9.43 of the statutory guidance). It must determine the application with a view to promoting the licensing objectives in the overall interests of the local community and notes that all the four objectives carry equal weight.

The premises at 64/66 Westwick Street, Norwich, is an open-air site in a predominantly residential area, with more residential accommodation being constructed close to the site. Some close residents are more vulnerable than others due to mental health difficulties, the committee has also heard from persons of retirement age who are concerned about the premises and who live close to the premises. The open-air nature of the site and its location by the river means that there are few if any physical barriers to noise transmission on site.

Regarding the promotion of the licensing objective of the prevention of crime and disorder, the committee notes and gives significant weight to the view of the Norfolk Constabulary and the committee accepts that the police view is that with the conditions proposed and agreed to by the applicant the police have no concerns under this heading. The committee also notes from the s182 guidance that the behaviour of members of the public when outside the control of a premises licence holder is a matter for personal responsibility. The committee accepts that antisocial behaviour is taking place in the area currently, and that there have been occasional disturbances at the Weir, but does not feel there is any evidence that this licensing objective would be damaged by activities if the sought premises licence was granted.

Regarding the promotion of the public safety licensing objective, the committee notes that of course a location next to a river is not risk free when persons are consuming alcohol. However, there are physical barriers to river access from the site with railings and a locked gate. Whilst it is possible that a determined individual could access the river from the site over these obstacles this must be considered unlikely and again a matter of personal responsibility which should not be held against any premises licence holder, nor is this a justifiable or proportionate reason to refuse a premises licence.

Regarding the protection of children from harm the committee notes the presence of Challenge 25 and the lack of any objection under this heading from a responsible authority. The police have introduced a condition regarding access late in the

evening. There is no evidence before the committee of a problem under this heading, nor is one expected to arise from the proposals of the applicant.

The committee has however been concerned regarding the licensing objective of the prevention of public nuisance and residents have raised concerns regarding odour, light and noise.

Nuisance from lights could be dealt with in the committee's view by the imposition of conditions as to siting or masking. These would be feasible and within the applicant's control and the cost would not be prohibitive. Any odour nuisance could be reviewed pursuant to the controls available under the Environmental Protection Act 1990 and the committee noted that if the application was successful a variation seeking a kitchen would have followed and this would logically have included odour mitigation measures.

Complaints of nuisance from noise, especially voice noise, is significant.

The committee has heard from some residents that they have needed to close their windows due to the noise arising from the Weir café bar and that they cannot use their balconies, that the noise is disruptive and invasive. This is felt not to be speculation nor unreasonable fears arising from the Marquee event in 2020, but evidence based due to the business having run under temporary event notices this year for long enough for a reasonable understanding of the effect of the open-air premises to be gained. The committee found the members of the public who gave evidence were reliable witnesses regarding the effects of the noise from the premises upon them and their living amenity. Some weight is also given to the amenity of those vulnerable persons in Highwater House, noting the definition of nuisance contained in paragraph 2.16 of the statutory guidance. The committee has focused on the effect of the proposed licensable activities on persons living and working in the area surrounding the premises and finds these noise concerns are an inevitable and linked result of persons drinking alcohol in an open-air environment and are disproportionate and unreasonable (para 2.15).

The committee notes the evidence from Mr Rees and finds him a reliable witness. It is noted that his investigations have taken place on a cold day with limited use of the tables at the premises (1st May) and on a second occasion when Mr Rees notes "conversational noise was quieter than before, with few patrons using the terrace" (12th June). Committee feels that his evidence should not be given greater weight than that of residents who have significantly more experience of the noise arising from the premises. He has not been able to measure voice noise levels likely to arise when the premises are busier in warmer weather. His evidence that noise at 55dBA was likely to be audible above 50 dBA background noise was noted also. Whilst Mr Rees did not expect the level of noise he measured to be disruptive to a lot of people, the committee had heard and accepted evidence from residents that the noise they heard was indeed disruptive. Mr Nutt's conclusions were the exception, when compared to the written and oral evidence given by the residents. Committee noted Mr Nutt had mentioned he was not at the front of the premises like persons in the Moorings, Indigo and Dyers Yards.

It is noted that the report of Mr Rees in paragraph 2.3 mentions that he would not expect background music at the level measured to cause *significant* disturbance to nearby residents (emphasis added). There is no suggestion that some disturbance would not be caused but it does appear that the effect of shouting and other loud conversations fuelled by alcohol are the primary concern rather than background music, which by definition should not be of such a volume as to require voices to be raised. Committee notes however that some residents have mentioned disturbance from music in their written representations.

It is the nature of voice disturbance that it varies, is likely to be more noticeable than the background continuous hum of the sluice/weir for example and it cannot be controlled by management. The nature of the site being in the open air and close to residential dwellings means that there are no suitable conditions which could mitigate these concerns. Many residents mention disturbance from noise from customers of the Weir in their written representations.

The committee takes account of the limited hours and days of operation and takes account of the financial interests of both the applicant and his staff. The decisions as to the promotion of the licensing objectives is a matter of balance and the interests of the entire community.

It is the view of committee that the promotion of the licensing objective of the prevention of public nuisance requires the application to be refused, and the committee follows the statutory guidance regarding the approach of licensing authorities as being one of prevention (paragraph 2.18). A testing period of one year is not felt to be a suitable approach to the exercise of licensing powers. It is the view of committee that there is an evidential basis for saying the likely noise nuisance arising would be significant during such a period, based on the evidence of the great majority of local residents, and evidence based concerns as to noise nuisance and the lack of available mitigation justifies the decision to reject the whole of the application even for a fixed period of one year.

This is the unanimous decision of committee.

Rights of appeal

Rights of appeal are set out in Schedule 5 of the Licensing Act 2003. Any appeal should be raised with a magistrates' court within 21 days of receipt of the written decision appealed against.



Signed.....

Chair, Licensing Sub-Committee

Dated 6 July 2021