



NORWICH
City Council

NORWICH CITY COUNCIL

NOTICE OF DETERMINATION

Date of Hearing: 7 December 2022 at 10:15 am

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

Address: The Yard Coffee Ltd, 1A Pivotal House, Orford Yard, Red Lion Street, Norwich NR1 3TB

Applicant: The Yard Coffee Limited

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

Other persons attending committee: Mr Tait Pollack (proposed DPS); Mr Stewart Gibson (SG Licensing Ltd – agent for the Applicant); Mr Nicolas Backhouse (Objector); Maxine Fuller Public Protection (Licensing Advisor), Norwich City Council; Sarah Moss, solicitor, nplaw (Legal Advisor to the Committee)

DETERMINATION

1. There were no apologies or declarations of interest.
2. Ms Fuller presented the report.
3. The hearing commenced at 10:30am. The Chair welcomed those present and invited Mr Gibson to present the application on behalf of the Applicant. Mr Gibson explained that the premises of Pivotal House were owned by Mr Pollack (Director of The Yard Coffee Ltd 'The Yard'). Currently two businesses within the premises were licensed – Go Bifanas and Jorges Restaurant (Mr Pollack confirming later in response to questioning that The Yard was seeking to licence the whole of the ground floor of the premises. Part of these premises was already covered by a licence granted to Go Bifanas in 2021).
4. The Yard customers shared the same ground floor area as customers of Go Bifanas and there had been no issues with this arrangement since Go Bifanas had been trading. It was not envisaged that licensing The Yard would bring in any additional customers, but simply extend the choice of beverages for customers. Table space was limited within the shared atrium area, which would automatically restrict numbers. Studio 2 (already in use with seating in place) was 50 feet underground at the back of the premises, which would limit any noise. The premises would close at 23:00 hrs, one hour earlier than Go

Bifanas. If hours needed to be modified on a one-off occasion, a TEN would be sought for this.

5. With regard to the reference to events in the operating schedule, Mr Gibson was clear that this meant events like book-signings and talks and not parties and there would be no live or recorded music in any area of the premises, only background music, which was not licensable. The reference to Regulated Entertainment in the operating schedule had been made in error and it was requested that this reference be withdrawn from the application.
6. Mr Gibson drew the Committee's attention to section (b) of the Operating Schedule, which suggested that SIA door supervisors would be in place at events and during 19:00 – 23:00 hours on Fridays and Saturdays. He requested on behalf of the Applicant that this condition be withdrawn from the application on the basis that this would be difficult to carry out practically, given that the premises were shared with other businesses; nor was it necessary or appropriate in relation to upholding the licensing objectives. The appointment of SIA staff would give the wrong impression of The Yard, be intimidating for customers and potentially draw the wrong kind of clientele to the premises. Mr Pollack explained further that he had been over-cautious and 'anxious to please' in his application and confirmed that actually there was no need for SIA staff.
7. Mr Pollack outlined his plans for The Yard, which included possibly changing the layout and location of the bar area, but within the proposed licensable area. The intention was to provide a relaxed environment, where customers could enjoy a quiet drink, with Studio 2 being used for activities such as board games and small gatherings arranged and managed by The Yard. The shared atrium would be table seating only (Mr Pollack offering a condition and wording for this – Appendix A) and it was envisaged there would be around 10-15 people standing in Studio 2 at the back, with other persons seated.
8. Mr Backhouse was invited to speak to the Committee in support of his representation. He explained that he was speaking as a representative of the Westlegate Tower Residents Association, whose properties looked down onto the open courtyard directly outside the premises. He confirmed that no serious issues had been experienced as yet by the operation of Go Bifanas, Jorge's Restaurant and The Yard as it currently stood. However, the mention of SIA staff in the Operating Schedule had given serious cause for concern that the premises would be rowdy and that the Applicant was intending to hold events, the nature of which would require additional security. Mr Backhouse stated that these concerns had now been alleviated by Mr Pollack's withdrawal of this condition. Mr Pollack responded to Mr Backhouse with the same assurances that with the exception of Studio 2 there would be no private/corporate events and also no playing of live or recorded music except background music. The exclusion of Studio 2 (located underground) was to allow the Applicant the flexibility to offer small-scale private hire. The same condition and wording as on the Go Bifanas licence with regard to these

aspects, with the exclusion of Studio 2, was offered by Mr Pollack – Appendix A).

9. In response to Mr Backhouse's concerns as to how the courtyard area directly outside the premises would be used (currently Go Bifanas customers are allowed to sit outside with drinks), Mr Gibson confirmed that 'off-sales' were not being sought as part of the application, meaning that alcoholic beverages bought within the licensable area (ground floor) could not be consumed outside. Furthermore, the Applicant had accepted a police condition with regard to not removing drinks from the premises (this wording was amended by Mr Pollack later following the Legal Advisor's raised concerns as to enforceability – Appendix A). A further condition and wording was offered by Mr Pollack with regard to preventing the removal of drinks outside the premises, to be backed up by signage (Appendix A). With respect to how this would be enforced, given that it may not be clear which premises customers had come from, Mr Pollack confirmed that The Yard staff would be trained to advise customers at the point of sale that drinks must be consumed on the premises. Similarly, in relation to The Yard customers using the outside area to smoke, this would also be controlled by Go Yard staff. Mr Backhouse stated that he still had concerns as to how customers across three licensed premises could be adequately controlled in the outside area.
10. In response to a Councillor question as to how the inside area would be controlled across two licensed premises (i.e. who would have responsibility over the various areas), Mr Pollack explained that staff at both premises would help each other out with clearing up and looking after customers, just as they did currently. In addition to Mr Pollack, two other business partners shared the running of his business, one of whom had previously run the student union bar, which obviously had a huge footfall. Mr Pollack was in the building all the time and another of his business partners was also there frequently. As such, Mr Pollack was confident that any situation could be adequately handled and diffused and to date, he had not had any issues needing to be sorted out. As the building's owner, he was responsible for carrying out regular fire risk assessments and each premises within the building was responsible for implementing their own fire safety measures. It was agreed with Mr Pollack that the references in the Operating Schedule to fire safety measures be removed as The Yard was already under a statutory duty to implement these under The Regulatory Reform (Fire Safety) Order 2005 and these did not need to be replicated in the Operating Schedule. This also included stipulations as to maximum occupation within a premises, rendering the reference to this in the Operating Schedule (c – public safety) also unnecessary.
11. Mr Pollack also explained the premise's under-age sales policy to a Councillor, offering a condition and wording as to the Challenge25 policy in place (Appendix A). A condition and wording was also offered in relation to not permitting children under the age of 16 to enter or remain in Studio 2 beyond 10pm (Appendix A).

12. Mr Gibson clarified to the committee with the Applicant's agreement that closing hours for The Yard premises would be 23:00hrs, with a drinking-up time of 30 minutes (ie last time for sale of alcohol at 22.30hrs), which would comply with the police condition of a minimum 15 minutes drinking-up time but also allow for a more staggered dispersal of customers. Go Bifanas customers could remain in the shared areas until the later closing time of 24:00hrs, but there was a condition on their licence that they needed to purchase food with an alcohol order.
13. The Legal Advisor clarified elements of the Operating Schedule with Mr Pollack and Mr Gibson, removing certain parts and amending the wording of other parts as requested and offered by Mr Pollack (Appendix A).
14. All parties were invited to make final representations to the committee, Mr Backhouse confirming his satisfaction with the conditions and wording as offered by Mr Pollack and that his objections were withdrawn on the basis of these (if accepted by the committee as part of their decision making). Mr Pollack stated that he would be exchanging contact details with Mr Backhouse after the hearing, so that they could continue to communicate and work together.
15. Members retired to consider their decision, reconvening the hearing at 12 noon to request further clarification from Mr Pollack as to how The Yard customers would be controlled in relation to Go Bifanas customers in the shared atrium area, given that The Yard customers were required to have consumed their drinks by the premises' closing time of 23:00hrs and could not stay on the shared premises as The Yard customers beyond that time. Mr Pollack offered a condition and wording to the effect that The Yard customers would be verbally advised of the situation by The Yard staff at the 'last orders' time of 22:30 hrs (Appendix A). Members retired again to consider their decision.

DECISION OF THE LICENSING SUB-COMMITTEE

The Sub-Committee unanimously approved the application for the grant of the premises licence (that part of the application pertaining to Regulated Entertainment and door supervisors having been withdrawn by the Applicant) with the adoption of the condition contained in the police email to the licensing department dated 9 November 2022 (as amended by the Applicant during the course of the hearing – Appendix A) and the conditions and amendments to the Applicant's operating schedule offered by the Applicant during the course of the hearing (attached at Appendix A)

REASONS FOR THE COMMITTEE'S DECISION

In coming to its decision, the Committee had regard to the Statutory Guidance published under S182 of the Licensing Act 2003 as well as its own licensing policy.

The Committee fully considered the representation submitted by Mr Backhouse on behalf of the Westgate Tower residents, together with his submissions made during the course of the hearing. It was noted that the main concern expressed by Mr Backhouse had been in relation to the apparent need for SIA door supervisors, leading Mr Backhouse to conclude that significant crime and disorder and public nuisance issues may arise if the premises were to be licensed. However, the withdrawal of the SIA door supervisors from the Operating Schedule appeared to have alleviated Mr Backhouse's concerns in this regard. Given the evidence submitted by the Applicant as to the proposed clientele and operation of the premises, Members did not consider that there was a need for SIA door staff and were agreeable to the Applicant's request that this condition be removed from the Operating Schedule.

The proposed management and operation of the premises had been fully explored by Members during the course of the hearing and Members were of the opinion that the premises currently appeared to be well run by experienced managers with no issues having arisen while The Yard had been trading (Mr Backhouse also having confirmed there did not appear to be any serious concerns with the current operation of the businesses). On the evidence submitted, there was no reason to believe that this would not continue to be the case. Although the premises were shared with Go Bifanas, the businesses appeared to cooperate and work well with each other, giving the committee confidence that the licensing objectives would be upheld at the premises and there would be adequate control over shared areas (including the outdoor courtyard). In addition, being the building's owner, the Applicant had a clear incentive to ensure that all businesses in the building operated in an appropriate manner and in accordance with the licensing objectives.

Members were of the opinion that the Applicant had been clear about the proposed premises' activities and clientele and sensible controls had been put forward in the Operating Schedule and offered during the course of the hearing to uphold the licensing objectives. The offered conditions had shown a clear willingness to accommodate local residents' concerns and it appeared that the Applicant wished to continue to work together with Mr Backhouse in the future. Moreover, Mr Backhouse had expressed himself to have no objections to the application based on what had been offered by the Applicant during the course of the hearing.

Weight was also given to the fact that the local authority department responsible for environmental health functions, including noise, had not made any representation and that the Committee must therefore proceed on the basis that there were no concerns from this department regarding the proposals in terms of public nuisance. It was also noted that the police's representation had been withdrawn following the Applicant's agreement to adopt the condition set out in the police email (as amended in the course of the hearing) to the licensing department dated 9 November 2022.

Taking the above into account the committee concluded, therefore, that there were no grounds to refuse the application, or impose any further conditions.

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 16 December 2022

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

Signed: (Chair, Licensing Sub-Committee)

1. The following amendments to the application for the grant of a premises licence were sought by the Applicant and agreed by the Committee:

Amendment – End time of supply of alcohol to be amended from 23:00hrs Mon-Sun to 22:30hrs Mon-Sun (page 12, section 15 of application)

Withdrawn - 'For events and during the hours of 19:00-23:00 on Friday and Saturday we will have door supervisors' (page 16, Operating Schedule (b) The prevention of crime and disorder)

Withdrawn – reference to 'regulated entertainment' (page 16, Operating Schedule (d) The prevention of public nuisance)

2. Conditions proposed by Norfolk Constabulary and accepted by the Applicant:

- i. 'CCTV to be in operation covering the main public areas inside and outside of the premises. CCTV to record for a minimum of 28 days and be available to Police or Licensing Authority on request'
- ii. 'Staff will be trained in relation to the sale of alcohol. A record of this training will be kept at the premises and available to Police or Licensing Authority on request'
- iii. 'There will be a drinking up period of at least 15 minutes so sales of alcohol cease prior to the premises closing'
- iv. 'Patrons will not be permitted to take open vessels of alcohol off the premises' (*wording 'will not be permitted to' offered by the Applicant in place of 'will be discouraged from'*)

3. Conditions offered by the Applicant:

- i. The licensee will ensure that customers are seated while consuming alcohol in the atrium area.
- ii. With the exception of Studio 2, the premises will not be hired out for private hire or corporate events.
- iii. No live or recorded music (except for background music) will be played at the premises.
- iv. No drinks are to be removed from the premises at any time (*signage also to be displayed within the premises with regard to this*).
- v. Children must be accompanied by an adult in the atrium area at all times.
- vi. No children under the age of 16 will be permitted to enter or remain in Studio 2 from 22:00hrs.
- vii. A 'Challenge 25' policy will operate at all times that the premises is open for a licensable activity; photographic proof of age (by means of a card bearing the PASS hologram, a photographic driving license, passport, or military ID) must be presented by anyone wishing to buy alcohol, who staff believe to be under the age of 25.
- viii. Customers will be advised verbally by staff at 'last orders' at 22:30hrs that The Yard Coffee Limited premises will be closing at 23:00hrs and that they must

have consumed their drinks purchased from The Yard Coffee Limited premises by the closing time of 23:00hrs.

4. Amendments to the Operating Schedule offered by the Applicant:

A. The following amendments are to be made to the second paragraph of the Operating Schedule (page 16, (b) The prevention of crime and disorder):

- i. **Remove** 'For events and during the hours of 19:00-23:00 on Friday and Saturday we will have door supervisors'
- ii. **Remove** 'The premises and its outside area has CCTV throughout'
- iii. **Remove** 'We will have a strict proof of age policy'
- iv. **Replace** 'All bottles and glasses are to be removed from public areas as soon as they are either finished with, or empty' **with** '*All bottles and glasses will be removed by staff promptly from the communal areas within the licensed area when they are either finished with, or empty.*'

B. The following amendments are to be made to the third paragraph of the Operating Schedule (page 16, (c) Public Safety):

All contents of this paragraph to be removed in their entirety so as not to replicate the Applicant's statutory duties under The Regulatory Reform (Fire Safety) Order 2005.

C. The following amendments are to be made to the fourth paragraph of the operating schedule (page 16, (d) The prevention of public nuisance):

- i. **Replace** 'Noise or vibration from the premises will be maintained at a level that will not be audible at the façade of any neighboring noise-sensitive premises' **with** '*Noise or vibration will be maintained at a level that will not cause a noise nuisance at the façade of any neighbouring noise-sensitive premises.*'
- ii. **Replace** 'Doors and windows will be kept closed when regulated entertainment is taking place' **with** '*Except for access and egress, doors and windows will be kept closed when the licensable activity is taking place*'
- iii. **Remove** 'The glass of the atrium is extremely thick and soundproof.'
- iv. **Replace** 'The premises are air-conditioned to avoid the need to open doors and windows for ventilation' **with** '*The premises will be air-conditioned to avoid the need to open doors and windows for ventilation*'.
- v. **Replace** 'The premises has a waste collection contract with Norwich Waste Disposal who remove waste' **with** '*The premises will maintain a waste collection contract (currently with Norwich Waste Disposal)*'