



NORWICH
City Council

NORWICH CITY COUNCIL

NOTICE OF DETERMINATION

Date of Hearing: 24 November 2021 at 10:15 am.

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

Address: Go Bifanas, Pivotal House, Studio 1B, Orford Yard, Red Lion Street, Norwich NR1 3TB

Applicant: Go Bifanas Ltd

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

Other persons attending committee: Mr Jorge Santos (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

DETERMINATION

1. There were no apologies or declarations of interest.
2. Ms Fuller presented the report.
3. The Chair welcomed those present and invited Mr Gibson to present the application on behalf of the Applicant. Mr Gibson referred to the written Applicant's submissions which had been submitted a few days prior to the hearing. He explained that the application was for a very small restaurant with the capacity for 40 covers. Customers would be seated in the communal courtyard area. As stated in the operating schedule, alcohol would only be served with a food order and there was no intention (and no room) for 'vertical drinking'. The restaurant was intended to provide a casual, laid-back dining experience, with google speakers providing background music.
4. The business currently closed between 18:00 – 20:00 hours and the request in the application for a licence for late night refreshment and the sale of alcohol up until 23:30 hours was to provide flexibility for the future and avoid having to apply for Temporary Event Notices. There was no intention that the business would open as late as this on a day-to-day basis.
5. With regard to the police representation, Mr Gibson stated that the police had simply wished to ensure that the CCTV would record for a minimum of 28

days and be available to Police or Licensing Authority on reasonable request. Once agreed with the landlord that this could be facilitated, the Applicant had agreed to this condition, resulting in there being no outstanding representation from the police. No other responsible authority had made any representations.

6. In response to Mr Backhouse's objection, Mr Gibson stated that the Applicant had taken note of his concern that loud music played late at night would not be appropriate for the surrounding area and had consequently removed that part of his application relating to Regulated Entertainment. The Applicant was unable to agree to Mr Backhouse's request that no live or recorded music be played at the premises, as the envisaged background music constituted recorded music. With regard to persons congregating in the courtyard area, this would not happen since all customers were to be seated, with only a limited number of persons at any one time using the outside smoking area. Addressing Mr Backhouse's concern that new owners may take on the premises in the future, leading to adverse conditions for neighbouring residents, Mr Gibson stated that the conditions in the operating schedule were such that anyone seeking to run the business differently would need to apply to vary the licence to remove the conditions.
7. Responding to questions from Members, Mr Gibson confirmed that Mr Santos, as an experienced DPS, would be providing staff training. In terms of the condition in the operating schedule (The prevention of public nuisance) relating to audibility of noise and vibration, Mr Gibson explained that background music would be set at a level so as not to interfere with neighbouring residents and that this would be controlled and policed by staff. In discussion with the legal advisor as to the practicality and enforceability of this condition, revised wording was agreed by Mr Gibson, as set out in Annex A attached.
8. Mr Backhouse was invited to speak to the Committee and explained his concerns (shared by other residents at Westlegate Tower) in relation to live and recorded DJ music being played at the premises, including private and corporate events, given that the premises had a glass roof and had no sound insulation. He was more comfortable now that the Regulated Entertainment aspect of the application had been dropped, preventing live and recorded music from being played beyond 11pm. His fears in relation to other aspects of the premises had also been alleviated somewhat by Mr Gibson's submissions.
9. Addressing Mr Backhouse's concerns, Mr Gibson stated that the Applicant had no intention of offering the venue out for hire for private or corporate events and offered a condition to this effect. In addition, Mr Gibson offered the condition that no live or recorded music (except for background music) would be played at the premises. The legal adviser advised those present that according to the Live Music Act 2012 and The Legislative Reform (Entertainment Licensing) Order 2014, live or recorded music played between 8am and 11pm was not classed as Regulated Entertainment and S177A of the Licensing Act 2003 meant that any condition related to this would have no

effect. Mr Gibson stated that he still wished to offer the condition as an indication of his client's intention and the Committee Chair confirmed that he was agreeable to this. Mr Backhouse subsequently confirmed that he now had no objections to the application.

10. Mr Gibson was invited to address the Committee in closing and Members retired 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 having been withdrawn by the Applicant) with the adoption of the condition contained in the police email to the licensing department dated 26 October 2021 and the conditions and amendments to the Applicant's operating schedule offered by the Applicant during the course of the hearing (attached at Annex 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.

Weight was 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 to the licensing department dated 26 October 2021.

Having heard fully from the Applicant's agent as to the proposed management and operation of the venue, Members were of the opinion that sensible controls had been put in place to uphold the licensing objectives. In addition, further controls and amendments to the operating schedule had been offered during the course of the hearing, demonstrating the Applicant's willingness to accommodate the concerns of local residents, and the objector had subsequently expressed himself to have no objections to the application based on what had been offered by the Applicant. There were, therefore, no grounds to refuse the application, or impose any further conditions.

It was also noted that the review system is available and that if there were to be any issues with the playing of music at the premises, the Committee would have the authority at a review hearing to disapply the provisions of S177A and add conditions relating to the playing of music as if it were regulated entertainment. In addition, the statutory nuisance provisions of the Environmental Protection Act would serve to give protection to neighbouring residents.

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 December 2021

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the initials 'JH' followed by a long horizontal stroke.

Signed: (Chair, Licensing Sub-Committee)

ANNEX A

Conditions offered by the Applicant:

1. The premises will not be hired out for private hire or corporate events
2. No live or recorded music (except for background music) will be played at the premises

Amendments to the Operating Schedule offered by the Applicant:

1. The following amendments to be made to the first paragraph of the operating schedule (steps to promote all four licensing objectives together):
 - i. **Replace** 'Seating must be provided for all customers' **with** '*The licensee will ensure that customers are seated while consuming food and alcohol.*'
 - ii. **Replace** 'Alcohol will only be served as ancillary to food' **with** '*Alcohol will only be served with an order of food.*'
2. The following amendments to be made to the fourth paragraph of the operating schedule (The prevention of public nuisance):
 - i. **Replace** 'All bottles and glasses must be removed from the public areas as soon as they are either finished with, or empty' **with** '*All bottles and glasses will be removed by staff from the communal areas within the licensed area as soon as they are either finished with, or empty.*'
 - ii. **Replace** 'No persons carrying open or sealed vessels containing alcohol must be admitted to the premises at any time' **with** '*No persons carrying unopened, open or sealed vessels containing alcohol, with the exception of those persons delivering alcohol to the premises for sale by retail, will be admitted to the premises at any time.*'
 - iii. **Replace** 'Noise or vibration from the premises will be maintained at a level that will not be audible at the façade of any neighbouring noise-sensitive premises' **with** '*Noise or vibration unrelated to live or recorded music will be maintained at a level that will not cause a nuisance at the façade of any neighbouring noise-sensitive premises.*'

Condition proposed by Norfolk Constabulary and accepted by the Applicant:

'CCTV to record for a minimum of 28 days and be available to Police or Licensing Authority on reasonable request'