

**O2 VICTORIA WAREHOUSE, TRAFFORD PARK ROAD, TRAFFORD M17 1AB**

**PREMISES LICENCE REVIEW APPLICATION**

**Licensing Sub-Committee Hearing – 11<sup>th</sup> December 2023**

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**WITNESS STATEMENT OF KEITH FORSHAW**

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I, **Keith Forshaw**, MCIQB, FCABE, CIWFM, MBA will state as follows:

- 1 I make this statement in relation to the application by Nicola Duckworth, Environmental Health Officer of Trafford Council (“the Council”) to review the Premises Licence for O2 Victoria Warehouse (the “venue”).
- 2 Where I have direct knowledge of the contents of this statement, they are true. Where my knowledge is indirect, they are true to the best of my knowledge, information and belief.
- 3 In this statement, I shall deal with matters in the following order:
  - A. Professional Experience and Background
  - B. Summary of communications
  - C. Response to Nicola Duckworth’s Statement

**A. Professional Experience and Background**

- 4 I have worked as a professional building surveyor and project manager for over 36 years working in local government and several highly successful multi-national companies. I have held positions ranging for surveyor to head of department managing teams of up to 35 people in various business sectors from local government, industrial, commercial, retail, licensed and entertainment industries.

- 5 I have worked in the entertainment industry for Apollo Leisure, Live Nation and the Ambassador Theatre Group managing property and developments across a wide range of theatre and music venues for approximately 20 years.
- 6 I have been employed by Live Nation and Academy Music Group in my current role as Property Manager since 2012 and prior to that was a consultant for approximately 7 months. I have also worked for the company between 2004 and 2009 before being TUPE transferred to ATG for approximately two years.
- 7 I hold professional memberships of:
- Member of the Chartered Institute of Building.
  - Fellow of the Chartered institute of Building Engineers.
  - Certified member if the Institute of Workplace Facilities Management.
  - Technical member of the Institute of Occupational Safety and Health.
  - Member of the international Institute of Risk and Safety Management.

I have an MBA from the Open University Business School and also hold the British Safety Council diploma in safety management.

## **B Summary of communications**

- 8 On 8<sup>th</sup> August 2023 an email was sent to Russell Taylor-Toal, General Manager of the venue, by Alison Acton, Environmental Health Officer of Trafford Council requesting information regarding the structural integrity of the venue which was forwarded on to me. Ms Acton had previously been advised that our lease has an internal repairing liability which did not include the building structure and she requested a copy of the lease and contact details for the landlord. The email also asked if we had a building control completion certificate for the alterations completed by the landlord in 2013, although this was several years before the commencement of our lease.
- 9 After receiving this email, I spoke to Richard Stone **Meng Ceng MIStructE** of Booth King, structural engineers, and arranged to meet at the venue on 15<sup>th</sup> August 2023 to review the balcony structure.

- 10 On 14<sup>th</sup> August, I had an exchange of emails with Ms Acton to query the information being requested. The emails are attached to my statement as **Exhibit KF1**. I also spoke to Ms Acton to clarify what was being asked for in relation to the specific parts of the building. Ms Acton was not very clear but thought the area of concern was the balcony. I explained that the balcony was an additional internal structure constructed by the landlord in 2013 which, combined with the area known as the mezzanine, had a capacity of 660. Ms Acton said it was the area which had been altered which suggested to me that it was the balcony which was the subject of her concern.
- 11 Ms Acton mentioned in our call that the Council's structural engineer was not happy with the loadings. I suggested that we arrange to meet the Council's structural engineer or arrange a call so that our respective structural engineers could discuss the issue in detail. Ms Acton said she would explore this but didn't come back with a proposal. Later, I followed this up with an email to ask if the specific area could be marked on the drawing, so we were sure as to the exact area of concern. This email is included in **Exhibit KF1**.
- 12 As a consequence of the call with Ms Acton, I assumed that the concerns related to the balcony as the mezzanine was the original warehouse floor. Accordingly, I instructed Booth King to undertake an initial structural assessment of the balcony.
- 13 On 15<sup>th</sup> August, I received an email from Ms Acton in response to my request for clarification of the area of concern in which she said, "I think some is original and some added" and "It is the bit our structural engineer needs for proof of loading." I called Ms Acton as it was still unclear to me what specific parts needed to be assessed and I explained the different areas of the building. I asked if she could put me in touch with their structural engineer so Richard Stone from Booth King could contact them directly and she said she would find out.
- 14 On 15<sup>th</sup> August, I was sent structural calculations from the landlord's structural engineers which I understood had also been sent on to the Council. I forwarded these calculations on to Richard Stone and met with him later that day to review the balcony structure. **On inspection, we could not find any deflection or visible deformity.**
- 15 Mr Stone emailed me later that evening with an interim report which stated that he had no concerns but recommended a 'footfall analysis' of the full balcony be

undertaken to check if there are any vibration issues. I agreed to this and asked Richard to proceed with the footfall analysis.

- 16 On 16<sup>th</sup> August at 8.10am I emailed Ms Acton with a copy of Mr Stone's interim report and stated that Mr Stone was happy for AMG to continue to use the balcony and a footfall analysis would be carried out. I stated that we would restrict the use of the balcony to 25 persons until Booth King had completed a full analysis of the balcony over the next few weeks. A copy of the emails including the interim email report from Richard Stone is attached to my statement as **Exhibit KF2**.
- 17 To be absolutely clear, the decision to restrict the use of the balcony to 25 persons until the footfall analysis had been completed was not as a result of any recommendation or suggestion by Booth King. This was a figure provided by management and proposed purely as a concession whilst the footfall analysis was being undertaken. In reality, the balcony is not widely used by customers for most events and the figure of 25 was to allow access customers to continue to use this area until the footfall analysis had been completed.
- 18 In email communications with the landlord, I also asked about the Building Control completion certificates following the change of use planning application, which had been queried by Ms Acton during my call with her on 15<sup>th</sup> August. Although initially the landlord's agent believed they had the completion certificates, it transpired that the Approved Inspector was waiting for a fire officer's report and so the final certificates had not been issued.
- 19 In the meantime, on 6<sup>th</sup> September 2023 the Council had seen fit to serve a health and safety prohibition notice in respect of the upper floor, which our lawyers duly appealed.
- 20 On 5<sup>th</sup> October 2023, Gary Lewis from Squires Patton Boggs (UK) LLP, instructed by AMG, submitted structural assessment reports from Booth King to Alison Acton. This included the Booth King Advice Note which had previously been disclosed to the Council on 1<sup>st</sup> September 2023; their Advice Note dated 4<sup>th</sup> October 2023 recording the results of the vibration assessment of the balcony (the 'footfall analysis') and their Structural Assessment of the mezzanine dated September 2023. A copy of the email from Mr Lewis is attached to my statement as **Exhibit KF3A** and the Booth King structural material is attached as **Exhibit KF3B, KF3C and KF3D**.

- 21 In the Key Notes and Conclusions to the Structural Assessment Report, Booth King state: ***“BKPL have no concerns with the structure for the current use as a music venue or bar area. All design checks undertaken show that the structure is well within capacity for the ongoing usage.”***
- 22 I also understand that the landlord through its own advisors had earlier submitted to Council officers a Structural Survey Report dated 21<sup>st</sup> September 2023 from Harry Seymour & Associates, Consulting Structural Engineers, which confirmed the findings in the Booth King structural report. A copy of the Harry Seymour Report is attached to my statement as **Exhibit KF4**.
- 23 **Therefore, the Council was in possession of two independent, expert engineering reports concluding that the balcony and mezzanine were safe. I do not understand why the Council is contesting these conclusions, and in any case it has not served any evidence doing so.**
- 24 Following submission of the Structural Survey Reports, Ms Acton sent an email on 6<sup>th</sup> October 2023 to Gary Lewis, AMG’s solicitor, in respect of the health and safety enforcement notices, in which she stated that the prohibition notice is complied with and the prohibition notice completed once the works detailed in the prohibition notice schedule have been completed. The prohibition notice schedule (Exhibit ND18) requests a comprehensive analysis of the structural integrity of the first floor which was provided in the Booth King and Harry Seymour structural reports. The schedule does not specify any requirement for “works” to be carried out. No remedial or other structural works have been undertaken in relation to the first floor because none have been required.
- 25 Mr Lewis sent an email to Mr Parry on 12<sup>th</sup> October 2023 asking for clarification on the Council’s position in relation to compliance with the prohibition notices. Mr Parry replied the same day in which he stated that AMG had *“supplied documents upon which they rely as being such a comprehensive analysis as required by the notice on the 5<sup>th</sup> October. Accordingly, the prohibition ceased to be effective from that date.”* I attach a copy of the 6<sup>th</sup> and 12<sup>th</sup> October 2023 emails to my statement as **Exhibit KF5**.
- 26 Mr Parry sent a further email to Mr Lewis on 20<sup>th</sup> October 2023 in which he stated *“As the notices have now been complied with, we are content for clients to be given liberty to with draw (sic) their appeal.”* Mr Lewis replied by email on 23<sup>rd</sup> October to

state that the proposed method of disposing of the Prohibition Notices was not agreed as this would be contrary to the Supreme Court Judgment in *Chevron*. I attach a copy of these emails to my statement as **Exhibit KF6**.

27 A preliminary hearing took place before the Employment Tribunal on 7<sup>th</sup> November 2023 at which AMG were seeking a formal cancellation of the Prohibition Notices. However, Mr Parry did not consent to the cancellation of the Notices and, consequently, the Employment Judge set the case down for an initial 'strike out' hearing in March 2024 with a full hearing to be listed on a later date if required and gave directions for the serving of evidence. Mr Parry did consent to the suspension of the prohibition notices pending determination of the appeal. A copy of the Case Management Order from the 7<sup>th</sup> November 2023 hearing is attached to my statement at **Exhibit KF7**. In view of the fact that Mr Parry had accepted in his 12<sup>th</sup> October email that the analysis documents to comply with the Prohibition Notices had been complied with, it is unclear why he did not consent to the cancellation of the Notices before the Employment Tribunal which would have resolved this matter.

28 For completeness, I am aware that the landlord had also been served with a prohibition notice in relation to the structural integrity of the balcony and mezzanine. The landlord's agent, Michael Krantz of Gunner Cooke solicitors, submitted the Harry Seymour structural report (referred to above) to the Council on 9<sup>th</sup> October 2023. Mr Parry replied to Mr Krantz by email on 10<sup>th</sup> October stating "*As you correctly opine, the action that was required to be taken under the terms of the prohibition notice has been completed and therefore as the notice has been complied with, the prohibition no longer applies and the notice is no longer extant.*" A copy of this email is attached to my statement at **Exhibit KF8**.

29 I am advised, however, that the procedural argument regarding the correct disposal of the health and safety prohibition notice is not relevant to this licensing review, particularly given that there is no argument regarding whether the upper floor is safe to use.

### **C. Response to Nicola Duckworth's Statement**

30 I have seen a copy of Nicola Duckworth's Statement in support of the premises licence review application and wish to make some comments in relation to matters of which I am aware.

- 31 In paragraph 18, I provided the information to Mr Taylor-Toal on the escape capacity which formed the 660 capacities for both balcony and 'mezzanine'. The information provided was in the format of exit capacities in accordance with Approved Document B (ADB) and so I do not understand the query on how these figures had been reached in paragraph 19 of Ms Duckworth's statement.
- 32 In relation to paragraph 22, I was not aware of information being provided in April 2023 regarding the building structure. However, the reference to 'mezzanine' is misleading as although that part of the floor is called a mezzanine, it is in fact part of the original warehouse structure and not a newly created structure. I presume the documents Mr Taylor-Toal sent were the original calculations for the balcony.
- 33 With regard to paragraph 24, I have referred to this matter earlier in my statement and explained the action taken including email communications and telephone calls between myself and Ms Acton.
- 34 To explain this in further detail, the 'mezzanine' part of the building hasn't been altered and is part of the original first floor of the venue. I believe Ms Acton was under the impression that the 'mezzanine' was in fact a new structure as she referenced a failure of a converted warehouse in London at least twice during one of our telephone calls. It also appears that Ms Duckworth has assumed that we did not do any due diligence as part of the lease acquisition in 2018, although she has not asked what checks and surveys we had carried out as part of this process.
- 35 Prior to the lease being acquired, a condition survey was undertaken by Mike Jackson Consulting (MJC) who are a firm of chartered structural engineers. The building fabric was assessed by MJC, with mechanical and electrical elements being assessed by Fagan Electrical and J Fletcher Engineering respectively. The Condition Survey is very comprehensive and consists of 221 pages of documentary and photographic information.
- 36 In August 2018, I personally walked around the building with the Condition Survey and reviewed the condition of the building against the report and I didn't find anything of concern.
- 37 I do not believe Council officers have visited the premises to specifically look at the balcony or the mezzanine and, to my knowledge, I don't believe the Council's structural engineer has ever visited the premises and I have never had any communications with the engineer. I consider it would have been helpful to have an

onsite meeting with Council officers and/or the Council's Structural Engineer to assist us to have a better understanding of the Council's concerns. Had such a meeting have taken place there is a real prospect that the Council's concerns would have been addressed without recourse to the service of prohibition notices or other enforcement action.

- 38 In paragraph 25, Ms Duckworth states that I had advised that the structural engineer had "*recommended that the balcony which overlooks Shed A be restricted to a capacity of 25 person, from the original figure of 660, until sufficient checks could be carried out to ascertain the structural integrity.*" This is completely incorrect. As I stated in paragraph 13 of my statement, our chartered structural engineer, Richard Stone of Booth King, was happy with the continued use of the balcony. It was a company decision, not one based on any recommendation or suggestion, to restrict the use of the balcony to 25 persons until the footfall capacity assessment was completed and this is confirmed in my email at **Exhibit KF2**.
- 39 In relation to paragraph 32, as I have mentioned earlier in my statement, I have asked to meet with the Council's structural engineer who I don't believe has ever visited the venue. There are now two separate structural engineering assessments that have been carried out by Booth King and Harry Seymour, and both have confirmed there are no issues with the structure of the venue. I have not received or seen anything from the Council's structural engineer indicating what they feel may have been unsafe in terms of the structure of the venue nor have the Council sought to challenge the structural assessments provided. As mentioned previously, I asked Alison Acton on at least two occasions if we could meet the Council's structural engineer so that we could gain a full understanding of their concerns but unfortunately these meetings did not happen.
- 40 In paragraph 35 c, Ms Duckworth states that "*there is no evidence that AMG has sought to obtain any information prior to our involvement in relation to the structural integrity of the building that they are using for licensable activities...*". As I have explained in paragraph 24 of my statement, we had a comprehensive Condition Survey undertaken before taking on the lease of the building in 2018. The venue was inspected at that time and has been inspected periodically since in accordance with our statutory and policy requirements. It is disingenuous to state that "*there is no evidence...etc*" when all the officers needed to do was ask the question on due diligence checks and the information would have been provided to them.



41 I have attached to my statement drawings and photographs of the venue which show the balcony and mezzanine and the structural supports at **Exhibits KF9A, KF9B and KF9C.**

42 I have been made aware that Ms Duckworth submitted a second statement to the licensing authority on 12<sup>th</sup> October 2023 to be included with the papers for the review hearing. The statement inaccurately stated that AMG had requested an extension of time for compliance with the prohibition notice when this was not the case. The request for an extension related to the improvement notice. An email was sent from Gary Lewis of Squire Patton Boggs (UK) LLP on 13<sup>th</sup> October 2023 pointing out the error and requesting a correction to the statement. This email is attached to my statement as **Exhibit KF10.**

**Conclusion**

43 In conclusion, when AMG acquired this lease in 2018, it carried out due diligence, with the benefit of expert advice, to ascertain the structural safety of the balcony and mezzanine, and was satisfied that there were no concerns in this regard. When the Council asked questions about the structural safety of the upper floor, it received two separate expert assessments demonstrating its integrity, which it does not contest. Based on that, I have no reason at all to believe that there is any concern whatsoever regarding the structural safety of the upper floor.

DocuSigned by:  
*Keith Forshaw*  
Signed.....6167B775839443D.....  
Keith Forshaw

Dated: November 30, 2023.....