

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

PREMISES LICENCE REVIEW APPLICATION

Licensing Sub-Committee Hearing – 11th December 2023

WITNESS STATEMENT OF ABIGAIL MILLER

I, **Abigail Miller**, MCIEH CEnvH CMIOSH Fire, Health and Safety and Food Safety Management Consultant, 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 details of the Review of Risk Assessments
 - C. The meeting with Nicola Duckworth on the 27th September 2023

A. Professional Experience and Background

- 4 I have over 40 years’ experience in my chosen field; ten years working in Local government, as an Environmental Health Officer (EHO), and 30+ years in the commercial sector, primarily in Health and Safety Management in the retail and hospitality sectors working as Head of Safety for Debenhams, Argos, Homebase and Habitat (Home Retail Group), John Lewis and Marks and Spencer.

- 5 Since 2019, I have worked as an independent consultant with clients including Girl Guides, who own and let out hundreds of venues across the country, and Letchworth Garden City Trust who have a theatre / cinema, and other venues they let out to the public. For over 20 years I was Chair of the British Retail Consortium's Health and Safety Group, I am a former Chair of the Institution of Occupational Safety and Health (IOSH) Retail and Distribution Group, a former Trustee and current member of the Chartered Institute of Environmental Health (CIEH) Health and Safety policy advisory panel and current chair of the CIEH Enterprise Network; the network represents all those EHOs not working in Local Government. I am also an associate of the Faculty of Public Health.
- 6 On 10 July 2023 I was appointed as a consultant to Academy Music Group Ltd (AMG) to act as the Independent Chair of the Company's Health & Safety Committee.

B Summary Details of the review of Risk Assessments

- 7 Following service of an Improvement Notice upon AMG by Trafford Council on 7 September 2023, I was asked to review the documents that constituted the risk assessment for the 'TV Girl' Event (the Event) at the Venue on 23 August 2023. The Improvement Notice alleged that the Risk Assessment was not suitable and sufficient because it was not specific to the Venue or the Event. The outcome of my review would inform the decision as to whether or not AMG would appeal the Improvement Notice.
- 8 On reviewing the documents relating to the Event, these included minutes of meetings held, briefing documents and other documentation, which record the hazards, identify the risks and the controls that needed to be in place, and were put in place at the Venue for the Event. In my view, these documents constituted a suitable and sufficient risk assessment for the Event at the Venue. It would appear that not all of those documents were provided to Environmental Health Officers (EHOs) at the time they attended the Venue for an unannounced site visit on 23 August 2023.
- 9 I understand on the day of the Event the EHOs arrived just before opening, advising they were attending to witness the control measures in place to manage access to the balcony. During the visit, they were accompanied by the General Manager,

Russell Taylor-Toal, who, as a result, was unable to undertake the pre-opening checks etc for the event.

- 10 Towards the end of the visit, the EHOs asked to see documentation relating to AMG's structure. This was not provided but, instead, a copy of the line management details was printed-off from 'Workday', AMG's HR system.
- 11 I understand that the General Manager was unclear what the EHOs were specifically requesting and they did not wait to be briefed on the process and/or be given an explanation on how these risks were recorded. As a result, some of the documents that constituted the suitable and sufficient risk assessment for the Venue and the Event were not disclosed to the EHOs.
- 12 The Company's Health and Safety Policy was seen by officers that night, and I understand Mr Taylor-Toal sent a copy of the Policy to them by email during their visit as requested.
- 13 I understand the General Manager did try and download, and print-off, documents requested by the EHOs, but they stated that they were keen to get away as where they were parked had parking restrictions and they could not wait for the print outs. The EHOs saw a box file labelled 'Risk Assessments' in the office. The box was seized by EHOs and the General Manager was given a notice to identify documents that had been seized and to request specified additional documentation, pursuant to Section 20 of the Health and Safety at Work etc. Act 1974 (the Notice). However, full details of the documents taken do not appear to have been listed/recorded on the Notice. A copy of the Notice is attached to my Statement as **Exhibit AM1**.
- 14 The Notice asks for the Stewarding Plan. I understand that a copy of this plan was provided to officers as part of the Event Management Plan documentation submitted by Mr Crier on 5 October 2023. I further understand that a copy of the Stewarding Plan was provided by Mr Toal to council officers on the 20 February 2023 which is referred to in his Statement. The Company approach is to assume that the standard stewarding requirements apply, unless otherwise identified during the pre-show reviews. In this case, notes were made about early queuing and scanning crowds for alcohol, and these were covered in the briefing document which was provided to council officers.
- 15 The list on the Notice does not ask for an event specific risk assessment. However, Nicola Duckworth's Statement for the Review Application states that this was

requested. In any event, the documents constituting the suitable and sufficient risk assessment were provided to the Council as part of the Improvement Notice compliance documentation on 18 October 2023 and I understand that an example of an event specific risk assessment was also provided to the Council by Mr Crier on 5 October 2023 as part of the licence Review proceedings.

- 16 The Box File seized by EHOs on the 23 August 2023 did not include all the documents which constituted the suitable and sufficient risk assessment for the Event at the Venue, i.e. meeting minutes, briefing documents, checklists and other event documentation.
- 17 It is clear from Nicola Duckworth's Statement that she saw the Event Medical Plan but did not take a copy. Her statement points to the fact that this was written by a third party and, on a previous occasion, she had found the qualifications of the staff didn't match that written in the document although I have not seen anything to support this comment.
- 18 Ms Duckworth also suggests that she spoke to the Medical Team who told her they had been moved from their normal locations. I cannot find anything documented to support this comment either.
- 19 The written policy describes a task topic-based approach to risk assessment, at local level, with examples provided, and using a risk matrix to determine the level of risk.
- 20 These documents were within the Box File taken by the EHOs on 23 August 2023. I would assert that, contrary to the allegation in the Notice, those documents were venue specific as every venue has a different set, and they are subject to local calculation of the likelihood against degree of harm. I have been provided with some show specific documents and emails which did cover-off the specific risks in relation to the event.
- 21 I suspect from a review of the correspondence that the document(s) which, in the opinion of EHOs, were missing are those that relate to the Mezzanine and its weight loading capacity, and the number permitted in that area during the specific event. Email correspondence to the Council on the 16 August 2023 advised that the maximum number of people who would be permitted on the Balcony would be 25 pending a footfall analysis. I have been advised by the General Manager that "they closed this (balcony) to general admission customers and just had the balcony for

accessible customers and their PA's, which never exceeded 25". This is supported in the information for the security brief for 'TV Girl'.

- 22 There is a separate section in the Health and Safety Policy regarding productions. In most cases, unless the Venue is the promoter, AMG manage the premises and equipment therein and effectively rent it to the external promoter for the period of the production.
- 23 This is in line with the approach generally taken by theatres and owners of halls (like Girl Guides who expect the people renting the building to take responsibility for the activity they undertake therein) and is recognised in HSE Guidance.
- 24 That is not to say they delegate health and safety arrangements. The key to this approach is the competence of the Promoter and co-operation and co-ordination between the parties.
- 25 Taken as a whole, in my professional opinion, these documents constituted a suitable and sufficient risk assessment of the TV Girl event that was both venue and event-specific.
- 26 As a result of my review of the documents and discussions with AMG and its legal advisers, an initial decision was made to appeal the Improvement Notice. However, before doing so, Steve Hoyland and I arranged to meet Nicola Duckworth and Alison Acton at Trafford Council Town Hall to go through the documentation and to discuss the matter. This meeting was arranged for the morning of the 27 September 2023, and we only had until 4pm that afternoon to submit the Appeal.
- 27 On the morning of the 27 September, Steve Hoyland and I met with Nicola Duckworth and Alison Acton at the Town Hall. There was no room readily available when we attended, and the organisation of the meeting generally caused some unfortunate delays.
- 28 We introduced ourselves and the EHOs were surprised and expressed that they were pleased to learn of my background as an EHO. I then provided them with the evidential documentation pack I had produced, to demonstrate that there was a suitable and sufficient risk assessment in place for the Event on 23 August 2023. I had assumed that we were going to go through the documentation as it was the main purpose of the meeting.

- 29 I started by saying that AMG did have all the areas covered required by the Improvement Notice, but they were not all in one document, or one specific document called a risk assessment. However, the combined documents covered all the hazards risks and control measures and therefore did constitute a suitable and sufficient risk assessment that was both venue and event specific.
- 30 I said although the Venue understood the processes etc, I recognised there had been a communication issue with the Council about what documents the Venue had to cover relevant risks. The documentation pack explained where these were covered. I also explained it was our intention to streamline the process emphasising this didn't mean it wasn't suitable and sufficient currently, but AMG were intending to create a venue and separate event risk assessment and event management plan for all events. This was welcomed.
- 31 It was apparent Nicola Duckworth was taking the lead rather than Alison Acton who was the person who had served the Notice.
- 32 The previous issues with ingress and egress at the Venue and being the subject of a previous improvement notice served in 2021 before I was involved were mentioned. We confirmed that AMG had submitted an appeal to this notice and as far as we were concerned it was in the hands of the Employment Tribunal.
- 33 We discussed the previous meetings between Steve Hoyland, Nicola Duckworth and the previous manager at the venue, Lee Atkinson. I asked if Nicola was happy with the current arrangements relating to ingress and egress at the Venue, and she confirmed she was happy with the arrangements on non-match days but had not seen the documentation for match days, although she seemed to imply there were no issues with what was actually in place and would be happy if the arrangements were documented.
- 34 Whilst discussing the current Improvement Notice, Nicola Duckworth mentioned that we hadn't risk assessed the structure of Victoria Warehouse and its suitability as a venue. The structural integrity of the Venue was the subject of the Prohibition Notices served at the same time as the Improvement Notice. This matter is covered in Keith Forshaw's Statement.
- 35 At this point it became apparent that the issue they had was not just with the Balcony but the whole first floor – This is referred to as a mezzanine, but it isn't actually a mezzanine in the true sense of the word. As the Prohibition Notices

related to the structural integrity of the Venue, I thought that issue was not included within the scope of the Improvement Notice which required AMG to put in place a suitable and sufficient risk assessment that was both venue and event specific. I was also aware that Keith Forshaw had been in communication with the EHOs regarding the structural issues.

- 36 The concern of the EHOs was on the appearance of the surface concrete which had a deliberate distressed look. Steve Hoyland was very surprised at their comments and explained the distressed look was decorative and had been instigated by the Landlord as part of the building's appeal. It had been extended to the bar area and did not impact upon the structural integrity of the steel underneath, if anything the presence of the concrete strengthened it. I understand this was later confirmed by reports from structural engineers. It was obvious from their reaction they were not aware of this.
- 37 During our conversation, I am not sure exactly when, we were relocated to another part of the office, and started to discuss the Improvement Notice and the documentation pack we had already shared.
- 38 Ms Duckworth mentioned the lack of detail in the stewards briefing referring to the call signs. She implied this was confirmed by the Control on the night but couldn't confirm who she spoke to. She also spoke about the qualifications of the security staff. Mr Hoyland tried to explain what we had in place, but she seemed adamant the issue had been confirmed by a senior member of the security team.
- 39 All the briefing documents were in place for the event and contained the details the EHOs had asked for. I personally spoke to the Compact Head of Security, Lee Hazeldine, following the meeting and he advised they hadn't spoken to Ms Duckworth so I am not sure who she spoke to.
- 40 I tried to move the conversation to the rest of the documentation pack but, before we could get into the detail, Nicola Duckworth indicated our time was up as she had to attend a meeting on legionella and she stood up.
- 41 Steve asked if they were still okay to meet again to discuss the licence conditions the following week to which Nicola Duckworth said yes.
- 42 I then said given that today was the last day for filing an appeal and we hadn't finished the discussion, AMG were intending to appeal the Notice on the basis of

the documentation pack that I had given them, and the fact that a suitable and sufficient risk assessment was in place at the time the Notice was served.

- 43 At this point, Nicola Duckworth's demeanour changed completely and she said that if we were going to appeal there was absolutely no point having any further discussions regarding the licence conditions. We were not able to discuss the matter further and we left the building disappointed that we had not been able to make positive progress on any of the issues.
- 44 Following discussions with AMG's solicitors after the meeting with the Council, it was decided not to appeal the Improvement Notice in the interests of the business and to maintain good relations with the EHOs. I agreed to expedite the work on streamlining the Improvement Notice compliance documentation to bring everything into an easier to read format for the benefit of the EHO's understanding of the process and ease of use going forward.
- 45 To facilitate this work and to give the EHO's time to read and confirm the documents secured compliance with the Notice, AMG's solicitors asked for an extension of time for compliance with the Improvement Notice. On the 18 October 2023, I submitted the compliance documentation pack to Alison Acton by email as she was the EHO who had served the Notice.
- 46 On the 19 October, I understand a meeting took place in relation to the Licence Review proceedings between Suzanne Whittaker, James Parry and Nicola Duckworth from the Council and Steve Hoyland and Phil Crier for AMG. It was intimated by the EHOs that, on a brief review of the compliance material, it was not considered robust enough and it was suggested we should change the template to the HSE format and refer to other documents where necessary.
- 47 I have successfully used the template I submitted to Trafford Council for many years (30 +). It fulfils the legal requirements recording foreseeable significant risks.
- 48 The Venue Risk Assessment did refer to other documents where relevant, but it didn't major on the event as this was covered by a separate event risk assessment which I was aware had already been submitted to the Council by Mr Crier on 5 October as part of the licence conditions relevant to the Review Application. I believe the process we went through culminating in a suitable and sufficient risk assessment did exactly what is required, namely to make everyone think about

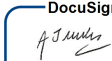
what was in place and should be in place to reduce the risks to as low as reasonably practicable, as far as is reasonably practicable.

- 49 The Venue Risk Assessment ensured the identified gaps were addressed through a process of summarising the risks and identifying the control measures which were being put in place to reduce those risks to as low as reasonably practicable.
- 50 The HSE template is a checklist against the risk assessment and a gap analysis between where you are and where you should be. It was created in 2019, so relatively recently, to support people who didn't know where to start.
- 51 On the 20 October 2023, an email was received by Gary Lewis, Solicitor at Squire Patton Boggs (UK) LLP, who represents AMG, from the Council outlining some further deficiencies (as they were called) but again explaining they hadn't fully reviewed the documentation. The review would be undertaken when Alison Acton returned from leave.
- 52 The majority of the items raised were actually covered in other sections of the risk assessment documentation I had submitted to secure compliance with the Notice. I suggested a meeting to discuss the approach with Alison Acton on her return from leave, but this was denied by the Council who implied they had provided enough time for us to put this in place.
- 53 This in my opinion goes contrary to HSE guidance which states that when an Improvement Notice is served, there should be a discussion with the Dutyholder about the notice and how s/he can comply with it. An effort should be made to resolve any points of difference. A copy of the relevant part of the HSE Guidance is attached to my Statement as **Exhibit AM2**.
- 54 In order to maintain good relations with the Council, I put both the Venue and Event Risk Assessment information already submitted into the HSE template, added the duplicate information into the section they had identified on the Venue Risk Assessment as 'deficient' and adjusted the Event Risk Assessment by specifically referring to items in the Event Management Plan and Appendices.
- 55 On the 26 October, I sent the revised documents by email to Alison Acton. A copy of my email is attached to my Statement as **Exhibit AM3**.

- 56 On the 27 October I received an email from James Parry confirming he had been advised these had been received with additional comments. A copy of this email is attached to my Statement as **Exhibit AM4**. I responded by saying that AMG were satisfied that they had satisfactory arrangements in place to ensure that events could be held at the Venue that were safe, so far as is reasonably practicable. A copy of this email is attached as **Exhibit AM5**.

- 57 As of 28 November 2023, I have never received any direct correspondence from either Alison Acton or Nicola Duckworth about any of the documents I have submitted. I find this surprising in view of the fact that the documentation had been requested and was necessary to satisfy compliance with the Notice served upon AMG.

- 58 In my professional opinion, I consider that the company has provided documentary evidence of a suitable and sufficient risk assessment that is both venue and event specific in order to comply with the Improvement Notice served by Alison Acton on 7 September 2023.

Signed:  DocuSigned by:
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Abigail Miller MCIEH CEnvH CMIOSH

Dated: November 28, 2023