

**Agenda Item No. 4 – Further Additional Information from the
Applicant and Durham Constabulary**

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In The Licensing Sub-Committee

DURHAM COUNTY COUNCIL

IN RELATION TO:

**The Kings Head, 176 Newgate Street, Bishop Auckland, Co. Durham.
DL14 7EJ**

APPLICATION TO VARY DPS

In the name of

MR CHRISTIAN BURNS

- 1 An application has been made by the premises licence holder, Punch Taverns Limited ('Punch') to vary the premises licence currently in force at the Kings Head, 176 Newgate Street, Bishop Auckland, DL14 7EJ ('the Premises') to change the Designated Premises Supervisor ('DPS') to Mr Christian Burns.
- 2 This application has been objected to by PC Ian Robertson from the Licensing Unit on behalf of Durham Constabulary.
- 3 The grounds for objection are articulated in a representation dated 21 December 2020 and amplified in a statement labelled 'Additional Information' provided to the Applicant on 13 January 2021.

The Law

- 4 The role of DPS is defined in S15 Licensing Act 2003 ('LA03') simply as being the 'individual for the time being specified in the licence as the premises supervisor.'
- 5 S19 LA03 provides two mandatory conditions be included on every premises licence where sales of alcohol are permitted. These prohibit sales of alcohol at a time where there is no designated premises supervisor, or where the person designated does not hold a personal licence.
- 6 Applications to vary the DPS are made under S37 LA03. The grounds upon which a police officer can object to the variation of a premises licence holder are narrowly constrained by the legislation. S37 (5) LA03 sets out these grounds as follows:

'Where a chief officer of police notified under subsection (4) is satisfied that the exceptional of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.'
- 7 There are no other grounds available to object to the grant of a DPS, which without an objection by the police must be granted as an administrative function of the Licensing Authority.

Function of the DPS

- 8 The functions of a DPS are not clearly stated in legislation. However the revised Guidance issued under S182 LA03 (April 2018 edition) states:

4.31 Every premises licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder...

4.32 The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly...

4.37 Only one DPS may be specified in a single premises licence, ***but a DPS may supervise two or more premises as long as the DPS is able to ensure that the licensing objectives are properly promoted and that each premises complies with the 2003 Act and conditions on the premises licence.*** [My emphasis]

Police Notice of Representation

- 9 The police notice states:

'...I am concerned that if this application is granted Mr Burns' control and responsibilities will inevitably be 'diluted' and worry that the expectation placed on the role and upholding the licensing objectives would equally be 'diluted'. Three of Mr Burns other DPS roles were granted between February and September 2020 and due to government restrictions have not yet operated to their full customer potential, where the level of his full responsibilities are tested.'

- 10 It is the Applicant's submission that the police case does not meet this high bar in terms of setting out why Mr Burns' appointment would undermine the crime and disorder licensing objective for the reasons set out below.

Mr Burns

- 11 Mr Burns has been a licensee both under the previous legislation (Licensing Act 1964) and since the transition to the LA03 in October 2006. He has an impeccable record of operating and managing licensed premises, including acting in a senior capacity at a large pubco where he was responsible for oversight of a large number of premises at the same time. He is an active member of the local pubwatch and chair of the licensed victualler's association, a fellow of the BII and a fellow of the institute of hospitality. He is also a licensed personal licence trainer. As such, to suggest that his ability to act as DPS would be diluted fails to take into account his standing as a personal licence holder and experienced manager of licensed premises.

- 12 It is worth noting that having day to day management of the premises is not mandatory for a DPS. Neither is it mandatory to be on site at all times. As such, the police cannot point to any disqualifying feature of this application on either of these grounds simply because Mr Burns is DPS at multiple sites. The Guidance makes this clear. Indeed, this is a relatively common occurrence for smaller operators of multiple sites to hold multiple DPS roles- especially currently during the coronavirus pandemic (dealt with below).

- 13 Neither is it enough to simply state that being a multiple DPS in and of itself is a grounds for successfully objecting to a DPS application being granted based on the undermining

of the crime prevention objective. Rather, the test as stated in the Guidance is the other way around: The police must provide evidence of crime and disorder directly related to the applicant being DPS at another site to even begin to suggest there are 'exceptional circumstances' to deny a personal licence holder his right to be DPS at 'two or more' premises as otherwise permitted.

- 14 In this case, Mr Burn appoints managers for all his premises. They all hold personal licences, as do senior staff members. Mr Burns has comprehensive training in place for all staff and with his experience and knowledge of the town is thereby able to ensure that as far as practicable incidents do not occur at his premises. On the rare occasion they do, which is only to be expected from time to time in licensed premises, his staff are trained to handle the situation and report to Mr Burns so that he is fully apprised. He takes a hands on approach to managing the premises, even when not there.
- 15 Mr Burns is well known in the town and is always available to officers to discuss any concerns. This is, as set out above, the fundamental role of the DPS.
- 16 It is Mr Burn's intention, once he is satisfied that his managers have demonstrated that they are competent and capable of running the premises to his exacting standards, to have them take on the role as DPS at the site they manage. However, in order to promote the licensing objectives properly and comply with the proper purpose of a DPS, he wishes to remain as DPS in the short-term to ensure that officers with concerns know who to come to should there be an issue whilst the managers prove themselves.

Coronavirus

- 17 Whilst the police state that part of their concern is that Mr Burns has not had a chance to operate all premises fully whilst he has been DPS, this fails to recognise that businesses in the hospitality sector are under increased financial and staffing strains. We are all aware that the furlough scheme has been set up to support the industry (amongst others) and many premises have been forced to take advantage of this for the duration of the scheme to save their businesses. Likewise significant numbers of staff in the hospitality sector have left the industry to seek work elsewhere. As such, there is probity in Mr Burns' holding the role of DPS at his premises precisely to avoid any such situation with his staff requiring further applications.
- 18 It should also be stated that operating a premises during the pandemic is not easier than in ordinary trading times as implied by the Police in their statement- far from it. The changes to regulations and Guidance (some 60+ and counting)- often released at the very last minute- has made operating during this period significantly harder. Managing customer expectations in the evolving environment is just as difficult given confusion over the regulations as applied to them and a level of 'Covid fatigue' that can lead to confrontations.

Conclusion

- 19 There is no legal impediment to a personal licence holder being a DPS at more than one site. Indeed, the Guidance specifically states that it is permitted.
- 20 When the individual circumstances are taken into account here, including Mr Burns' experience, his proactive and exemplary record in training and management of the premises, there is no evidence provided by the Police in objecting to this appointment that would make the very high bar of their application being for 'exceptional' reasons relating to the crime and disorder licensing objective. Indeed, the specific circumstances as set out above rather suggest the opposite.
- 21 If the Police, or indeed the Licensing Sub Committee are concerned that permitting Mr Burns to be DPS at multiple sites sets a bad precedent, the specific facts here are

unlikely to apply in the overriding majority of cases where objections may be made. Should someone else come forward with an impeccable record over 30+ years in the industry, who is a personal licence trainer and chair or member of the various local and national licensing groups/ associations, then the reality is that they too should be seen as the kind of person that should be actively encouraged to take on the responsibility of being DPS.

15 January 2021

Piers Warne

For and on behalf of the premises licence holder, Punch Taverns Ltd.

From: Nicola Gill

Sent: 14 January 2021 17:16

To: Iain Robertson

; Darren Hull

; Owen Cleugh

Subject: RE: VDPS objection - Christian Burns - committee hearing Tuesday 19th

Hi

Statements attached from both myself and Andrew List, detailing our visits to the premises on 17th October 2020.

With reference to the witness statement from A Watson, my response to his allegations is as follows:

Witness Statement 8th January 2021

My Name is A Watson, employee of Christian Burns for the Tavern Hospitality Group. I have previously been employed by Mitchell's & Butler's of 5 years managing large pubs as General Manager. I have been a personal licence for that period and DPS for various sites over the years. On the night of the 17th October 2020, I was acting manager at Kennedy's bar, located on Bondgate Street, Bishop Auckland. **We received a routine visit by members of both the council and police. Upon arrival they walked up to myself where I was currently stood at the bar. I greeted them courteously as I suspected who the plain clothed people were (council) although initially there was no immediate introduction of who they were. I was addressed with the wrong name and once I corrected the lady, I was told that I was wrong, and my name was incorrect. After going back and forth, she accepted that my name was A, not S. THE VISIT WITH THE POLICE WAS INFACIT THE SECOND VISIT OF THE EVENING. ANDREW LIST AND I VISITED EARLIER AND UPON INTRODUCING OURSELVES TO MR WATSON (WHO I HAD ALREADY MET ON A VISIT TO THE PREMISES THE PREVIOUS EVENING), I REFERRED TO HIM AS S, WHO IS ACTUALLY MANAGER AT THE NEARBY READING ROOMS, ALSO OWNED BY CHRISTIAN BURNS. MR WATSON CORRECTED ME AND I APOLOGISED FOR THE GENUINE MIX UP – THIS WAS NOT DISPUTED BY ME.**

By this point, all visiting parties were now inside the building and I was surrounded by a horseshoe of

6 persons, 3 from the council, and 3 police officers. I felt very intimidated by the situation as I was trapped with my back against the bar and 6 people surrounding me shoulder to shoulder. **THIS WAS THE SECOND VISIT TO THE PREMISES. AGAIN, ANDREW LIST AND I FROM THE COUNCIL AND FROM MEMORY, 3 POLICE OFFICERS. WE WERE GATHERED IN A VERY SMALL AREA, DUE TO PREMISE LAYOUT. AT NO POINT, DID MR WATSON EXPRESS CONCERNS OF INTIMIDATION.**

I was questioned at that time about the capacity of the venue, the music level, current (at that time) Covid-19 measures etc. I calmly explained all points to them as requested, of which being the following;

Capacity.

I was asked what the current capacity limits were and I explained that due to the current Covid restrictions with only one household per table allowed in, of which was up to 6 people max, that the tables and chairs were laid out accordingly to give appropriate distance between each and that we ask everybody who comes in wishing to sit at the same table if they are from the same household. At the time, there was no law where we had to ask for evidence (driving licence, council tax bill etc.) of people living in the same household.

I was challenged by this as the council lady had said that people do not have a genetic make-up of people living in the same household. I argued this point and explained that A) we would be breaching Data Protection of individuals by asking people to show evidence of their current residence, and B) people can live in the same household without being related i.e. house shares, students etc. I EXPLAINED TO MR WATSON THAT IT IS OFTEN APPARENT FROM THE GENETIC MAKE-UP OF A GROUP OF PEOPLE, THAT THEY ARE UNLIKELY TO BE FROM THE SAME

HOUSEHOLD, AND WHERE THIS MAY BE THE CASE, PATRONS SHOULD BE CHALLENGED ON THEIR ADDRESS STATUS.

Music Level.

I was quizzed about the level of music in the venue, apparently it was too loud. The current guidelines at the time were that background music could not be higher than 85dB at any one time.

I

had a decibel reader and was monitoring this constantly. However, DCC website had explicitly stated

in black and white that all live music/live performers was exempt from the 85dB rule. Being that Kennedy's Bar is a karaoke venue, and that evening we had a singer for the night, the music level, at

times, was higher than 85dB for this reason only. The council did not carry a decibel reader or even ask for mine, it was simply judged on natural hearing. When I explained about the DCC website

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displaying this exemption I was told I was incorrect and that it was too loud, to which I kindly obliged

and reduced the volume of music level and singing anyway. **I WAS NOT AWARE OF INFORMATION PUBLISHED BY DCC REGARDING MUSIC LEVELS, HOWEVER THE VOLUME OF MUSIC FAR EXCEEDED THAT OF BACKGROUND MUSIC AND VOICES HAD TO BE RAISED IN ORDER TO BE HEARD.**

Current Covid-19 Measures.

As part of the routine visit I was asked what measures we have in place and I had explained that we had spaced out seating, everyone was asked upon arrival if they were in the same household – anybody who said they weren't, were not allowed to sit together.

I also explained that we had hand sanitiser stations upon arrival, an up-to-date Track and Trace system, both electronic QR codes and also paper versions if the person did not have the app. **We also had a strict 'mask on' policy if you were not sat at a table, to which I was accused of neglecting**

as one person at that time walked from their table to the toilet. I explained that both the doorman and I had both seen her NHS exemption card allowing her not to wear a mask, to which I was accused of lying and that it was too convenient that that one person had a card. We also had a table

service only policy so there was no mixing or close contact at the bar etc. **SEVERAL CUSTOMERS WERE WITNESSED STANDING/MINGLING WITHOUT FACE COVERINGS AND THIS WAS CHALLENGED. THE FLOOR SPACE ON THE PREMISES IS SO SMALL, CLOSE CONTACT COULD NOT BE AVOIDED.**

Towards the end of what felt like an inquisition, Christian Burns arrived to ensure things were going smoothly, as he always does being the DPS and saw me surrounded by 6 people in a horseshoe at the bar. He did not intervene nor make his presence known as I was dealing with the visitors myself.

I was informed then that they would be in touch and to continue trading until we heard from the council. Surely if things were not within the guidelines or law then we would have been asked to close immediately, but it did not appear so, we could continue to trade.

Upon being ready to leave, I escorted them to the outside of the premises where we were joined by Mr Burns and the conversation continued in the same manner. **We were accused of poorly running a**

bar during the Covid-19 pandemic, but when asked to explain which issues were concerning, this could not be answered and we were told that they would be in touch. ALL CONCERNS WERE REITERATED TO MR BURNS. WHILST ACCEPTING SOME OF THE CONCERNS RAISED, MR BURNS DID CHALLENGE AND DISPUTE OTHERS. I ADVISED FURTHER CONTACT WOULD FOLLOW.

At that time, I felt very intimidated and was made to feel like a criminal, even though we were following the Covid-19 guidelines and the law at that time. **However, upon receiving the closure notice nearly a week later, it was then lifted 48 hours later following an inspection from a senior member of the licencing committee from DCC. AS CLARIFIED BY DARREN HULL, THE DIRECTION WAS NOT RESCINDED WITHIN 48 HOURS, NOT WOULD THIS BE DONE BY LICENSING COMMITTEE.**

I believe I have covered most, if not all, of the points from that evening, but I am more than happy to elaborate at any time if this is requested.

Kind Regards,

A Watson

Operations Manager

Tavern Hospitality Group

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The visit Mr Watson refers to on his statement was recorded on both DCC and Police bodycam

I hope this is of some assistance.

Thanks,

Nicola

Nicola Gill

**Community Protection (Covid-19 Compliance) Team Leader
Neighbourhoods and Climate Change**

T:

E:

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DURHAM COUNTY COUNCIL

STATEMENT OF WITNESS

(Criminal Procedure Rules rule. 16.2; Criminal Justice Act 1967, Section 9
Magistrates Court Act 1980, Sec 5B)

STATEMENT OF: Nicola GILL

AGE: (if over 18 enter "over 18"): Over 18

OCCUPATION: Licensing Enforcement Officer

ADDRESS: C/O Community Protection Service Durham County Council,
Annand House, Meadowfield, DH7 8RS

This statement consisting of 3 page(s) each signed by me is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.

Date: 21.10.2020

Signed:

I am the above named person and I am employed by Durham County Council as a Licensing Enforcement Officer; a position I have held since April 2014.

On Saturday 17 October 2020 at approximately 18:30 hours, I visited KENNEDY'S BAR, 37-38 Fore Bondgate, Bishop Auckland with my colleague Andrew LIST, Principle Consumer Protection Officer.

The purpose of the visit was to carry out a Covid-19 compliance check on the premises.

Upon approaching the premises, there was a doorman and several members of the public standing to the front curtilage, all within close proximity to one another. Loud music could be heard in the street and it was clear that this was emanating from the premises.

I explained to the door supervisor the purpose of our visit and we proceeded to enter the premises.

It immediately became apparent that social distancing requirements were not being adhered to and households appeared to be mixing.

The floorspace of the bar is relatively small and there was approximately 8-10 tables in situ; all of which appeared occupied at the time of the visit. The spacing of the tables was not adequate and whilst customers were seated, did not allow for 2 or even 1 meter distance.

Some, if not all of the tables were occupied by groups of people that appeared to be of a similar age, thus raising the concern that households were mixing

Karaoke was taking place on a stage to the left hand side of the front entrance, with two females side by side as we entered. The volume of the karaoke backing music was extremely high, resulting in raised voices in order to be heard.

Andrew LIST and I approached the bar area, which is located at the rear of the premises, and I spoke with the manager A WATSON. I explained to Mr WATSON that we had major concerns relating to what we were witnessing and the apparent disregard to COVID-19 restrictions. I requested the volume of the music be lowered to background level, as it was very difficult to have a conversation without raising voices.

Mr WATSON advised that it was his understanding from information published on the council's website that there was no limit as to how loud a karaoke could be; however he did reduce the volume of the backing music.

Mr WATSON explained that the door supervisor was controlling entry to the premises, however members of the public were not required to provide

verification of their address beyond verbally confirming they were from the same household.

Customers on the premises were witnessed 'mingling' without the use of a face covering. Mr WATSON advised that the customers were exempt.

I advised Mr WATSON that we would likely make a second visit as a result of our concerns.

At approximately 20.00 hours, a return visit was made to the premises with Andrew List and several Police Officers from Durham Constabulary.

It was immediately noticeable that the noise level had reduced and some customers had vacated the premises.

I proceeded to speak to the manager A WATSON for a second time.

The owner of the premises, Mr Christian Burns, subsequently arrived whilst we were still present in the premises.

At the request of Mr BURNS we continued the discussion outside of the premises and I reiterated to him the concerns I had. Mr BURNS challenged, however accepted the concerns raised and I advised I would be in touch early in the next working week.

The second visit to the premises was recorded on bodycam, worn by Andrew LIST. This device was handed to the COVID Compliance Team, within the Community Protection Service for footage to be downloaded.

Signed

DURHAM COUNTY COUNCIL – TRADING STANDARDS SERVICE

STATEMENT OF WITNESS

(Criminal Procedure Rules rule. 16.2; Criminal Justice Act 1967, Section 9
Magistrates Court Act 1980, Sec 5B)

STATEMENT OF: Andrew LIST

AGE: (if over 18 enter "over 18"): Over 18

OCCUPATION: Principal Consumer Protection Officer

ADDRESS: C/O Durham County Council Trading Standards, Annand House,
Meadowfield, DH7 8RS

This statement consisting of 4 page(s) each signed by me is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.

Date: 21.10.2020

Signed:

I am a Principal Consumer Protection Officer employed by Durham County Council within their Consumer Protection Service.

On 17.10.2020 at around 18:30 hours, I accompanied my colleague, Nicola GILL, Licencing Enforcement Officer with Durham County Council, on a visit to KENNEDY'S BAR, which is located on the Fore Bondgate Street in Bishop Auckland, County Durham.

The purpose of the visit was to carry out a Covid-19 compliance check, to ensure the premises was adhering to Covid-19 related restrictions.

Upon approaching the premises, loud music that was clearly originating from inside it could be heard in the street. There were also several customers and / or members of the public standing in close proximity to its entrance. These individuals were either smoking or talking to one-another.

There was a door supervisor controlling entrance into the premises. Nicola explained the nature of the visit and we entered.

Signed

Upon entering, I was taken aback by how loud the atmosphere was. There was a karaoke taking place on the stage, which is located on the left-hand side, as you enter the premises.

The volume of the karaoke's backing music was high. As a result, it was apparent that customers were having to talk loudly to one another to be heard.

The customer area of the premises appeared to be very compact, as a result of the number of tables and chairs that were laid out. Most, if not all the tables were occupied by customers, in groups of between two and four.

There did not appear to be adequate distance between the arrangement of several of the tables to ensure different groups were at least 1 metre away from each other.

Several groups with more than two people in them were made up of individuals who, in my opinion, were of a similar age. I was therefore concerned that individuals in these groups may not be from the same household.

Nicola and I approached the bar area, which is located at the rear of the premises, and Nicola spoke with the manager.

At times, due to the noise level, I struggled to hear what was being said between the two.

I did hear the manager advise Nicola that the door supervisor was asking groups that wished to enter the premises if they were from the same household or were part of a bubble.

The manager also advised that it was their understanding from information published on the council's website that there was no limit as to how loud a karaoke could be.

Signed

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My overall assessment of my visit to the premises was that it felt very much like a normal Friday night out in a licenced premise, prior to Covid-19 restrictions being implemented.

Both inside and outside the premises seemed a lot more chaotic than any other premises I have visited in recent weeks as part of the Covid-19 compliance checks.

Upon returning to the visit the premises later in the evening, at around 20:00 hours, it was apparent that the noise level of the music had been lowered and there were less customers inside.

I entered the premises with Nicola and several police officers, and Nicola again spoke with the manager.

The owner of the premises subsequently arrived whilst we were still present.

A discussion took place between Nicola and the owner outside the premises, in which Nicola put forward her concerns. The owner addressed the concerns and the conversation ended amicably.

During the second visit to the premises I wore a video recording device. This device was passed to the Service's Covid Compliance Team so that the footage could be downloaded.

From: Darren Hull [
Sent: 14 January 2021 14:22
To: Nicola Gill < >; Iain Robertson

Subject: RE: VDPS objection - Christian Burns - committee hearing Tuesday 19th

These aren't my official comments, however see below.

Below is the wording from the Direction to Close. Dated 23rd October 2020. It was revoked on 29th October 2020.

(c) Relevant statutory requirements are not being met and customers are permitted to behave in ways which contravene both legal requirements and public health guidance. It was evident that the premises were not following social distancing guidelines, there was apparent mixing of households and tables were situated too close together. Customers were witnessed mingling and at times dancing; encouraged by the excessive volume of music.

I'm sure there will be a statement on the system relating to what Nicola and others observed on the evening. However Nicola will speak to you later.

Not sure who the senior member of the Licensing Committee is that has spoken to them but the committee has no dealings with Directions. It would have been the Community Resilience Team that assessed it. Which is now my team. I think from memory Martin visited from my team. It will have been from that inspection and subsequent assessment that the decision was made to revoke the Direction. No action was taken two days later to revoke. It was revoked 29th as above.

There may be confusion or other elements to other visits we are unaware of?

Have you spoken to Owen/Craig about comments and attendance?

Cheers

Darren Hull
Community Protection (Covid-19 Compliance) Manager
Community Protection
Neighbourhood and Climate Change

T:
E:

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