

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held remotely via Microsoft Teams on **Tuesday 19 January 2021 at 1.30 pm**

Present:

Councillor L Marshall (Chair)

Members of the Committee:

Councillors C Hampson, A Hopgood, L Kennedy and M Wilson

Also Present:

Mr S Buston (Council's Solicitor)

Ms H Johnson (licensing Team Leader)

Mr P Warne (Applicant's Solicitor)

Mr C Burns (Proposed DPS)

Mr J Moran (Punch Taverns Ltd – Applicant)

Sgt C Dickenson (Durham Constabulary)

PC I Robertson (Durham Constabulary)

1 Apologies for Absence

There were no apologies for absence.

2 Substitute Members

There were no substitute Members in attendance.

3 Declarations of Interest

There were no declarations of interest.

4 Application to Vary a Premises Licence to Specify an Individual as Designated Premises Supervisor - The Kings Head, 176 Newgate Street, Bishop Auckland

The Chair welcomed everyone to the meeting and explained that only three Members would be deliberating the application.

The Council's Solicitor explained why only three Members deliberated the application and ran through the procedure for the meeting.

The Applicant's Solicitor asked that the CCTV evidence provided by Durham Constabulary be viewed in private due to data protection implications.

The Council's Solicitor suggested that they ask the Sub-Committee to make the resolution to move the proceeding in private at the appropriate time.

The Applicant's Solicitor then referred to the representation from Durham Constabulary and that any representation to changes to the Designated Premises Supervisor (DPS) could only be made by senior police officers and asked the police to confirm that the representation was acting on behalf of a senior police officer, so that they were complying with regulations.

PC Robertson, representing Durham Constabulary confirmed that he was acting on behalf of the Chief of Police and had delegated authority to act in this matter.

The Applicant's Solicitor and Members confirmed their agreement to proceed with the application.

The Sub-Committee considered the report of the Corporate Director of Neighbourhoods and Climate Change regarding an application to Vary a Premises Licence to Specify an Individual as the Designated Premises Supervisor in respect of The Kings Head, 176 Newgate Street, Bishop Auckland, County Durham (for copy of report, see file of minutes).

A copy of the application and location plan had been circulated together with the representation from Durham Constabulary and additional information provided by the Applicant and Durham Constabulary.

The Licensing Team Leader was in attendance to present the report and outlined the options open to the Sub-Committee.

The Licensing Team Leader then advised the Sub-Committee that Durham Constabulary had provided video footage that contained members of the public and asked if the public could be excluded from this part of the hearing under regulation 14 of the Licensing Act 2003.

The Sub-Committee considered the request and agreed that members of the public be excluded from the hearing during the viewing of the footage.

The Council's Solicitor sought clarification on how many premises Mr Burns was currently the DPS and the location of the premises.

The Licensing Team Leader confirmed that he was currently DPS for four premises all located within Bishop Auckland which were the Merry Monk, Finnigans Bar, Reading Room and Kennedys Bar.

The Council's Solicitor then asked what was the greatest number of premises that one DPS oversaw in County Durham.

The Licensing Team Leader responded that she did not have those figures to hand but in the past, there had been a DPS at a number of premises, but this tended to be off-licensed premises or an area manager for a supermarket.

PC Robertson referred Members to his objection at page 8 of the second bundle. He asked Members to remove 'Public Safety' from the grounds for the objection, which members agreed.

PC Robertson then referred members to his report and asked that reference to 'DPS at one premise' be omitted from his report that Members agreed.

PC Robertson also asked that the last paragraph at page 16 of the first bundle be omitted as this was an update. Members agreed to omit this paragraph.

PC Robertson then made representations on behalf of Durham Constabulary and indicated that Mr Burns was currently DPS at four premises in Bishop Auckland Town Centre. In his opinion all premises had the potential to be popular late-night drinking establishments, they were not restaurants but late-night bars. He referred to the Council's Statement of Licensing Policy 2019-2024 that referred to the role of DPS as having day-to-day control of licensable activities and recommended that the DPS should be present between 22:00 hours and closing time, when the premises was one that regularly opened after midnight for both regulated entertainment and the supply of alcohol for consumption on and off the premises. All four premises fit into this recommendation as did the Kings Head which was the premises for the application today.

Durham Constabulary were concerned that Mr Burns physically could not be at each of the premises to fulfil this recommendation. This was a recommendation and not mandatory, but Durham Constabulary were concerned that across five sites Mr Burns would have a lot of responsibility. Mr Burns current premises were all based in the same area around the Market Place and Bondgate.

He then referred to the map at page 12 of the second bundle that showed the location of the four premises that Mr Burns was the current DPS which were in close proximity to each other that were mainly pedestrianised with a one-way road system in place, the proximity of the premises afforded Mr Burns

some immediate control. He did not object to the DPS for three of the premises to Mr Burns that were granted between February and September 2020. One of his considerations when looking at these applications was at those times there was very little happening at the other premises and he felt that Mr Burns had the ability to look after those premises due to the proximity. It was a busy area and COVID had changed things, but it was approximately one minutes' walk between premises.

The map also showed the location of the proposed premises that was situated half a mile away from his current premises along a busy road with other licenced premises. In his opinion, they were two different socialising areas.

He referred to the existing premises licence for the Kings Head and provided Members with details of the times of the licensable activities together with the details of these activities for the four premises that Mr Burns was currently DPS.

PC Robertson then provided details of the reported incidents and visits carried out for each of the premises from the beginning of 2020 as follows:

Merry Monk – 12 reported incidents and 17 visits carried out at the premises
Reading Rooms – 1 reported incident of concern and 13 visits carried out at the premises
Kennedys Bar – no reported incidents and 7 visits carried out at the premises
Finnigan's Bar – 1 reported incident that was irrelevant and 8 visits carried out at the premises

PC Robertson indicated that each of the premises had late licensing times. Three of the premises Finnigans Bar, Kennedys Bar and the Reading Rooms were granted the licence last year and had only been operating for a short space of time during COVID restrictions and a number of lockdowns. Mr Burns had not had the opportunity to run these premises both individually and collectively at full capacity.

He asked Members to consider the responsibility placed on Mr Burns and his staff at present. Fulfilling the responsibilities demanded by the ever changing COVID landscape and from the time businesses return to a degree of normality, so they must also consider the future. Mr Burns had not been tested at full capacity at the four premises and adding a fifth may further dilute his control of the premises. Durham County Council's Statement of Licensing Policy recommended that at DPS be present between 22.00 hours and closing time when the premise was one that regularly opened after midnight for both regulated entertainment and the supply of alcohol for consumption on the premises.

He then referred to the policy in relation to good practice of the DPS, he would not class all the premises as 'vertical drinking establishments' but there was the capacity for all of the premises to be vertical drinking establishments. The nature of the premises also meant that they fitted into the third point for televised sporting events. All premises were bars with late night premises licences and good practice suggested that the DPS should be on site from 22:00 hours. He was concerned how Mr Burns could fulfil this recommendation being at five premises at once which was a concern of Durham Constabulary.

PC Robertson then referred to point 3 at page 11 of the second bundle that was the visit to Kennedys Bar on the 17 October 2020 where issues were found with patrons breaching COVID regulations. Mr Burns was not on site at the time of the visit but did attend from another premises. There was police body-worn footage of the visit and the discussion that took place with Mr Burns. The premises were subsequently issued with a direction of closure on the 24 October 2020 by Durham County Council, due to the issues discovered at the visit on the 17 October 2020. This incident appeared to undermine the crime and disorder licensing objective. There was also police body-worn footage of the notice been served by Durham County Council to Mr Burns on the 23 October 2020. Mr Burns appeared argumentative on both occasions with the local authority. As an enforcement authority and considering Durham County Council's Statement of Licensing Policy they would expect DPS's to be co-operative and a positive degree of engagement. The footage showed that Mr Burns had a poor level of respect for persons in authority on those occasions. There was body-worn video footage of Mrs Gill and the police attending the Reading Rooms to request CCTV footage from Kennedys Bar but to date this CCTV had not been produced, even though this with a condition stated on the premises licence.

He referred to the statements of Mrs Gill and Mr List shown at page 10 of the third bundle of papers and Members confirmed that they had read the statements.

PC Robertson then referred to page 13 of the second bundle and members confirmed that they had also read this evidence.

He referred to the correspondence from the MP's office that prompted the visits to the premises on the 16 October 2020 and the 17 October 2020 and wished to show the body-cam footage of the second visit to the premises that showed a lot of the comments from Mr Burns stating that he wished to work closely with the police and Durham County Council and comments were made in relation to COVID breaches.

On the 20 October 2020, he accompanied Mrs Gill to obtain CCTV footage, Mr Burns contacted Mrs Gill on the 21 October 2020 to confirm that he had

made the decision to close Kennedys Bar and the CCTV footage had not yet been provided.

He then referred to paragraph 5 of page 11 of the second bundle and wished to show the video footage from the Reading Rooms relating to COVID breaches. No subsequent action was taken as the government closed all pubs that week.

In summary, the case of Durham Constabulary was that prior to the incident on the 17 October 2020, Durham Constabulary had no objections to the three DPS applications submitted last year as there was no evidence that Mr Burns could not run those premises. However, on the 17 October 2020 there was a situation that highlighted some concerns relating to the running of the premises during the times of COVID restrictions. He explained the current delegated powers for the police and the local authority in relation to COVID. Gatherings and non-wearing of face mask in premises fell firmly with Durham Constabulary which was a serious issue. They also had concerns in relation to CCTV footage been requested and not provided and if this CCTV had been produced it would have resolved what had happened in the premises.

He then referred to the incident on the 2 November 2020 relating to the Reading Rooms and the video footage heightened their concerns relating to the running of the premises during this time, there was no further action taken but if the police had been called they would have dealt with patrons that was under the control of the premises.

In Conclusion, they were not trying to say that Mr Burns was a poor operator and was operating at a difficult time as all operators were. He would no doubt, state that he was trying his best but on two occasions he had been caught short in their expectations. When a fifth application was submitted, and you had two instances where the Crime and Disorder Licensing objective had been undermined. Members needed to consider if granting a fifth licence more diluted control to Mr Burns and whether that was irresponsible or not. He stated that they were not trying to kick Mr Burns but they were worried that the expectation that was placed on him to run four premises now and in the future post pandemic was great and a fifth premises would further stretch him and further dilute his control.

Councillor Hopgood moved and Councillor Wilson seconded that under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations the hearing exclude members of the public to enable all parties to view the video footage referred to in the objection from Durham Constabulary at page 8 of the second bundle.

At 2.35 pm members of the public were excluded from the meeting.

At 3.20 pm the meeting moved to in public and members were given the opportunity to ask questions of Durham Constabulary.

The Chair asked if there had been any incidents or visits to the Kings Head.

PC Robertson asked for confirmation if the Kings Head had been closed.

The representative from Punch Taverns Ltd confirmed that the premises had only been closed under COVID regulations and no incidents had been brought to their attention.

PC Robertson responded that since January 2019 there had been two incidents reported and four visits to the premises details of which were provided, he confirmed that there were no issues with the premises.

The Applicant's Solicitor then addressed the Sub-Committee and referred to his skeleton argument at page 3 of the final bundle of papers. He indicated that PC Robertson referred to dancing in a statement but there was no reference made to dancing in that statement.

He stated that Mr Burns could have made application for his Manager at the Kings Head to be the DPS but there were a number of reasons why he had chosen not to take that course of action. He felt at this time the best action was for him to be appointed as the DPS at the site and oversee its management as he was the tenant and therefore had responsibility to Punch Taverns Ltd to ensure that the premises complied with all the legal requirements.

The Licensing Act when it was introduced did not make much reference to the role of a DPS and this was still the case. All the act stated was that the DPS was the person designated as the premise's supervisor on the premises licence. What they needed to draw from that was that anyone who holds a personal licence could act as DPS and Mr Burns holds a personal licence. He noted that the sales of alcohol must be authorised through a personal licence holder rather than the DPS which was a deliberate choice by government. The reason for this was that the DPS role was an oversight, the sale of alcohol and the supervision thereof was the role of the personal licence holder and could be the same person but did not have to be. They were different roles so the notion that someone who was DPS had to be on site at all times was not required. A number of DPS's acting for companies like Punch Taverns Ltd and various others around the country hold multiple sites which you have heard from the licensing officer today that there are multiple DPS holders within the region alone, so this was not an unusual situation, albeit five was probably to the larger end but he had come across this for management purposes. The guidance for the functions of the DPS which were set out in his skeleton argument and the guidance stated that the

person would normally be given day to day responsibility so it was not an absolute and it could have been made an absolute had the government wished it to be. The main purpose in line with oversight was to allow officers to immediately identify who was the DPS so that they could deal with problems swiftly.

He then referred to section 4.37 of the guidance which was the key part as it stated that the DPS may supervise two or more premises and did not specify a maximum but to ensure that the licensing objectives were promoted. This was key in terms of Mr Burns who was taking responsibility for his premises in what was very difficult times for operators. It was not a time as stated by PC Robertson that things were easier as they were not at full capacity but this was the most difficult time that premises license holders have had operating their premises for a number of reasons, partly you were asking customers to do things that were unnatural to them, people trying to get around the rules which Mr Burns had taken that responsibility incredibly seriously and had employed an expert to come in and help with risk assessments.

He referred to section 37(5) of the Licensing Act 2003 that stated that the police could only object in exceptional cases and on the basis the appointment would undermine the crime prevention objective, there were no other relevant considerations that could be taken into account. An example of an exceptional circumstance was provided in the guidance which he read out and indicated was a very high test and they were nowhere near that test in what was exceptional.

He then referred to the COVID regulations that made it clear that a direction could only be given where conditions were met and there was a serious or imminent threat to public health. This does not mention crime and disorder and must be on a public health grounds and if a direction was served this did not demonstrate any criminal offence. The only criminal offence under these regulations was if you contravened the direction of the regulation and no one was suggesting that there had been any contravention of the direction and was eventually withdrawn, so there was no criminal offence, so looking at the crime and disorder directive this could not be taken into account.

Mr Burns was currently the DPS for four premises and Durham Constabulary were objecting to him being DPS for a fifth premises stating that it would stretch him was unwarranted. He was pleased that PC Robertson stated that they were not trying to do Mr Burns down as a DPS.

Durham Constabulary had stated two allegations of breaches of the COVID regulations over the course of 45 visit over a 12-month period. Of those visits, there were no complaints apart from these two times where there were allegations on the Facebook side and then on the visit of breaches and this

was an exceptional record and demonstrated the level to which Mr Burns takes his duties seriously but also his staff and management team and anyone who entered the premises.

He then referred to the visit to the premises and the challenge that was given to the Sergeant in August and there significant number of visits afterwards by officers and one could not say that was an ordinary course of events or the one course of event that should define your consideration of Mr Burns as an operator. The reality was the whole process and everything he had gone through would demonstrate that he was in the main very helpful, he did challenge the points that he felt should be challenged. The evidence showed that where there were requests to do thing they were done, such as the first visit on the evening in October where there was a difference of opinion if the music was too loud but this had changed by the time of the second visit. There were lots of examples of Mr Burns and his team dealing with people properly and dealing with the actions that were needed to ensure that the premises operated without breaching COVID regulations.

He referred to the list of incidents provided for each of the premises and indicated that you could not infer much in terms of crime and disorder from them, some of them actually showed proactive management but there was no evidence provided to back up what those incidents were. Some of the incidents read out were allegations and in PC Robertson's words some of them could be 'a whole lot of rubbish', so no weight could be added in terms of evidencing crime and disorder associated with Mr Burns or his premises.

The Key point was that Mr Burns had no intention of remaining as DPS at his sites and wanted to ensure his management team were up to doing the job to his standards and he took his obligations very seriously and this needed to be commended. When the managers were ready they would be given the responsibility but it would always be the case that if the police or anyone else had any concerns they should take them to Mr Bruns first as the man who oversaw the operation of his premises.

He referred to the point in relation to the geography of the premises and that it was a couple of minutes to walk down the road to the premises. If needed Mr Burns could be at the premises as it was in close proximity and a number of people who had multiple licences hold them in different towns where you could not get across town, which was perfectly acceptable. It was about how you promoted the licensing objectives in the premises.

It was a very difficult time for operators in an incredibly stressful time, businesses were going under at a very quick rate and premises were gipping on. In this case they had a man who was willing to take on premises in these difficult times and operate them for the benefit of the town and for people who needed the ability to go out and see people and mingle. Even people

who wouldn't normally visit the pub or restaurants had now come to understand the importance of these premises in towns for people.

Mr Burns would not be DPS at these premises forever if members were worried about setting some kind of precedent. Mr Burns had 35 years plus experience and was Head of the Licence Rituals Association and former Chair of PubWatch and a personal licence trainer. He trained all his staff and had many staff with personal licences on his books and should be commended as being DPS's at premises who take the responsibility and have the experience to do so.

These were exceptional circumstances and exceptional times but not in the way the police presented it for the purposes of section 37 of the legislation.

Mr Burns and Mr Moran confirmed that they had nothing to add to the representations.

The Licensing Team Leader asked Mr Burns to outline how he managed the premises and if he stuck to one premises and maybe visit each premises every hour or did he stick to the one premises and if any issues attend those premises.

Mr Burns responded that he appointed a manager for the premises ensuring that they were suitably trained and where he could, he would put a personal licence in their name. He worked on a confidence basis and they were senior staff that had been around the industry for some time and he allowed them to manage the premises to comply with all the licensing objectives. If he was needed, then he would attend the premises, he tended to be based at The Monk as it had the latest licensing hours and was the busiest bar and had the opportunity for conflict more than the others. Each site was supported with door supervisors who all complied with the rules. He did travel around the premises but he did not just leave the premises in the hands of new staff, there was an area manager and underneath him they had people in each premises that were actually managing and he supported them and trained them. He hoped he would bring them forward and ultimately; they would move on with great training.

Sergeant Dickenson referred to the proximity of the premises and asked the Applicant's Solicitor if had visited the premises to see how near they were to each other.

The Applicant's Solicitor confirmed that he hadn't visited the premises, but he had spoken to Mr Burns and Mr Moran about this and asked them how far it was to get down the road and that was their assessment not his.

Sergeant Dickenson responded that they had looked at the distance on the route planner and it was an 11-minute walk as it was half a mile between the premises, so it was not two minutes away.

Mr Burns responded that it could be an 11 minutes slow walk, but it was a two-minute drive and his car was always parked outside The Monk, so the distance between the two sites was not unmanageable.

Sergeant Dickenson then referred to the closure notice and that Mr Burns stated that it was cancelled and asked if he had any paperwork confirming this.

Mr Burns stated that he had the rescinding notice that he was issued by Durham County Council that he could send to Sergeant Dickenson.

Sergeant Dickenson asked if the notice confirmed that a check had taken place and they were confident that the premises were COVID compliant.

Mr Burns stated that the notice was issued to him stating that they had spoken and realised that the COVID aspect could be covered off.

Sergeant Dickenson indicated that she had spoken to the officer who had issued the closure notice yesterday who confirmed that the notice had never been rescinded. They would normally carry out an inspection and if they were happy that all the points were met then the premises could open again in the seven days.

The Chair confirmed that the Sub-Committee would note this.

The Applicant's Solicitor indicated that this could be due to lockdown closures, but the discussions were had. The notice did not deal with crime and disorder.

Sergeant Dickenson stated that she wanted Members to be aware that the notice still stood and had not been cancelled.

The Council's Solicitor referred to the issue over the police never been presented with the CCTV footage for the incident that occurred on the 17 October 2020 and asked for the reasons why.

Mr Burns responded that the request was made for the CCCTV footage but then the action was taken by the Council to issue a closure notice and when he looked at the CCTV footage it was not there and had 'fallen off' the system by the time he tried to download it. His understanding was that the CCTV footage was no longer needed as action had been taken by the Council and he didn't think it was needed as it was a request and they had

already taken the action and that was the reasons why the CCTV footage was not provided. When CCTV footage had previously been requested for his other premises it had been provided to help get a case against individuals.

The Council's Solicitor referred to the Council's own Statement of Licensing Policy that stated that it expected that DPS to be present at the premises most of the time and how could this be addressed on a practical level.

The Applicant's Solicitor responded that you needed to look at it under three levels. The Licensing Act was blank in this regard and the guidance was first then policy, you could go against guidance but there had to be good reason to do so. These were designed to be flexible in individual circumstances and the reality of the role of the DPS was an overarching supervisor of the premises and the management of the premises whilst it was good practice and the recommendations was good practice. Mr Burns stationed himself at the busiest premises which was in close proximity to the other premises so there were no issues in getting to the premises. Good practice goes further than simply having the letters DPS after your name and when you take into account the training of staff, the other personal licence holders and the clear oversight that Mr Burns had and the fact that he made himself available to all the officers. Forty-five visits had been carried out with only two allegations of anything coming close to breaches of COVID regulations and nothing on crime and disorder to suggest that he could not manage these premises. All of this taken into account had to weigh against what you would consider good practice and recommendations in these circumstances.

Councillor Hopgood referred to page 5 of the final bundle, paragraph 16 that stated that Mr Burns intention that once he was satisfied that his managers had demonstrated they were competent and capable of running the premises to his standards to have them take on the role as DPS at the site they managed. She asked how long this process took given that Mr Burns would have five premises and how quickly in the past had he handed over the role as DPS on each premises.

Mr Burns responded that sometimes staff don't stay and due to COVID he had seen a lot of staff movement, if he had been asked this question prior to COVID he would have said that it normally took around three months as he wanted to see them attend PubWatch meeting and to see them apply all of the procedures that were put into place.

All parties were given the opportunity to sum up.

PC Robertson reiterated that Durham Constabulary's main concerns related to Mr Burns control being diluted or stretched over five sites which was a concern. There had been two incidents where he had been tested and there

had been issues that had come to themselves and hence why they had objected to the application.

The Applicant's Solicitor stated that you had heard about the measures that Mr Burns had put into place and that this was a temporary measure that he would expect or anticipate in ordinary times would take somewhere around three months but in COVID times it was difficult to say when. This was a robust move by a robust manager who intended to take control himself and manage what was a very difficult time and difficult process. The reality was that over the years Mr Burns had worked very well with officers and barring the one aberration he had provided compelling evidence of having done so. The fact that there had been 45 visits, not all had been put before you as examples of somebody who doesn't take to authority was compelling evidence that this was not the case and not the way that Mr Burns worked in ordinary circumstances.

The law was silent as to what you could do in terms of the role of the DPS, the guidance was very clear in stating two or more premises and did not set any limits and made it clear that the purpose was to have a single point of contact for officers. Officers did know Mr Burns and would be able to approach him or Punch Taverns if there were any issues. Punch Taverns took these responsibilities very seriously and they liked people to be DPS on fewer sites but in speaking to Mr Burns they had assured themselves that this was the right option at this time on the basis of the reasons set out. The Council's policy stated that a DPS could be on more than one site, two or more again not setting a limit. The only harm was the undermining of the crime and disorder licensing objective but there was no evidence put before you and as stated there was no trouble relating to The Kings Head and they would not expect any further extraordinary circumstances for its management than those that had been put into place. The example provided in the guidance was someone on the verge of losing a personal licence but kept it and then going into a premises where there was troubles that were directly associated with the reasons why he was prosecuted and they were nowhere near that standard of exceptional. This was the one time that you get to do this safe in the knowledge that it was the correct decision for the promotion of the licensing objectives.

The Chair thanked everyone for their attendance and at 4.10 pm the Sub-Committee Resolved to retire in private to deliberate the application. Councillors Marshall, Hampton and Hopgood retired to make the decision.

In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader and the written and verbal representations of the Applicant and the written and verbal representations of Durham Constabulary. Members had also considered Durham County

Council's Statement of Licensing Policy and Guidance issued Under Section 182 of the Licensing Act 2003.

Resolved: That the Application to Vary the Premises Licence to specify an individual as a Designated Premises Supervisor be granted.