

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.