

Licensing Act 2003 Sub-Committee
Friday, 25 September

**Hearing to Consider Representations against Interim Step Taken, Pending
Summary Review – Bretherton Arms, 252 Eaves Lane**

The Licensing Act 2003 Sub-Committee met to determine, under Section 53B of the Licensing Act 2003, whether the interim step was appropriate for the promotion of the licensing objectives and whether to withdraw or modify it following representations received against the interim step taken on Friday, 18 September.

The Premises Licence Holder, Nick Yates and his representative, Duncan Craig of Counsel attended the meeting via Microsoft Teams to make their representations, as did Sergeant Richard Horton to make representations to the Sub-Committee on behalf of the police.

The Council's Enforcement Team Leader reminded the Sub-Committee that a hearing was held on Friday, 18 September to consider whether to take interim steps following an application from the police. The decision was made to suspend the premises licence with immediate effect. At 06:53hrs on 24th September 2020, the premises licence holder made representations against this interim step. Section 53B of the Licensing Act 2003 required that the Authority hold a hearing within 48 hours of receiving such a representation to consider whether the interim steps were appropriate for the promotion of the licensing objectives.

The Enforcement Team Leader for Licensing informed Members that a supplemental email had been received in advance of the meeting. Members had received a copy of this email. The email advised that Mr Yates had subsequently dismissed Mr Moss from working at the premises and had found a replacement DPS, Nicola Steele whose CV had been attached to the email. A proposal was outlined which asked that the Licensing Act 2003 Sub-Committee exercise its powers to substitute the suspension of the premises licence with the removal of the DPS and the addition of the following condition as interim steps;

1. Graham Moss shall have no involvement in the management of the business, nor the carrying on of any licensable activities, nor be employed by the business and shall not be permitted onto the licensed premises at any time.

In response to a Member query, the Enforcement Team Leader for Licensing advised that he was not aware, nor had he been informed by Mr Yates whether any of the improvements requested at the last meeting had been made at the premises, however this did not mean that had not been undertaken.

Mr Craig made his representations on behalf of the premises licence holder. He began by clarifying that Mr Yates had handed in his notice as he felt it was best for him to step down and was currently serving a one month notice period. The premises owners Heineken/Star pubs were in agreement that this was the best course of action. Contrary to any confusion, the relationship between Mr Yates and the premises owners remained positive. Mr Craig gave thanks to officers and Members for accommodating a hearing at such short notice.

Mr Craig informed Members that since the meeting on 18 September, Mr Yates had addressed the concerns raised by Members as he felt he held responsibility to keep the pub open for the community. Following the publication of the Decision Notice, Mr Yates recognised that Mr Moss' position as DPS was untenable and had therefore dismissed him. Members were informed that Mr Moss lived in the flat above the premises, however, were reassured the proposed condition would ensure that he had no involvement or connection to the premises in the interim period.

Mr Yates had found a replacement DPS, Nicola Steele, who he felt was well suited to the role and would be ready to start immediately once the application to specify her as DPS had been completed. Mr Craig advised that Ms Steele currently held a personal licence with Bolton Council and had 20 years' experience of working in the licensing trade. She knew the area well, lived locally and was working behind the bar at the premises at present, after being a DJ at the pub for three years. For clarification, it was confirmed to Members that Ms Steele was not at the premises on 12/13 September when the serious incident took place.

Members were made aware that Ms Steele was currently manager at a care home and was therefore very aware of regulations required for Covid, she was a first aider and did not have a criminal record. It was understood that she was very enthusiastic about the potential DPS role and proposed that she would be working at the premises in the evenings after working at the care home during the day. Her husband would work at the pub in the day when she was at work.

Mr Craig ran through eleven of the twelve points on the Decision Notice (saying nothing about the twelfth point) recognising Members' concerns, the work undertaken by Mr Yates to tackle some of these issues and how the removal of Mr Moss from the premises addressed these concerns further. Mr Craig did, however, take issue with part of point 4 on the Decision Notice regarding the lack of searching a person on arrival at the premises, as he pointed out that this was not usual practice undertaken at community pubs.

Members had visited the site of the premises prior to the meeting in order to view the rear access and the upgraded CCTV. In response to Member queries, Mr Yates confirmed that the CCTV camera had broken recently, however it was not repaired immediately as the DVR equipment behind the camera needed to be fully replaced and not just the camera itself, therefore this was a big piece of work. He did, however, remind members that CCTV was not conditioned to the licence. Mr Yates advised that two new cameras had been installed. Staff are now able to monitor what is happening in all areas of the pub including the outside smoking shelter.

With regards to how the events unfolded in the serious incident that took place on 13 September, Mr Yates understood that the attacker had been in the pub before leaving, however remained waiting around the rear of the premises. The attacker and victims never met in the pub, but the incident occurred when the victims left via the rear of the premises towards the carpark. It was also confirmed that the female individual who took a patron out of the premises as viewed on the CCTV footage at the meeting on 18 September was not employed at the pub but was simply a patron herself. The CCTV footage was viewed again for clarification.

With regards to Mr Moss accessing his flat, it was confirmed that the flat above the premises had a separate entrance and therefore the proposed condition did not need altering.

Following further Member queries, Mr Yates confirmed that the change in demographic due to Covid was not immediately apparent. The premises became slightly busier but not to the point that it was deemed necessary to carry out a risk assessment as it was only as busy as it had been in the past pre-Covid. Following the changing demographic, Mr Yates asked that Mr Moss be vigilant in ensuring that social distancing was maintained. They discussed the use of door staff, from a Covid compliance point of view to control the numbers but this was not required to address violence. Members were reminded that there was no history of violence at the premises.

From a technical point of view, the Enforcement Team Leader for Licensing confirmed that once Mr Moss was removed from the position of DPS, an application to specify a new DPS was required in respect of Ms Steele. During this period of transition, alcohol could not be sold at the premises until the application was lodged. In response to a member query, it was confirmed that there was no requirement for the DPS to be present at the premises all the time however in the absence of the DPS other staff would need to receive authorisation from the DPS to sell alcohol.

In response to a query from the council's Legal Officer, Mr Craig confirmed that Mr Yates had handed his notice in in his capacity as tenant. The proposed conditions put forward were for the interim period and Mr Craig suggested that it was inconceivable to suggest that government would revoke the 10pm closing time under Covid-19 regulations before the full hearing on 13 October.

In response to a query from Sergeant Horton, Mr Yates confirmed that he was not aware that the police and Chorley Council licensing officers had attended the premises following the letter sent in August, which Mr Yates claimed to have not received.

Sergeant Horton made his representations on behalf of the police. He reminded Members that an application had been considered and a suspension made due to good reasons provided by the sub-committee. He agreed that Ms Steele had a good CV and presented a good character but questioned whether she would be able to satisfy the role of DPS when taking into consideration her full-time work commitments. He commended Ms Steele but reiterated the previous issues of the DPS not having control at the premises which led to the serious incident.

In response to a Member query, Sergeant Horton suggested that Mr Yates had taken steps to address issues following the scare of the incident however did not appear to monitor the DPS prior to this. He stated that a DPS was only as good as the premises licence holder and believed that the police would still hold the same concerns about the proposed DPS for as long as Mr Yates remained premises licence holder. As such, Sergeant Horton did not feel that the actions taken were sufficient from keeping the premises from being associated with serious crime.

In Summary, Sergeant Horton reiterated his concerns with Mr Yates as the premises licence holder and the proposed DPS being an individual who may not be able to give their full attention to control the premises against serious crime. He welcomed

the repairs to the CCTV but recognised that this was following a visit from the police and council and the incident which took place. Although this was not a condition on the licence it was still a responsibility for the premises licence holder to repair.

Mr Yates summarised by informing Members that he had been looking after the pub for longer than stated in the original report. He reapplied for his licence in 2019 following its expiration but made Members aware that he had been the licence holder of the premises for the three years prior and during this time there had been no incidents at the premises. He reassured Members that he acted as quickly as he could following the incident on 13 September.

Mr Craig reminded Members that Mr Yates had addressed their previous concerns and felt it was therefore appropriate for Members to modify the suspension and take the proposed steps on board. Mr Craig reiterated that Mr Yates would no longer be the premises licence holder in 3 weeks but had a responsibility to keep the community pub running in the interim.

Having considered all the relevant representation, the Sub-Committee resolved that: **the interim step taken was no longer appropriate for the promotion of the licensing objectives and determined to modify the interim steps taken. Members determined that the interim steps which were appropriate for the promotion of the objectives were:**

- 1. The removal of the designated premises supervisor (ie. Graham Moss) from the licence.**
- 2. The modification of the conditions of the premises licence, as follows:**
 - a. Reduction in hours for the sale of alcohol by retail to 00:30 (presently 01:00) on a Friday and Saturday (it is presently only midnight for the rest of the week) with the Hours the premises is open to the public to be reduced to 01:00 (presently 02:00).**
 - b. The addition of the following conditions of the licence:**
 - i. Graham Moss shall have no involvement in the management of the premises, nor the carrying on of any licensable activities, nor be employed by the premises.**
 - ii. At least two SIA door staff shall be employed on a Friday and Saturday from 22:00, until the premises is cleared of customers or 01:00 (whichever is the later).**
 - iii. The premises shall operate and maintain a CCTV system covering the interior of the premises, the outside area, the bar, the rear car park and the smoking shelter which shall be in use at all times that licensable activities are taking place. The focus of the camera(s) shall be so as to enable clear identification of persons on the premises.**
 - iv. The CCTV system shall correctly time and date stamp recordings and retain said recordings for at least 28 days.**

- v. **The Data Controller shall make footage available to a police officer or authorised officer of the Council, where such a request is made in accordance with the principles of the Data Protection Act 2018 or any subsequent legislation.**
- vi. **Appropriate signage shall be displayed advertising that CCTV is in operation.**
- vii. **Appropriate signage notifying customers that the rear area is not to be used after 10:30 pm shall be displayed in appropriately prominent positions in the premises.**

The above interim steps shall have immediate effect; thus, the suspension of the premises licence is no longer applicable. However, no licensable activities may take place until there is full compliance with the above measures. The premises may not sell alcohol until a new DPS is in place.

The above steps are subject to national Coronavirus restrictions.

Members came to the decision for the following reasons;

- The step regarding CCTV was imposed given the serious incident of violence and to promote the licensing objective of prevention of crime and disorder.
- The step at paragraph 9 was imposed due to use of the rear outside area in breach of the existing licence condition at Annex 3.
- Members did not consider that it was reasonable to prohibit Mr Moss from being allowed on the premises as a customer. If the premises choose to exclude Mr Moss as a customer or at other times to the extent permissible by law that is a matter for the premises.
- Members' gravest concern on 18 September had been that it was envisaged that Mr Moss would still be employed in some capacity at the premises. The removal of Mr Moss as DPS and in any other employed capacity and other steps addressed members' concerns.
- Members' concerns were also alleviated by the improvement at the premises including the upgrade to the CCTV.
- Members noted the concern raised by the police about the availability of the proposed new DPS to devote her full attention to the premises given her full-time job elsewhere. However, members directed themselves that they were considering interim steps and not determining an application to specify a new DPS.
- Members were not influenced by the fact that Mr Yates had handed in his notice as tenant as the licensing objectives must be promoted just as much during any short remaining period that Mr Yates might anticipate remaining premises licence holder as they would be for many years.



Councillor Matthew Lynch

Chair of the Licensing Act 2003 Sub-Committee