

Licensing Act 2003 Sub-Committee
Friday, 18 September

Interim Steps Hearing Following Summary Review Application under Licensing Act 2003 – Bretherton Arms, 252 Eaves Lane

The Licensing Act 2003 Sub-Committee considered whether it was necessary to take interim steps following an application for a summary review of the premises licence under Section 53B of the Licensing Act 2003.

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

The Council's Enforcement Team Leader for Licensing informed the Sub-Committee that the Premises Licence Holder had held the licence at the premises since 24 October 2019 and the Designated Premises Supervisor (DPS), Mr Moss had held that position since 27 November 2015.

On 16th September 2020, an application was made by Lancashire Police under Section 53A of the Licensing Act 2003 for a Summary Review of the Premises Licence for Bretherton Arms, 252 Eaves Lane, Chorley, in the Chorley East ward of Chorley. The grounds for the review were that, in the opinion of a senior police officer, the premises were associated with serious crime. The council, as licensing authority, is required under Section 53B of the Act to consider whether it is necessary to take interim steps, pending the summary review of the premises licence, for the promotion of the licensing objectives within 48 hours of receiving a summary review application. This would be followed by a full review hearing within 28 days.

The Enforcement Team Leader for Licensing advised that supplemental information had been received via email in advance of the meeting. The email had been received following discussions between the Police and the Premises Licence Holder which confirmed the following agreed position in respect of necessary and appropriate interim steps for Members to consider;

- 1) Removal of the current DPS
- 2) Reduction in hours for the sale of alcohol by retail to 00:30 (presently 01:00) on a Friday and Saturday (presently only midnight for the rest of the week) with the premises to be closed by 01:00 (presently 02:00)
- 3) Condition on the premises licence requiring at least two SIA registered door staff on a Friday and Saturday from 22:00, until the premises are cleared of customers or 01:00 (whichever is the later).

The email also confirmed that the repair of the external CCTV camera was being addressed. All Members had sight of the email.

In response to a Member query, the Enforcement Team Leader for Licensing advised that he had attended the premises since the letter, as appended to the report, had been sent at the end of August and confirmed that efforts had been made to secure the rear area of the premises.

Sergeant Richard Horton provided his representations on behalf of the police which informed members that an application to review the premises licence was submitted following a serious incident involving a group of people at the rear of the premises at approximately 01:00 on 13 September 2020. It was understood that a fight had broken out which resulted in life changing injuries to an individual involving impaired vision or even loss of sight in the eye. Another person suffered serious head wounds. It was later confirmed that a broken baton was found at the scene. Members were advised that this was a live police investigation with one person under arrest.

It was understood complaints had been received from nearby residents with regards to noise and nuisance at the rear of the premises since the lockdown restrictions were loosened. Following these complaints, the police had attended the premises in August. On visiting, they observed a lack of regard to the condition on the licence which instructs that the use of the outside rear area must cease at 10:30pm.

The Police had provided CCTV footage from within the premises on the night of the incident which included the DPS not challenging the use of the rear outside area after 10:30pm, not challenging unruly behaviour or lack of social distancing and showed him drinking alcohol by the bar. Members had sight of this during their deliberations.

In response to a query, Sergeant Horton confirmed that the police were satisfied with the agreed interim conditions put before Members. He advised that the use of door staff was essential as was the removal of the DPS who he suggested was not suitable to continue working at any licensed premises.

Mr Craig made his representations and informed Members that Mr Yates was very experienced in the licensed trade. It was therefore proposed that he would step in as DPS himself if Members were minded to remove the current DPS. Mr Craig recognised that a serious crime had taken place at the premises and although they could not confirm whether the fight originated in the pub, they understood that the premises had some part to play.

With regards to the letter sent to the premises licence holder on 24 August, Members were advised that Mr Yates had not received sight of this and therefore he was not aware of the extent of the issues at the premises. He recognised the seriousness of this, which resulted in the suggestion to remove Mr Moss as the current DPS.

Members were informed that the CCTV camera in the rear outside area was not working, however this would be getting repaired on the following Monday. Mr Craig reminded Members, however, that the licence did not include a condition for CCTV and therefore no licence had been breached in relation to this. It was also advised that Mr Yates was happy with the suggested conditions in the interim and would look into the viable options for the longer term. Mr Craig expressed his gratefulness to the police in helping to reach the agreed interim conditions and asked Members to consider these in their deliberations.

In response to questions from Members, Duncan Craig highlighted that there was already a condition on the licence regarding supervision of the rear outside area and apologised that this had not been complied with. Assurances were given that this would be adhered to going forward.

With regards to installing motion sensor lighting at the rear of the premises, Mr Yates confirmed that there was permanent lighting in the car park but was also happy to investigate the option of installing motion sensor lighting. Mr Yates also confirmed that the rear fire exit door could be alarmed from 10:30pm. At present the door could not be locked due to fire safety regulations, however when shut, it physically looked locked. Mr Yates advised that he was also looking into ways to ensure that door would not be used as a thoroughfare after 10:30pm.

In relation to how the door staff will manage the premises to give the required level of security, Mr Yates confirmed that he had spoken to some companies who would subsequently have to attend the site and risk assess to put a plan in place. A visible security presence would act as a deterrent to ensure no one was in the rear area after 10:30pm and ensure that social distancing rules were being adhered to.

Mr Yates confirmed that he had been in regular contact with the current DPS before the serious incident had taken place, however he recognised that Mr Moss had shown weakness in not controlling the customers and Mr Yates was regretful that it had got to this. He assured Members Mr Moss had shown he was very experienced in running pubs and suggested that complacency had drifted in on this occasion.

Following questions from the council's Legal Officer, Mr Yates confirmed that the premises had continued trading since the incident on 13 September with the current DPS in position. He reiterated that he did not think that Mr Moss was not fit for the role and complacency had set in on this occasion therefore highlighting a training issue. Mr Craig advised that Mr Yates had acted as quickly as he reasonably could, and it would have been unfair to remove Mr Moss without the clear picture. Mr Yates confirmed that he felt that Mr Moss was competent in his position and had acted so. The premises were incident free for the last 5 years. Mr Craig confirmed that Mr Moss did not have a particular standing on the proceedings, and it was not improper for him not to be in attendance at the meeting.

In response to questions from the police, Mr Yates confirmed that he intended to employ Mr Moss in an interim managerial role where on occasion he would be left in control of the premises. Mr Yates advised that he has never questioned Mr Moss' ability to manage before. Mr Moss would still report to Mr Yates as the premises licence holder and DPS.

In response to questions from the council's Legal Officer, Richard Horton confirmed that it came as a surprise that Mr Moss would be employed in a managerial position. He advised that he still agreed with the interim steps in regards to the reduced hours and appointment of doormen however felt that the removal of the DPS in this case was not as sophisticated as it should have been and therefore this condition did not meet the concerns of the police. The Council's Legal Officer asked if there was no longer a meeting of minds over the proposed interim steps between the police and the premises and Mr Horton replied that this was the case.

Mr Craig reiterated the agreed position and complained that question of Mr Moss and his complete removal were never asked. He reminded Members that responsibility would lie with Mr Yates as the premises licence holder and DPS, therefore Mr Moss would hold no responsibility for licensable activities in a managerial role. He advised that dismissing Mr Moss would have to be considered

under employment law and that members were straying into employment law territory outside their remit.

In summary, Sergeant Horton reiterated the representations he had made to Members on behalf of the police and invited them to view the CCTV footage as part of their deliberations.

Mr Craig summarised by inviting Members to support the agreed interim steps. He reiterated that Mr Yates agreed to do everything required over the next 28 days to ensure the premises were fully compliant with conditions and stated that the proposed position of Mr Moss was not relevant to the decision Members were making.

Mr Craig queried whether the police would welcome a further condition which would ensure that Mr Moss was not included in any licensable activities. Richard Horton confirmed that he held concerns leading to a lack of confidence in Mr Moss in a supervisory role or managerial position and therefore welcomed the additional condition. Mr Craig suggested that Mr Moss would be restricted to activities such as cashing up and ordering stock.

Having considered the application from the police and the relevant representations and on viewing the CCTV footage when they retired the Sub-Committee resolved to **take the following interim step pending the summary review:**

1. Premises Licence to be suspended with immediate effect

Members considered that the above interim step was necessary for the following reasons:

- 1. There had been an incident of serious crime at the premises around 01:00 am on 13 September involving a fight between several men resulting in life changing injuries to an individual involving impaired vision or even loss of an eye. Another person suffered serious head wounds.**
- 2. There was a lack of control of the premises by the DPS on 12-13 September. CCTV footage on 12-13 September shows him drinking in the bar area and not monitoring any activity in the rear yard outside. There was no report of him intervening with customers arguing with each other.**
- 3. The lack of control by the DPS on 13 September was despite a joint visit by the Licensing Unit and the police on 20 August followed up by a letter and assurances from the DPS that he would manage the premises more actively. Members noted that the Premises Licence Holder says he did not receive the letter but this would not excuse the DPS as the letter merely summarised the conversation between the Council's Licensing Enforcement Officer and the DPS.**
- 4. The incident on 13 September involved use of a weapon. There was no evidence of any searching of patrons before entry which might have prevented someone with a weapon being allowed on the premises.**
- 5. Not all of the CCTV cameras covering the rear yard were working.**
- 6. The DPS had not submitted anything to rebut the police application.**
- 7. The premises had not closed voluntarily after the violent incident which the Sub-Committee considered would have been responsible.**

8. **Members were alarmed that the premises licence holder intended to retain the DPS in another unspecified capacity at the premises. Members considered that the continued involvement of the DPS was not conducive to promoting the licensing objective of prevention of crime and disorder.**
9. **The sub-committee were confused by the position of the premises licence holder that Mr Moss was acceptable as a DPS but should be removed. This suggested that the premises licence holder was only agreeing to the removal of the DPS as an expedient for his own convenience.**
10. **Members were also concerned that the premises licence holder proposed a condition that the DPS should be prohibited from involvement in the carrying out of licensable activities when at the same time he considered Mr Moss to have potential as a DPS. Members considered that such a condition would be vague and very difficult to enforce.**
11. **Employment law matters between the premises licence holder and the DPS raised by Counsel for the premises licence holder were not of concern to the licensing sub-committee. If persons undesirable were still to be connected to the premises this was a legitimate area of concern for the licensing authority. The premises has the option of suspending an employee on a no prejudice basis if it wishes to take a cautious approach to employment matters. Alternatively, if the contract of employment of the DPS was not drafted to address disciplinary sanctions in the event of sanctions by the licensing authority this was not a concern for the licensing authority.**
12. **Members did not consider relevant the point made repeatedly by Counsel for the premises licence holder that the question about Mr Moss's involvement in some other capacity at the premises had not previously been raised. The position between the police agreed on the assumption by the police that Mr Moss would have no role whatsoever was not binding on the licensing authority. The question had been asked at Sub-Committee which was enough.**

The premises licence holder has the right to make representations against the interim steps taken by the licensing authority. The authority must, within 48 hours of receiving representations against the interim steps, hold a hearing to consider those representations.



Councillor Matthew Lynch
Chair of the Licensing Act 2003 Sub-Committee