

LICENSING COMMITTEE HEARING

MONDAY, 15 MARCH 2021 - 11.00 AM



PRESENT: Councillor M Humphrey (Chairman), Councillor D Connor and Councillor M Tanfield, Councillor Mrs K Mayor (Substitute)

OFFICERS IN ATTENDANCE: Colin Miles (Legal Representative), Linda Albon (Member Services & Governance Officer), Izzi Hurst (Member Services & Governance Officer), Michelle Bishop (Licensing Manager), Trevor Darnes (Environmental Health Officer) and Annabel Tighe (Head of Environmental Health and Compliance Manager)

LH2/20 **DETERMINATION OF AN APPLICATION FOR THE REVIEW OF A PREMISES LICENCE MADE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - THE ANGEL PUBLIC HOUSE, WISBECH**

Members considered an application for the review of a premises licence made under the provisions of the Licensing Act 2003 in respect of The Angel Public House, Wisbech.

The Chairman introduced the Panel and Officers. Others present were;

- PC Paul Hawkins – Cambridgeshire Constabulary
- PC Justin Bielawski – Cambridgeshire Constabulary
- Val Thomas – Deputy Director of Public Health
- Steve Fleming – Cambridgeshire Fire & Rescue
- David Dadds – Legal Representative for the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS)
- Brenda Barber – Interested Party and member of the public.

Councillor Humphrey asked for confirmation that those present had received the report and associated documentation. David Dadds stated that he had not received the body-cam footage from the Police. Councillor Humphrey asked the Police if this footage is included in the CCTV footage to be viewed by the Panel. Michelle Bishop confirmed that the body-cam footage is not included in the CCTV footage. David Dadds stated that he disagreed with this as the body-cam footage is referenced in the Police's witness statement.

Councillor Humphrey asked if any parties wished to introduce any documents or other information not previously disclosed. Michelle Bishop confirmed she had information pertaining to the petition which she wished to disclose to the Panel. David Dadds stated that he did not support this additional information being shared.

David Dadds explained that he had written to Fenland District Council last week to request an adjournment to today's hearing. Councillor Humphrey confirmed that whilst he had not seen the letter, he was aware that an application had been made but felt there were no grounds for an adjournment as adequate time had been given to consider the evidence.

David Dadds stated that on the 5 March he was provided with 'substantial' CCTV evidence which he viewed with his client. Following the viewing of the CCTV footage, he wished to challenge a number of assumptions made and asked for additional time to consider this piece of extensive evidence. He added that he and his client had wished to contact witnesses seen in the CCTV

footage however this had not been possible due to the current Covid-19 restrictions. On this basis, he and his client had been unable to reach out to witnesses that may be able to assist and support them against the accusations made. He reiterated to the Panel that the CCTV evidence had only been provided on the 5 March leaving inadequate time to consider this.

David Dadds stated that his client is entitled to a fair hearing and should be allowed further time to consider the evidence disclosed. He confirmed that he and his client had attempted to prepare for today's hearing however this was not possible due to the reasons outlined. He requested that today's hearing be adjourned for at least four weeks to allow witnesses to be contacted and their evidence considered. He confirmed that no parties would be prejudiced by the adjournment due to the premises currently being closed due to Covid-19 restrictions. He stated that his client is entitled to a fair hearing, in line with the Human Rights Act, and in order to do this his client should be given adequate time to view the CCTV evidence and to address the issues raised.

David Dadds requested disclosure from the Police of the body-cam footage, due to the assertions made in the witness statements which reference this piece of evidence. He argued that the Police are not party to the proceedings as they have not made a representation as a responsible authority and have merely provided witness statements in support of the application.

David Dadds highlighted that the body-cam footage will contain audio, which in turn, will demonstrate that there was no music or DJ playing on the night in question thus disputing claims that a party/event had taken place. He asked that the CCTV footage should be shown in private session to protect the identity of those in attendance and whilst he believes it is unlikely that the Police will initiate criminal proceedings, showing this publicly would be in contempt of court. He stated that if there was any indication that a criminal investigation would take place, this hearing should be heard in private session to ensure his client a fair hearing and trial.

David Dadds thanked the Panel for allowing him time to explain his reasoning behind his request for an adjournment.

Councillor Humphrey reaffirmed that he had considered David Dadd's application for an adjournment and felt that he and his client had been given adequate time to consider the evidence. He confirmed that the Police are in attendance today as a witness.

David Dadds asked that the Panel retire to consider his request for an adjournment, considering the insufficient time to analyse the CCTV evidence and the potential that this evidence could be used as part of a future criminal investigation.

The Panel retired from the meeting at 11.21am to consider David Dadd's request for an adjournment.

The hearing reconvened at 11.40am.

Councillor Humphrey confirmed that the Panel had considered David Dadd's request for an adjournment and as the CCTV footage had been disclosed on 1 March, the Panel agreed that adequate time had been given to consider this evidence. In relation to a potential criminal investigation, Councillor Humphrey highlighted that this is outside of the Panel's remit therefore the Panel agreed that today's hearing should continue.

Michelle Bishop presented the report to the Panel. In relation to the additional evidence referenced earlier, she confirmed that as part of the Council's consultation on the application, at least one of the signatories of the petition had responded that they were unaware that their name was included and did not support the petition.

Councillor Humphrey invited questions.

1. Councillor Tanfield asked for clarification on the petition. Michelle Bishop confirmed that one signatory had responded to confirm they were unaware their name had been included. One other signatory of the petition had responded that they had signed the petition and is present at today's meeting as an interested party.
2. Councillor Humphrey asked if the DPS had any other licensed premises in the district. Michelle Bishop confirmed that the DPS has two other premises in Fenland.
3. David Dadds asked if he could be provided with the name of the individual to be removed from the petition so he can refer this to his client. Councillor Humphrey agreed but highlighted that members had only had sight of the redacted petition which forms part of the report.
4. David Dadds reminded the Panel that the additional premises managed by his client do not form part of today's hearing.
5. David Dadds reiterated that the Police and Cambridgeshire Fire Service's evidence is provided solely as witness statements and not as supporting representations. Councillor Humphrey confirmed this.

Councillor Humphrey read the following statement;

'As a preliminary procedural point, members will be aware that officers intend to play clips from the CCTV footage taken at the Angel on 24 December 2020. Given the nature of the premises, the CCTV footage reveals the identities of staff and customers who were present and, as the controller of this data, Fenland District Council is therefore required to comply with data protection and human rights legislation in considering whether and how to publish it.

In particular, the data obligations and Article 8 require Fenland District Council to afford a high level of protection to the privacy of individuals shown in the CCTV footage. Specialist legal advice has been sought and confirmed that the faces and clothing of the customers and staff should be obscured as much as possible to prevent them being identified. This has been achieved via the instruction of an external pixilation service however in order to preserve the quality of this evidence, it has not been possible to pixilate the clips to the extent necessary to achieve a required level of anonymity. The Sub-Committee is requested to consider playing the pixilated footage in private session. Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005 permit this approach provided that the Sub-Committee is satisfied that the public interest in doing so outweighs the public interest in that part of the hearing.

This high level of protection is given to customers shown in the CCTV footage because the licensing enquiry is primarily concerned with the conduct and behaviour of the Designated Premises Supervisor (DPS) and less so with the identity of the customers.

Clearly there is a public interest in the outcome of this review, but equally, there is potential for a significant adverse impact if the Council fails to meet its UK GDPR obligations. If agreed, the hearing would only be in private session whilst the CCTV footage is being played, the remainder would still be broadcast via YouTube. Equally, the review notice and supporting evidence has been published with the agenda and was presented in the opening part of this meeting. The public would therefore be provided with a detailed profile of the events that were taking place but without compromising the identities of those who are not subject to the review. Conversely, if the CCTV footage is not played at all, this valuable evidence will be lost and compromise the ability of the Sub-Committee to fully understand the breaches in context.'

The Panel agreed to consider the CCTV footage in private session and the hearing was adjourned at 11.54am. It was agreed that David Dadds be present during the private viewing of the CCTV footage.

The hearing reconvened at 1.30pm. Councillor Humphrey apologised for the delay.

Trevor Darnes presented his report to the Panel.

The Police, Public Health and Cambridgeshire Fire & Rescue presented their statements to the Panel.

Val Thomas explained that, for context, Fenland had moved into Tier 4 of Covid-19 restrictions on 26 December 2020 due to the rapid increase of cases in the district. She explained that the regulations provide a sound evidence base in terms of transmission of the virus and endorsed Trevor Darnes explanation of the regulations. She stated that failure to comply with these, increases the risk to public health.

Councillor Humphrey thanked Val Thomas for her comments.

PC Justin Bielawski and PC Paul Hawkins endorsed their witness statements submitted to the Panel. PC Bielawski emphasised the breaches he witnessed whilst in attendance at the premises including lack of masks and limited evidence of people having a substantial meal with alcohol.

Steve Fleming confirmed his statement and explained that his concerns related to fire safety on the premises as the CCTV showed individuals unable to exit the premises due to a door being locked. He highlighted that in an emergency, this would have hindered these individuals escape to safety.

Councillor Humphrey invited questions.

1. Councillor Connor asked the Police how long they attended the premises on 24 December 2020. PC Bielawski confirmed that the Police attended the premises at 20.56 with Mr Balsevics (DPS) arriving shortly after at 21.01. Whilst he cannot confirm the exact time the Police left the premises; it was approximately 15 minutes after their arrival.
2. Councillor Connor asked why the Police had not taken any action to intervene during their visit. PC Bielawski explained that Mr Balsevics had confirmed that he would be calling 'last orders' at 21.30 and due to other commitments, the Police could not revisit the premises to confirm whether this had happened. He confirmed that the Police had driven past the premises later that evening and witnessed people leaving however they had not entered the premises to confirm how many individuals remained in-situ.
3. PC Bielawski explained that upon his return to the police station, he had immediately written a report in relation to what he had witnessed, which he submitted to his Licensing colleagues for investigation.
4. Councillor Connor referenced Appendix E of the report (page 66 of the agenda pack); '*What has been consistent is police harassment of the current licensee of The Angel. This has included variously: the search of his premises with an improperly filled out search warrant, the deliberate smashing by police officers of doors to hotel bedrooms; the sending in of over a dozen police officers in full riot gear (helmet and riot shield) when the staff were serving meals; the shouting at a 7 year old dining with his parents until he wet himself..*' Councillor Connor asked for the Police's comment on this statement. PC Bielawski confirmed he had not been in attendance during these alleged incidents and could not comment. He reiterated that Police's visit had been prompted by a report that the premises would be holding a private function for a football club and that food was not going to be served.
5. Councillor Tanfield asked for confirmation that the number of Covid-19 cases in Wisbech had risen dramatically in January 2021. Val Thomas confirmed that serious concerns had been raised in January 2021 regarding the level of Covid-19 cases in the town.
6. Councillor Tanfield asked the Police for clarification regarding the locked entrance at the premises. PC Bielawski confirmed that the entrance door leading on to Alexandra Road had been locked upon their arrival.
7. Councillor Humphrey asked Trevor Darnes for confirmation that Mr Balsevics had not provided the Council with the Test & Trace information and if the Council had requested this

in a timely manner. Trevor Darnes explained that Test and Trace information is to be retained by the premises for a period of 21 days and the Council had requested this information on the 7 January 2021 during a visit to the premises by Andy Fox (Senior Environmental Health Protection Officer). Mr Balsevics had stated that he could not locate the list of attendees for 24 December 2020.

8. David Dadds asked Trevor Darnes for clarification that the alleged health and safety breaches form part of different legislation and are not covered by the Licensing Act. Trevor Darnes confirmed that there is a requirement under the Health & Safety At Work Act 1995 but the alleged offences relate to the management of the premises in question and are in the interest of public safety and the prevention of crime and disorder.
9. David Dadds asked Trevor Darnes for confirmation that the alleged offences fall under the Health & Safety At Work Act 1995. Trevor Darnes confirmed this.
10. David Dadds asked Trevor Darnes if, as part of his investigation, he had conducted or planned to conduct an interview under the Police and Criminal Evidence Act 1984 (PACE) with Mr Balsevics. Trevor Darnes confirmed that no PACE interview had been conducted and it was felt that this hearing was the most expedient and appropriate way to deal with these issues as they pertain to public health and safety. He stated that the Licensing Act objectives support this and allow relative action to be taken against this premises. He stated that he could not confirm whether further action would be taken against the individual in relation to these allegations.
11. David Dadds asked Trevor Darnes for clarification that criminal proceedings may still be triggered. Trevor Darnes reiterated that no decision had yet been made in relation to this.
12. David Dadds explained that this further supported his initial request for the hearing to be held in private session as any future criminal investigation would be prejudiced based on this.
13. David Dadds asked Trevor Darnes if he agreed that, under the Licensing Act, the Panel are not entitled to determine innocence or guilt. Trevor Darnes stated that it is the responsibility of the Panel to decide whether the DPS and PLH have complied with the objectives stated in the Licensing Act.
14. David Dadds asked Trevor Darnes for confirmation that there were no other allegations or concerns regarding the premises, aside from those raised on 24 December 2020. Trevor Darnes asked over what period does David Dadds refer to. David Dadds clarified from March 2020 to present. Trevor Darnes replied that there had been complaints made however no evidence of non-compliance had been proven.
15. David Dadds asked for confirmation that when officers attended the premises, the PLH and DPS had been cooperative. Trevor Darnes said that this was a fair assumption.
16. David Dadds asked for confirmation that during visits to the premises, officers had witnessed Covid-19 measures (e.g. one-way systems, hand sanitiser etc) in place. Trevor Darnes highlighted that this information is available in Russell Watkins statement.
17. David Dadds read excerpts from Russell Watkin's witness statement and highlighted the Covid-19 measures taken.
18. David Dadds asked Trevor Darnes for confirmation that his department (Environmental Health) does not prosecute under the Licensing Act but rather health and safety legislation. Trevor Darnes confirmed that this is correct, and the Licensing authority is a separate team.
19. David Dadds asked Trevor Darnes again for confirmation that the Environmental Health team do not investigate crimes in relation Licensing Act offences. Trevor Darnes explained that the Environmental Health team carry out compliance checks for the Licensing team as a responsible authority and breaches are reported back.
20. David Dadds stated that Trevor Darnes had earlier mentioned 'disorder' and asked what 'disorder' was witnessed on 24 December 2020. Trevor Darnes referenced the CCTV footage as this shows a number of people in close contact with one another, members of the public congregating around the bar area and some individuals even 'mock fighting'. He argued that this does not present as orderly behaviour as it does not comply with the current Covid-19 regulations.
21. David Dadds asked Trevor Darnes to confirm that he considers the lack of social distancing

as 'disorderly'. Trevor Darnes said in his opinion he does.

22. David Dadds asked Trevor Darnes to confirm that he believes the alleged crimes fall under the Health & Safety At Work Act. Trevor Darnes agreed that they do fall under this legislation and the allegations also breach Covid-19 regulations.
23. David Dadds asked if the CCTV footage had been requested by Trevor Darnes. Trevor Darnes stated that the CCTV had been requested by the Licensing authority following information received from the Police.
24. David Dadds asked Trevor Darnes how he obtained the CCTV footage. Trevor Darnes confirmed this was passed on to him by the Licensing authority.
25. David Dadds asked Trevor Darnes to confirm he had then passed the CCTV footage on to Cambridgeshire Fire service. Trevor Darnes stated that he had shared and viewed the CCTV footage with Cambridgeshire Fire service.
26. David Dadds asked Trevor Darnes if he had shared the CCTV footage with the Police. Trevor Darnes stated that he had not shared the footage with the Police.
27. David Dadds stated that the Test & Trace information should only be shared with NHS Test & Trace for the purpose of contact tracing. Trevor Darnes stated that the information had been requested to show the number of attendees. David Dadd reiterated that this information should only be shared with NHS Test & Trace for the purpose of contact tracing. Trevor Darnes agreed.
28. David Dadd asked how Trevor Darnes received the email correspondence between Mr Balsevics and the Police (Appendix 1). Trevor Darnes said he had received this information from the Police.
29. David Dadds asked if Mr Balsevics was aware that this correspondence was to be shared with Trevor Darnes and they were interviewing him on his behalf. Trevor Darnes stated that he could not confirm or deny this.
30. David Dadds drew members attention to Appendix 1 and clarified that in question 3 of the email correspondence this should read; 'It was not an event!'.
31. Trevor Darnes explained that this is dependent on people's interpretation of an event. He stated that he understood that there were people in attendance and assumed that members of the public could attend the premises, albeit the door was locked. He added that he understood there were a number of customers who were members of a local football club.
32. David Dadds asked why the Police had not disclosed the body-cam footage. PC Bielawski confirmed that the Police had offered this footage to the hearing but had been told it was not required and would not be relied upon.
33. David Dadds asked for confirmation that the Police had not closed the premises during their visit using powers under the Licensing Act or Covid regulations. PC Bielawski confirmed this was correct.
34. David Dadds asked for confirmation that the Police had not asked for a voluntary closure during their visit. PC Bielawski confirmed that they had not as Mr Balsevics had stated that he would be closing the premises at 21.30. He reaffirmed that the Police had driven past the premises later that evening and had observed individuals leaving.
35. David Dadds asked if the Police accept that the DPS was not hosting a private event at the premises on 24 December 2020. PC Bielawski said he could not comment on this but got a snapshot of events during his visit and as a result, reported his concerns. He confirmed that the intelligence received by the Police claimed that an event was being held at the premises for a football club.
36. David Dadds asked PC Bielawski for confirmation that he was unable to verify the allegations of there being a private event during his visit. PC Bielawski stated that he was certainly suspicious of an event being held due to what he witnessed however it is not for him to say whether there was or not.
37. David Dadds asked the Police for confirmation that there was no music or DJ playing during their visit to the premises. PC Bielawski confirmed this.
38. David Dadds asked the Police if there is an officer in charge of investigating the alleged breaches of the Licensing Act. PC Bielawski stated that he had reported his concerns to PC Paul Hawkins the Licensing Officer.

39. David Dadds asked PC Hawkins for confirmation that he is the officer in charge of investigating the alleged breaches of the Licensing Act. PC Hawkins stated that he had reviewed the CCTV footage and investigated the allegations following the report made by the officers in attendance.
40. David Dadds asked PC Hawkins if the allegations were being investigated as a crime and whether there was a crime reference number for the case. PC Hawkins confirmed that there was no crime reference raised in relation to breaches of the Licensing Act or Covid-19 Regulations.
41. David Dadds asked PC Hawkins for confirmation that the Panel are not here today to establish innocence or guilt in relation to the alleged offences. PC Hawkins confirmed this.
42. David Dadds raised concerns over the interview conducted by the Police via telephone (Appendix 1 of the report). He asked PC Hawkins to confirm that the interview was not carried out in accordance with PACE. PC Hawkins explained that Mr Balsevics was not interviewed under caution and the questions were asked to establish what had happened on the evening of 24 December 2020. He stated that the interview had been conducted by telephone due to Covid-19 restrictions in place.
43. David Dadds asked PC Hawkins if he had made Mr Balsevics aware that he was not under caution during the interview. PC Hawkins referenced Appendix 1 of the report which states that; 'as such you responded without requesting a solicitor and you were not under caution at the time'.
44. David Dadds asked for confirmation that PC Hawkins had made Mr Balsevics aware during the telephone call that he was being not being questioned under caution and was entitled to a solicitor. PC Hawkins confirmed that he had informed Mr Balsevics that he was not under caution during the telephone call and the Police were just trying to establish information surrounding the alleged breach.
45. David Dadds asked for confirmation that the emails contained within Appendix 1 were shared with third parties. PC Hawkins confirmed that the information was shared with the Licensing manager and highlighted that Mr Balsevics was aware that this information was going to be shared, as per the emails shown in Appendix 1. He added that there is an Information Sharing Agreement in place with Fenland District Council which allows this.
46. David Dadds asked PC Hawkins for confirmation that the Police are not in attendance at today's hearing as a responsible authority but as witnesses. PC Hawkins confirmed this.
47. David Dadds drew attention to the letter from Cambridgeshire Fire & Rescue Service shown in Appendix D of the report. He asked that given the number of individuals inside the premises did not exceed 60 and as there were other exits available, is this sufficient to say there were other means of escape available within the premises. Steve Fleming confirmed that other exits were available however confirmation of the number of attendees were never provided to Cambridgeshire Fire Service.
48. David Dadds stated that given there was signage in the premises, can it be assumed that individuals were aware that there was protocol in place to safely exit the premises. Steve Fleming endorsed the letter provided (Appendix D of the report) and highlighted that following review of the footage, Cambridgeshire Fire Service have offered to undertake further education, advice and guidance with the responsible person.
49. David Dadds asked for confirmation that Cambridgeshire Fire Service have not prosecuted under the Regulatory Reform (Fire Safety) Article but have instead decided to work with the responsible person in ways of education and guidance. Steve Fleming confirmed this.

Val Thomas left the hearing at 2.23pm

Steve Fleming left the hearing at 2.32pm

PC Bielawski and PC Hawkins left the hearing at 2.35pm

Councillor Humphrey invited David Dadds to present his case to the Panel.

David Dadds requested a brief adjournment to the Hearing to allow him to consult with his client.

The Panel agreed and the hearing was adjourned at 2.33pm.

The hearing reconvened at 2.45pm.

David Dadds invited Brenda Barber (Interested Party) to present her case to the Panel.

Brenda Barber thanked the Panel for the opportunity to speak and asked for confirmation that she is entitled to attend today's hearing to express her views, following comments made on social media. This was confirmed.

Brenda Barber stated that she is speaking today on behalf of The Angel and Mr Balsevics and has been a customer of the premises for a number of years. She stated that she has always found the premises to be friendly, clean and welcoming and sadly this is not the case for a number of pubs within the town.

Brenda Barber highlighted the diverse nature of the clientele that frequent The Angel and said she has always admired the harmony between the range of different individuals who visit the premises. She highlighted that in a town like Wisbech which is a 'melting pot' of different cultures, The Angel acts like a community hub. She believes it would be a tragedy if the premises were to lose its licence and would deprive the town of this venue, which would be a great shame for a great number of people.

She concluded that she has always found Mr Balsevics to be a professional and conscientious publican.

Councillor Humphrey invited questions.

1. Councillor Tanfield asked Brenda Barber if she was present at The Angel on the evening of 24 December 2020. Brenda Barber stated that she was not in attendance.
2. Councillor Humphrey asked Brenda Barber for confirmation that she was one of the signatories shown on the petition. Brenda Barber confirmed this.
3. Councillor Humphrey asked Brenda Barber how the petition was signed due to the current Covid-19 restrictions. Brenda Barber explained that she had seen reports on social media regarding the allegations made and had called Mr Balsevics to offer her support. Mr Balsevics had made her aware of the petition and both she and her husband had agreed to sign it.
4. Councillor Humphrey asked if Brenda Barber had physically signed the petition as it shows handwritten entries (Appendix F of the report). Brenda Barber clarified that she had not physically signed the petition due to the current Covid-19 restrictions however she had given permission to Mr Balsevics to add her name.

David Dadds thanked Brenda Barber for her attendance at today's meeting and said members of the public should feel encouraged to come and speak at public hearings regardless of any negative comments made on social media.

Brenda Barber left the hearing at 2.51pm.

David Dadds presented his case to the Panel. He said the review was unusual due to the fact that there had been no matters arising in relation to the operation of the licence, allegations or anti-social behaviour or crime and disorder prior to 24 December 2020. He reiterated that the review is based solely on one evening, Christmas Eve. He explained that Mr Balsevics runs two other premises within the district and a member of the public has just endorsed that he is a conscientious licensee.

He stated that the onus is not on Mr Balsevics to rebut the allegations made against him but on those in attendance to assert their primary evidence. He referenced Russell Watkins statement (Appendix C of the report) confirming that a risk assessment had been voluntarily provided by Mr Balsevics, Test and Trace information had been displayed in the premises, a one-way system had been established, hand sanitiser was available and sufficient social distancing signage.

David Dadds stated that his client had fully co-operated throughout this investigation and had even sought guidance from the Council regarding Covid-19 restrictions. He said there have been many assumptions made at today's hearing, including the non-disclosure of the body cam footage. He questioned why this had not been disclosed as it would provide clear footage, with audio, of the Police's inspection of the premises.

He reminded the Panel that the Police had not exercised their powers under the Licensing Act or Covid-19 regulations to close the premises on the night in question and the door to the premises had been locked and the curtains closed to prevent additional customers entering. He reiterated that Cambridgeshire Fire Service had no concerns for public safety and are willing to engage with Mr Balsevics via education as oppose to enforcement.

David Dadds highlighted that the alleged breaches relate to the Health & Safety at Work Act and Covid-19 regulations and disagreed with the interpretation that these represent crime and disorder. He reminded the Panel that they are not here to determine whether an individual is innocent or guilty and argued that it would be inappropriate for the Panel to make a judgement on this since no investigation has taken place, no interview under caution and no evidence disclosed to his client prior to the interview.

David Dadds drew the Panel's attention to Section 182 of the Licensing Act and reminded them that they have an obligation to adhere to this. He said this legislation states that there should be no duplication of other statutory schemes and he highlighted that the Health & Safety at Work Act is a separate statutory scheme. He stated that if there is an alleged offence that breaches this legislation, it should be dealt with via their channels.

David Dadds reiterated that his client has not had the opportunity to gather witnesses and has not received a full disclosure of the evidence. He believed that officers have made 'wild' assumptions based on the CCTV footage shown in private session and have no proof that those individuals shown were not medically exempt from wearing face coverings or formed part of the same household or support bubble. He stated that everyday in supermarkets, individuals fail to follow social distancing however these premises retain their alcohol licenses.

David Dadds raised concerns in relation to statements provided by the Police, as the telephone interview was not carried out under caution and Mr Balsevics' response was noted and disclosed to other parties. He stated that Mr Balsevics was not made aware of his right to a solicitor at the start of the interview and therefore the process did not comply with PACE. He added that his client had voluntarily answered questions however had not been legally represented and his response then disclosed to other parties which is wholly unacceptable.

David Dadds said that evidence provided by the Police today had established that there is no ongoing criminal investigation in relation to the alleged breaches under either the Licensing Act or Covid-19 Regulations. He stated that it was inappropriate of the Police to have provided a witness statement which publicly contains such accusatory allegations and remarks towards Mr Balsevics when no interview has been conducted in accordance with PACE and no investigation has taken place on the matter. He believed that this is against police protocols and questioned whether this was deliberate or negligible of the Police.

David Dadds explained that the CCTV footage had been collected by the Licensing Authority however this had been disclosed to both the Police and Fire Services. He stated that this data is

protected and should have only been obtained on the premises of investigating a crime. David Dadds alleged that he had seen correspondence which stated incorrectly that the Police had requested the CCTV footage, and on this basis, the Data Controller had released this. He argued that this footage had therefore been unlawfully obtained.

David Dadds highlighted references in the report to the closed curtains and locked door at the premises and questioned why, if an event or party was taking place covertly, would the CCTV be running and then disclosed to the authorities. He expressed that this further supports that there was no party or event taking place at the premises. He reminded members that the CCTV footage shows a wide range of individuals in attendance and highlighted the lack of DJ or music on 24 December 2020.

David Dadds stated that as there is no primary evidence in relation to the alleged breaches and as the Police have confirmed that no criminal investigation is pending, it is unlawful for the Panel to make a decision on these allegations. He stated that the fact information has been shared and confidential Test & Trace information requested, the public are concerned about how their data is being handled. He remarked that this will be reported to the Information Commissioner's Office.

David Dadds said no allegations can be substantiated in regard to the sale of alcohol without food and steps had been taken by Mr Balsevics to ensure compliance with Covid-19 Regulations including the hiring of a doorman for the evening, signage in place and a limit on the number of attendees. He asserted that none of these allegations relate to offences under the Licensing Act.

He concluded that his client had followed all guidance and whilst he fully accepts the concerns raised, he will ensure the continued promotion of the licensing objectives. He reminded the Panel that whatever decision they make today, it must be both appropriate and proportionate as per the legislation and urged members to consider appropriate case law during their deliberation. He reminded members of the impact of the accusations upon Mr Balsevics and suggested they consider the decision made by Cambridgeshire Fire Service in relation to further education and guidance. Whilst suspension of the licence is an option, he highlighted the impact of Covid-19 on the hospitality industry and asked the Panel to take a common-sense approach.

Councillor Humphrey invited the Panel to ask questions.

1. Councillor Tanfield disagreed with the comparison made regarding adherence of social distancing in supermarkets and licensed premises. She asked David Dadds for confirmation that his client had considered the number of attendees and available tables on the night in question. David Dadds confirmed that there had been a limit on the number of attendees hence why the door had been closed to prevent exceeding this. He added that his client has learnt from this and in future would have an additional member of staff on duty to ensure compliance. In relation to the comparison made between pubs and supermarkets, he suggested that as individuals there have been times where we have all witnessed the non-adherence of social distancing in public locations regardless of the stringent steps taken to prevent this.
2. Councillor Tanfield endorsed the requirement for additional staff and said, as an experienced landlord, Mr Balsevics should have considered that given that Christmas Eve is normally a busy night for pubs.
3. David Dadds confirmed that in hindsight, his client would have employed additional staff. He stated that this was the first Christmas Eve with Covid-19 restrictions in place and his client had taken the opportunity to spend a short period of time with his children as he is unable to do so most other years.
4. David Dadds informed members that his client had closed his other premises as he was unable to facilitate the requirement to serve food as part of the Covid-19 restrictions.
5. Councillor Tanfield stated that the CCTV footage does show individuals not adhering to social distancing and whilst it cannot be proven that they were not part of the same

household or support bubble, it cannot be proven that they were either. She reiterated that additional staff could have monitored and supervised this. David Dadds confirmed that future risk assessments of the premises could reflect the additional need for staff.

6. David Dadds reiterated that this was the first Christmas Eve with Covid-19 restrictions in place which presented a unique set of circumstances for Mr Balsevics. Aside from this occasion, his client had had no other issues operating the premises with these restrictions in place.
7. Councillor Tanfield highlighted that the CCTV footage showed individuals congregating around the bar area however no member of staff appeared to try and stop this. David Dadds stated that the restrictions had changed several times prior to 24 December 2020 but agreed that retrospectively an additional member of staff could have prevented this from happening.
8. Councillor Tanfield asked what processes the Premises Licence Holder (PLH - Elgoods & Sons Ltd) have in place to ensure that their tenants are complying with Covid-19 regulations. David Dadds explained that whilst it is the tenant's responsibility to comply with the regulations, the Premises Licence Holder would have confirmed this with them. He stated that both the PLH and the tenant are taking these allegations seriously and want to work with the Licensing Authority to ensure that the objectives are being achieved.
9. Councillor Tanfield asked what the PLH had done to ensure compliance, prior to the review. David Dadds reiterated that it is the tenant's responsibility to ensure the law is upheld as part of their tenancy agreement.
10. Councillor Humphrey asked for confirmation that Mr Balsevics had sought advice regarding safe working practices during the Covid-19 pandemic. David Dadds confirmed this and said this is endorsed in the witness statements provided by officers.
11. Councillor Humphrey asked for confirmation that Mr Balsevics was present and working at the premises on 24 December 2020. David Dadds confirmed that Mr Balsevics was present at times throughout the day.
12. Councillor Humphrey asked if Mr Balsevics agreed that on 24 December 2020 Covid-19 safe working protocol was breached. David Dadds stated that his client did not agree as reasonable steps had been taken to prevent this from happening but his client recognises that possibly more could have been done.
13. Councillor Humphrey raised concerns over the legitimacy of the signatures in the petition and asked what reassurance is provided to the Panel. David Dadds explained that due to Covid-19, the way in which petitions are administered has changed and the legitimacy of only one signature has been questioned, of which he has been unable to verify. He stated that it is the Panel's decision to determine the importance of the petition as part of their deliberations however Brenda Barber had confirmed her signature as part of her presentation.
14. Councillor Humphrey asked if individuals were encouraged to send in letters of support. David Dadds confirmed that his client is entitled to solicit representation to individuals to support him.
15. Councillor Humphrey referenced one of the letters of support (Appendix E of report) which accuses the Police of placing a surveillance camera team in the Town's Council Chamber to record activity at the premises. David Dadds explained that he is unaware of this and could not comment.

Councillor Humphrey invited Trevor Darnes to sum up his case.

Trevor Darnes said it was important to remember that whilst it was Christmas Eve, this does not make it acceptable to breach Covid-19 Regulations. He stated that these actions put people's lives at risk and furthermore could have over-burdened the NHS making it wholly unacceptable. He referred to David Dadd's comments about the assumptions made during the viewing of the CCTV footage and stated that the footage clearly showed a number of individuals congregating at the bar in close proximity to one another and having physical contact. He disputed claims that individuals were not consuming alcohol and stated that the footage clearly shows alcohol being served without

a meal.

Trevor Darnes argued that the food shown on the CCTV did not constitute a 'substantial' meal and footage shows that food was not being consumed with plates being left on tables for several hours. He stated that it is the responsibility of the DPS to take 'all reasonable steps' to ensure customers comply with regulations and remain seated. He said the accusations are not trivial and whilst there is a graduated approach to enforcement, the evidence speaks for itself.

Trevor Darnes reiterated that the evidence shows the lack of substantial meals being served, lack of social distancing and the sale of alcohol without a meal. He did not agree with the argument that the individuals shown in the footage formed part of the same household or support bubble, due to sheer number of people seen moving between areas of the premises.

Trevor Darnes concluded that the footage speaks for itself and represents the events of 24 December 2020. He highlighted that Mr Balsevics is an experienced landlord and the Council had provided him with numerous advice and guidance leading up to the evening. He agrees that whilst Mr Balsevics has accepted that things went out of control on 24 December 2020, it is the extent in which they went out of control that is the concern.

Councillor Humphrey invited David Dadds to sum up his case.

David Dadds summarised by saying that reasonable steps were taken on the night of 24 December 2020 however in hindsight his client would have taken further precaution by employing additional members of staff. He reminded the Panel that there had been no licensing concerns raised in relation to the premises prior to the 24 December 2020. He highlighted that the concerns raised do not relate to the licensing objectives but rather Covid-19 regulations and Health & Safety at Work Act, of which no criminal investigation has been launched. He reminded members that these are separate pieces of legislation and in his opinion, it is inappropriate that this matter has not been dealt with via those legislative processes.

David Dadds disagreed that the CCTV footage conclusively proves the officer's version of events on 24 December 2020. He reminded members that they are not here today to establish the innocence or guilt of Mr Balsevics in relation to breaches under Covid-19 regulations as these allegations should be dealt with in a court of law. He stated that no licensing offences have been evidenced and the Panel have received only letters of support for Mr Balsevics from members of the public. He confirmed that additional staff should have been present on 24 December however it was not Mr Balsevic's intention to commit the alleged offences or undermine the licensing objectives.

David Dadds stated that Mr Balsevics confirmed that the meals provided complied with the definition of a 'substantial meal' as per Parliament's legislation and reiterated that no private party or event took place that night. He stated that Mr Balsevics track record spoke for itself and if members are minded to impose any sanction other than a warning, it must be fair and proportionate. He highlighted that there have been no other warnings issued to the landlord and urged the Panel not to 'take a sledgehammer to a nut'.

Councillor Humphrey thanked those in attendance for their presentation and presence at today's hearing.

The Panel adjourned at 3.52pm for deliberation and reconvened at 16.25pm.

Councillor Humphrey thanked everybody for their patience and confirmed that there are no points the Panel needed clarifying. He confirmed that due to the amount of evidence to consider, the Licensing Sub-Committee will not be making a decision at today's meeting and will be exercising their rights under Regulation 26 of the Hearing Regulations to allow them 5 working days to

determine the application. He confirmed that the decision notice will be published on the Council's website and all parties present will receive an email notification once the decision has been made.

He thanked everybody for their attendance at today's meeting.

The meeting closed at 4.27pm.

The following decision notice was published on 18/03/2021.

Sub-Committee ("the Committee/ We"): Cllrs Humphrey (Chair), Connor and Tanfield

Premises Licence Holder ("PLH"): Elgoods & Sons Ltd

Designated Premises Supervisor ("DPS"): Mr Aigars Balsevics

Premises: The Angel Public House, 45 Alexandra Road, Wisbech, Cambridgeshire, PE13 1HQ

Legal Representative for the DPS and PLH: David Dadds, Barrister Legal Officer: Colin Miles

Licensing Officer: Michelle Bishop

Environmental Health Officer ("EHO"): Trevor Darnes

Preliminary Matters

- 1. The Committee was convened on Monday 15th March 2021 to consider an application to review the Premises Licence for the abovenamed premises, submitted by Environmental Health in the capacity of a Responsible Authority, under Section 51 of the Licensing Act 2003.**
- 2. The Review Notice was served on the PLH and DPS on 2nd February 2021 in response to reported incidents taking place at the premises on 24th December 2020 which may have breached the then Covid 19 safe practices requirements and restrictions in place at that time, those being "Tier 2". Further details follow.**
- 3. The Review was supported by other Responsible Authorities by way of witness statements and oral submissions. These others were Cambridge Constabulary ("the police"); Cambridgeshire Fire & Rescue Service; and Public Health.**
- 4. CCTV footage of the 24th was viewed by the committee. This footage was not viewed in public but in a private session (under Reg 14 of the Hearing Regulations 2005)**
- 5. Police body worn camera footage was not supplied. The police saying it was not sought. This was not explored further by the Committee.**
- 6. One representation was received raising concerns about the spread of Covid 19 in Wisbech specifically.**
- 7. A petition was received in support of the DPS containing some 168 names. Some 16 letters/emails were submitted in support of DPS and one those who signed the petition, spoke to the committee in support of the DPS.**
- 8. The DPS attended by telephone link to his legal representative. He was not asked any direct questions, nor did he offer any submissions, other than through his legal representative.**
- 9. This Notice should be read in conjunction with the committee bundle.**

The Function of the Committee

- 10. It is not the function of the Committee to establish guilt or innocence in relation to**

matters of crime; nor is it able to investigate alleged crime. The Committee is tasked with making a decision based on the information before it. The decision is based on a 'value judgment' and not 'beyond all reasonable doubt'.

11. The Committee exercises an administrative function conferred on it by the 2003 Act. It is not a court of law and the usual strict rules evidence do not apply.
12. The Committee must base the decision on facts and information put before it and can take into account any local knowledge that may assist in the decision-making process. The decision must be balanced and proportionate; it must be helpful in order to assist the promotion of one or more of the licensing objectives and be appropriate given the circumstances.
13. The Committee can exercise a wide discretion on the steps it can take but must not stray beyond the promotion of the licensing objectives.
14. The steps that can be taken are:
 - Take no further action
 - Modify the conditions of the licence
 - Exclude a licensable activity from the scope of the licence
 - Remove the Designated Premises Supervisor
 - Suspend the licence not exceeding three months
 - Revoke the licence

Application to Adjourn

15. Mr Dadds made an application to adjourn the hearing for four weeks on the basis that his client could not have a fair hearing as there had been insufficient time to prepare. Mr Dadds wished to contact those in attendance to obtain statements. Some of those in attendance were from the travelling community whom he had been unable to contact to date, partly due to Covid 19 issues; and this was against the DPS's human rights.

Right to a Fair Hearing

16. There is a right to be informed of the case against you and that you have had reasonable time to prepare your representations; and you have the right to have those representations taken into account by the decision maker.

Rules of Natural Justice

17. You have a right to be informed of the allegations against you and you must be given the chance to rebut those allegations.

Human Rights

18. The decision must be proportionate. The decision maker must strike a fair balance between the rights of the individual and the wider community.
19. The rights for a person to retain a licence (DPS) has to be balanced against the rights of the public to be protected (from transmission of the Covid 19 virus in this instance); a fair balance must be reached.

Committee's Decision of the Application to Adjourn

20. Time frame:

- 1st February 2021 – Review Notice Served
- 18th February 2021 – Confirmation that Mr Dadds was acting for the PLH and the DPS (Confirmed by PLH and later by Mr Dadds on 3rd March)
- 1st March 2021 – Consultation period comes to a close

- 1st March 2021 – Information on behalf of the Licensing Authority sent to DPS and PLH, including date of hearing, although Mr Dadds says he did not receive the information and notification of the hearing date until 5th March
 - 12th March 2021 – Mr Dadds seeks an adjournment on the above basis by emailed letter
21. The Committee retired into private session. The Committee believed that sufficient time had elapsed for Mr Dadds to take full instructions and conduct any enquires he felt necessary.
 22. The Committee believed given the circumstances leading up to the review that any delay would not be in the public interest. A balance between the rights of the DPS and the public had to be struck. The Committee did not feel that the DPS or the PLH would be prejudiced or disadvantaged if an adjournment was not granted, and given the timeframe, there was no breach of natural justice, the fair hearing principles or the human rights of the DPS.
 23. Legal advice was given on the Human Rights Act, and the principles and requirements which underline natural justice and those of a fair hearing, as previously mentioned.

The Review

24. There now follows a brief summary of the information put before the committee. Reports, statements and other supporting information were contained in the committee bundle. These were made available to all parties. It was not the intention of the Committee to hear all the information, having taken the time to read the committee bundle, the Committee wished to explore certain matters and ensure all parties had had sufficient time to put forward their submissions.
25. The Licensing Officer delivered the Committee Report. This was followed by Environmental Health Officer outlining the reasons for the review.
26. The Review related to the two Licensing Objectives of Public Safety and the Prevention of Crime and Disorder, which the EHO says were being undermined.
27. The review was brought due to concerns that there were breaches of health and safety legislation and public health legislation.
28. This legislation referred to can be found on Pages 27 – 30 of the committee bundle in the Application for the Review of the Premises Licence submitted by the EHO. Also, the reasons for the alleged breaches are detailed at the same.
29. In brief, the legislation is:
 - The Health and Safety at Work Act 1974, Sections 2 & 3 – Employers are required to so far as is reasonably practicable, to protect the health and safety of their employees and others who may be affected by their work activities
 - Management of Health and Safety at Work Regulations 1999, Regulations 3 & 5 – All employers are required to carry out a suitable sufficient risk assessment and implement, monitor and review the control measures identified
 - The Health Protection (Coronavirus, Restrictions)(All Tiers)(England) Regulations 2020, Regulations Schedule 2, Part 3, Paras, 11, 13 & 14– In tier 2, no further sales of alcohol are to take place after 2200hrs; food and drink is only ordered by and served to customers seated and all reasonable steps are to be taken to ensure the customer is seated whilst consuming food; alcohol only to be served as part of a main or substantial table meal
 - The Health Protection (Coronavirus, Wearing of Face Coverings in a relevant Place)(England) Regulations 2020, Regulation 3 – No person may enter or remain in a relevant place without wearing a face covering unless seated for eating and drinking with a meal
 - The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020, Regulations 6,7 & 8 – Requirement to display QR code or other means for collecting relevant details for track and trace purposes

- **Working Safely During Coronavirus (Covid 19) in Restaurants, Pubs, bars and Takeaway Services – Government guidance and not legislation. Guidance on how to maintain a Covid secure working environment.**
- 30. **The Committee were referred to four occasions when advice and guidance was given to the DPS on safe working practices during the pandemic. The final occasion the advice was sought by the DPS.**
- 31. **The occasions were:**
 - **22nd July 2020**
 - **15th September 2020**
 - **28th September 2020**
 - **30th November 2020**
- 32. **The Committee were referred to a “Safe to Trade” risk assessment and “Covid Return to Work Form” completed by the DPS. These can be found in the committee bundle on pages 37-49.**

CCTV Footage

- 33. **The Committee were invited to view CCTV footage supplied by the DPS under Condition 12 of the premises licence. This CCTV was obtained by Andrew Fox, Environmental Health Officer as an authorised officer for the Licensing Authority.**
- 34. **On external legal advice, this was shown in private to the Committee and Mr Dadds with commentary from the EHO. The footage consisted of excerpts which had been pixelated.**
- 35. **Mr Dadds made observations and representations on the footage.**
- 36. **Having viewed the footage, a brief description of what the Committee saw follows:**
 - **Perspex screens were in place at the bar; a QR code was displayed; direction markings were placed on the floor**
 - **At lunchtime a meal was served to customers sat at a table. The empty plates remained at the table**
 - **At 1527hrs DPS was seen passing drinks to people from a tray. No face coverings were worn, and food was not being served**
 - **At 1833hrs people were stood at the bar drinking and it appeared the “rule of six” was being breached as there was mixing between groups/persons. Three persons were seen behind the bar when only one staff member was on duty plus the DPS**
 - **At 1843hrs customers were seen to be drinking alcohol, mixing, no food was being served, customers entering the premises were not submitting their details for track and trace purposes**
 - **At 1845hrs the main entrance was seen to be locked. A doorman was on duty who let people in. He was not wearing a face mask nor was the DPS or the member of staff behind the bar**
 - **At 1849hrs customers were seen to be trying to leave the premises but the door was locked.**
 - **At 1941hrs drinks were being served without food**
 - **At 1944hrs the DPS delivered what appeared to be “shots” of alcohol to a table. No food was served**
 - **At 1945hrs in what used to be the pool room, customers were seen to be mixing and having physical contact with each other. It appeared that there may have been a buffet provided at some stage, but this is not clear from the CCTV. Certainly not many people were eating with their alcohol**
 - **At 2020hrs a customer appears to be serving himself from behind the bar and another customer**
 - **At 2040hrs customers are standing at the bar and not eating**
 - **At 2056 the police arrive. They are unable to gain immediate access as the door is locked. The doorman is seen trying to seat people and the member of staff behind the**

bar puts on a face covering (at 2107hrs)

- At 2057 a person is seen to drink three shots and not have food
- At 2110hrs in the rear bar, there is no social distancing and no main meal being served
- At 2146hrs customers are seen to be served at the bar. No food
- At 2205hrs customers are still being served at the bar
- At 2020hrs social distancing is not being observed. On one occasion three persons were seen to be wearing face coverings
- At 2233hrs one person was seen to be served alcohol in the form of a short with mixer

37. In response Mr Dadds informs the Committee:

- That the DPS and SIA doorman are exempt from wearing face coverings
- The people mixing were of the same household
- Food was being served in the form of a buffet
- There is no requirement, which is agreed, that customer details should be supplied to local authority under the track and trace scheme
- The person seen helping himself from behind the bar was actually a casual member of staff
- The door was locked in order to control who enters and that there were other exits open

Other Representations in Support of the Review

38. Russell Watkins, Environmental Health Officer, states in his statement that on 22nd July he visited two premises which the DPS was responsible for – one being The Angel Inn, to advise on required Covid 19 safe working practices.

39. Following a complaint regarding the lack of social distancing, a telephone conversation was had with the DPS and further advice was offered.

40. On 28th September the DPS telephoned and sought advice relating to the playing of pool and face masks. Advice was given along the lines of face masks should be worn.

41. On 30th November advice was given by telephone to the DPS regarding the serving of food, a substantial meal and the seating requirements.

42. Chief Fire Officer, Cambridgeshire Fire and Rescue Service. By letter states that the locking of an exit in the event of an emergency is in contravention of the Regulatory Reform (Fire Safety) Order, Article 14b. Advice and guidance is the way forward on this occasion.

43. PC Justin Bielawski, Police. He attended the premises just before 2100hrs on the day. Intelligence had suggested that a football club was holding a private party and that food would not be served. Wisbech was subject to Tier 2 (high risk) restrictions. The door was locked, and curtains were drawn. He waited five minutes until he saw the DPS walking quickly towards the pub whilst on his phone.

44. DPS said there was no private party. Food had been served in the form of sausage rolls and salad. A number of paper plates were seen on a table. A number of young males were seen sitting at tables, many in a group of six.

45. Whilst walking around the pub, the DPS was not wearing a face covering and offered no explanation.

46. The DPS said he sponsored a football club. There were lots of empty glasses to be seen around the pub. Two males were seen smoking in a shelter at the rear; a pint of beer was seen on a bench close to them.

47. PC Paul Hawkins, Police. Reiterated the then current Covid 19 Restrictions legislation and the concerns aired by the Prime Minister, and Chief Medical Officer through UK television broadcasts.

48. PC Hawkins on 20th January conducted a telephone conversation, not under caution, with the DPS relating to the correctness of questions sent to the DPS previously. These questions and answers can be seen on pages 33 – 35 of the committee bundle.
49. In this document, the DPS denied there was an organised event. Food was being served, in the form of sausage rolls, pasties, salad and chips. There were two staff on duty including himself. He was away for about an hour around 8pm.
50. The doors were locked to prevent overcrowding as it was Christmas Eve.
51. Public Health (Dr Val Thomas in attendance). Public Health supply a document detailing the spread of the Covid 19 virus and the health risks associated with the pandemic specific to Fenland. For example, the infection rate leading up to 18th December was 203.2 per 100,000; throughout December and by the 18th, the over 60's rate was higher than the national average. In January, the all age rate was 560.6 per 100,000. The asymptomatic risk was also outlined. The seven-day rolling increase average was 59.1. One in three persons are asymptomatic. This document can be found on pages 63-65 of the committee bundle.

Representations in support of the DPS and the PLH

52. Letters and emails numbering some 16 say that the public house is well run and causes no concerns. The DPS is a good DPS and supports the local football team and other entities within the community.
53. He treats his customers with the utmost respect. There have been no witnessed drunken behaviour, anti-social behaviour or crime associated with the premises.
54. One letter states that the writer and partner attended the premises on the night and had a meal and practiced social distancing. These letters/emails can be found on pages 66 – 83 (excepting that on page 70) of the committee bundle.
55. The Petition contains some 168 names and is in support of the premises. The wording is “We, the undersigned, confirm that we have no concerns regarding the Angel Public House. We support the premises and its licence in its current form and we strongly believe that the premises is a well-managed premises that effectively promotes the four licensing objectives”. The petition can be found on pages 84 – 93 of the committee bundle.
56. Brenda Barber, other Person. This lady says that the pub is very friendly, clean and welcoming. It is diverse in its customers and should it close it would deprive the town.
57. She did not personally sign the petition but was asked if her name could be put down.
58. She was not present at the pub on 24th December last.

Submissions by Mr Dadds on behalf of the DPS

- 59.
- The Committee cannot determine whether any crime was committed on the day in question. There is no disorder associated with the events of 24th. The Committee cannot determine guilt or innocence
 - Committee should not duplicate statutory schemes
 - There has been no criminal breaches of the 2003 Act
 - There have been no issues associated with the premises leading to the 24th
 - The DPS has co-operated fully with the officers and even sought advice on the Covid 19 safe working practices for licensed premises
 - The DPS is conscientious
 - The police did not exercise any of their powers on the night either mandatory or voluntarily
 - Russell Watkins states at para 6 of his statement (page 51 of the committee bundle) that the staff training records, and Covid 19 risk assessment were sufficient, and

there was compliance regarding Covid 19 safe working practices

- The Fire Service chose education over any further action
- The DPS is responsible for the operation of the public house and the day to day running of the public house by way of a tenancy agreement
- The PLH has not engaged the DPS or offered any assistance regarding Covid 19 safe operating procedures due to the tenancy agreement being in place
- The person seen serving himself was a casual member of staff
- The entrance/exit was locked in order to control numbers
- Many of the persons attending were of the same household, and or were family members
- This was not an organised event or party
- Substantial meals were being served

Findings of Facts

60. We find the following:

- Persons attending the public house on the day were not wearing face coverings (save as to three females) and were not practicing safe distancing
- The staff were not adhering to the requirements of safe working practices and were not wearing face coverings
- Many persons were not supplied with a substantial meal and drinks were clearly being purchased without the purchase of a meal
- Drinks were being sold to persons at the bar
- A person helped himself to drinks from the bar and supplied drinks to a companion
- Drinks were sold after 2200hrs
- The rule of six persons at table was largely ignored
- Persons were freely mixing and not remaining seated
- The main entrance and exit door was locked
- Staff appeared not to have washed hands between serving drinks and there was no evidence of sanitizer being used
- The DPS was present for most of the day
- There was no attempt, until the police arrived, to adhere to safe working practices or enforce the Covid 19 restrictions/conditions as laid down in the Covid 19 Regulations
- The DPS was complicit in the disregard for safe working practices for staff and in the disregard of the regulations
- No attempt was made to collect customer details for track and trace purposes
- No attempt to implement Covid 19 safe working practices as identified in the risk assessment
- The public house was Covid 19 compliant as to regards having the QR system in place; having screens at the bar; having one-way markers on the floor; but these were not enforced on the day
- The DPS was fully aware of his legal obligations have received advice and having completed the risk assessment and 'Safe to Trade' document

Reasons for the Decision (which follows)

61. We attach significant weight to the information put before us from the Police, the Fire Service and Public Health.
62. Also, we attach considerable weight to what we saw on the CCTV footage.
63. We have taken into account that there are no previous issues associated with these premises.

64. We note that the DPS is a DPS for two other licensed premises.
65. We have taken into account the letters and petition in support of the DPS.
66. We do not attach much credibility to the version of events presented on behalf of the DPS.

Conclusions of the Committee

67. We conclude that the DPS was fully aware of his responsibilities but chose to ignore them on 24th. Covid regulations were largely ignored as was the Health and Safety at Work Act. There were little or no safeguarding for employees and customers. The motive behind this blatant disregard can only be for profit.
68. We find such behavior during the pandemic as was on 24th, staggering to say the least. Not only were staff put at risk and those in attendance but also persons in the wider community who may well come into contact with those present on the day. We are all fully aware of how easy the Covid 19 virus can be transmitted and what are the consequences not only for those infected but for the burden placed on the NHS.
69. We have grave concerns that the door was locked whilst customers were in the premises, especially as a doorman was employed on the night to control numbers.
70. There is no evidence to suggest that persons attending had booked a meal or were intending to do so. It is more likely than not that this was an organised event given the number of people who appeared to know each other and that a buffet had been supplied.
71. We do not accept that the PLH can “contract away” their responsibilities as a PLH to the DPS as tenant, as this would go behind the provisions and core protections of the 2003 Act.
72. We have no doubt that the DPS is a popular member of the community who sponsors a local football team, and that previously there have been no issues of concern, but previously the country was not in a pandemic.
73. We considered the information before us and felt it necessary to take robust steps as the circumstances that gave rise to the review are totally unacceptable.
74. The DPS was the main person responsible for the events of 24th but the PLH cannot avoid any responsibility.
75. The steps taken, as follows, are necessary and proportionate, and should help the PLH to promote the two licensing objectives in question; and protect the public.

Legal Advice Sought in the Committee’s Deliberations

76. We took advice on the following legislation and guidance:

- Human Rights Act: Section 6 – Acts of Public Authorities; Schedule 1, Art 6 – Right to a Fair trial
- The Crime and Disorder Act 1998: Section 17 – the Council’s duty to do all it reasonably can to prevent crime and disorder
- Health and Safety at Work Act 1974: Section 2 – General duties of employers to their employees; Section 3 – General duties of employers and the self-employed to persons other than their employees
- The various Covid 19 Restrictions Regulations as previously mentioned
- The Licensing Act 2003: Sections 51 & 52 relating to review proceedings
- The Council’s own Statement of Licensing Policy
- The statutory guidance issued under Section 182 of the 2003 Act: In particular but not limited to, 11.17; 11.19 – 11.23

The Decision

- The DPS is to be removed from licence
- The licence is to be suspended for three months
- A condition is to be attached to the licence which states that the current DPS (Mr A Balsevics) must not have any further managerial responsibility for the premises which includes responsibility for the day to day running of the public house and hold any supervisory position associated with the public house. This condition will still apply should there be a change of name for the premises while a premises licence is in place authorising the sale or supply of alcohol

We find that two following licensing objectives have been undermined by a disregard of the above mentioned Covid regulations and health and safety legislation, even in the absence of any “disorder” in the general sense of the word:

- The Prevention of Crime and Disorder; and
- Public Safety

We note this does not deprive the DPS of working as he is a DPS for two other premises. The three-month suspension will allow the PLH to seek a new DPS and engage fully with any existing or subsequent relevant health and safety and public health legislation affecting the licensed trade. The additional condition is placed on the licence to promote public safety and to protect customers of the premises, and it is clear that the current DPS is unable to operate the public house in accordance with relevant health and safety and public health legislation.

Under the terms of the Licensing Act 2003, this Decision and the licence suspension will not commence until 21 days after this Decision has been sent to all parties, or if the decision is appealed against, until the determination of that appeal.

Any party to this review who disagrees with the decision, may appeal the decision to the Peterborough Magistrates’ Court, within 21 days of notification of this decision, at The Court House, Bridge Street, Peterborough, PE1 1ED.

Further details of the Rights of Appeal can be found in Section 181 and Schedule 5 to the Licensing Act 2003.

There may be a fee to pay.

Signed by the Chairman of the Sub-Committee