

FENLAND DISTRICT COUNCIL

LICENSING SUB-COMMITTEE DECISION NOTICE

The Angel Public House, Wisbech

Monday 15th March 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 previous 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.

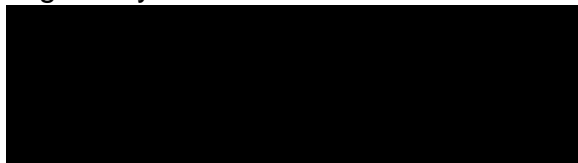
Under the terms of the Licensing Act 2003, this Decision and the licence suspension will not commence until 21 days after this Decision has been sent to all parties, or if the decision is appealed against, until the determination of that appeal.

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

A large black rectangular redaction box covering the signature of the Chairman of the Sub-Committee.

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Date signed: 18 March 2021