

Statutory Licensing Sub Committee

A meeting of Statutory Licensing Sub Committee was held on Tuesday, 6th July, 2021.

Present: Cllr Paul Kirton (Chairman), Cllr Mick Moore, Cllr Marilyn Surtees

Officers: James Jones (CS & T) Jonathan Nertney (HR,L&C), Nigel Hart, Leanne Maloney-Kelly, Sarah Whaley, John Wynn (MD)

Also in attendance: Paul Henderson, (Porky Pint Limited, Company Director & Designated Premises Supervisor for the Porky Pint), Phillip Kolvin QC. Graeme Cushion (Solicitor), Acting Sergeant Andrew Thorpe (Cleveland Police), James Kemp (Barrister). Members of the public.

Apologies: None

SLS Declarations of Interest

1/21

There were no declarations of interest.

SLS LICENSING ACT 2003

2/21

APPLICATION FOR REVIEW OF A PREMISE LICENCE THE PORKY PINT, 40 MILL LANE, STOCKTON-ON-TEES, TS23 1HF

The meeting of the Statutory Licensing Sub Committee, adjourned on 19 May 2021(see earlier minute), was reconvened on Tuesday, 6th July, 2021.

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee were asked to consider an application for a review of a premise licence from Cleveland Police on the grounds of the prevention of crime and disorder and public safety objectives.

The Chair introduced all persons who were present and explained the procedure to be followed during the hearing. It was noted that this was a hybrid meeting where some parties were in attendance via Microsoft Teams and some in person. All parties confirmed that they could see and/or hear each other.

A copy of the report and supporting documents had been provided to all persons present and to members of the Committee.

Members noted that the review of the premises licence was made at the request of Cleveland Police. Representations had also been received from other responsible authorities including Licensing, and Trading Standards.

The Committee noted that additional information had been circulated prior to the hearing to the parties including: -

- Representation in support of the premise from two Members of the public.
- Additional information in support of the premise from a member of the public who had submitted representation previously.
- Further information in support of the representation made by the Licensing

Authority including a continuation witness statement from Licensing Officer John Wynn.

Mr Phillip Kolvin QC informed the Committee that the Company Director & Designated Premises Supervisor, Mr Paul Henderson for the Porky Pint did not dispute any of the evidence presented on behalf of the responsible authorities and did not dispute that he had undermined the licensing objectives.

Mr James Kemp, Barrister, informed the Committee he was presenting his submission on behalf of Cleveland Police, the Licensing Authority and Trading Standards.

Mr Kemp thanked Mr Kolvin QC for being frank in relation to the admissions made on behalf of Mr Henderson. Mr Kemp noted that the Committee had read the representations and did not propose to take his witnesses though their statements.

Mr Kolvin QC stated that Mr Henderson had taken a deliberate decision to disobey the law to which he conscientiously objected. It was accepted that Mr Henderson had broken the law and that he had done so after warnings.

Mr Kolvin QC referred the Committee to Mr Henderson's witness statement contained within the Agenda pack.

Mr Kolvin QC stated that Mr Henderson acted out of a duty to challenge the implementation of the laws which he believed penalised small businesses in a disproportionate manner.

Mr Kolvin QC submitted that the only disagreement was what sanction should be imposed. The Committee would consider what they felt to be right and proportionate.

Mr Kolvin QC noted that our liberty as citizens was about to be restored. Mr Kolvin QC referred to incidents which had occurred within Government during the pandemic including the high profile matters concerning Dominic Cummings and Matt Hancock. Mr Henderson had been perplexed as to what the rules and regulations were at any given point in time and in his view the Government had failed to publish a proper evidence base.

Mr Kolvin QC noted that not everyone had acted properly during the pandemic. The question was what should happen to those who broke the law. Mr Kolvin QC noted that Mr Henderson had received a Penalty Notice for the breach of the coronavirus regulations. Mr Henderson had not paid this penalty notice as he wanted his day in court and, if he failed to persuade the court as to his views, then he would face the consequences and the punishment would fit the crime.

Mr Kolvin QC posed the question to the Committee as to whether Mr Henderson should be stripped of his licence to sell alcohol. Mr Henderson had no history of incidents of disorder, no underage sales and he operated with a five star food hygiene rating.

Mr Henderson had breached regulations which were soon to be repealed. The law that he had broken was introduced as a public health measure and it should

be noted that public health was not a licensing objective.

Mr Henderson was not a routine lawbreaker. He had no convictions, no history of wrongdoing and no stain on his record. He had invested heavily in this business and his character was confirmed by the character references included in the papers. Many Billingham residents had come out to support him and they very much want Mr Henderson to survive this episode.

Mr Kolvin QC noted that the Committee was not a court of morals and that shortly Mr Henderson the law breaker would become Mr Henderson the businessman and employer of local people. Mr Henderson was not an irresponsible greedy person and he acted the way he did out of personal belief.

Mr Kolvin QC submitted that if Mr Henderson retained his licence, he would be compliant. The Committee did not have to take his licence away and they should not do so.

Representations were received from persons in support of the premise. These included residents who lived within the vicinity of the premise, customers and others who stated that the premise was very well run and was highly valued by the local community. Copies of all the representations received were circulated to the Committee and all parties within the agenda papers. Additional information was also circulated prior to the hearing.

Resident Peter Bumstead attended the meeting to speak on behalf of Sarah Morgan who had made a representation. Mr Bumstead stated that Mr Henderson was an upright citizen and he implored the Committee to consider very carefully the outcome of this review.

All parties present were given the opportunity to sum up their case.

Mr Kemp noted that up until the incidents which had led to the review, The Porky Pint was a well-run premise which was well received in the local community. Mr Kemp stated that was precisely why it made it all the more painful as to why the review procedure was commenced.

When an individual receives a licence, it is not up to them to pick and choose which parts of the law they will comply. Mr Henderson was the sole director and controlling mind of the Porky Pint Limited. Mr Henderson broke the law deliberately and stated he was a conscientious objector. It was accepted that all citizens had the right to demonstrate but the law was there for a reason and was required to control its citizens especially during a pandemic. Mr Kemp noted that Mr Henderson at paragraph 51 of his statement (contained within the Agenda pack) stated "I know and appreciate that coronavirus is a transmissible virus that has taken on pandemic proportions". The elderly and infirm have suffered the greatest. Providing protection required the controlling of others. It may well be that those who attended the Porky Pint were unwell for a few days but that was not the point, as it is then a question of who they would pass the virus onto. That appeared to be a fundamental misunderstanding of Mr Henderson. He did not seem to appreciate who they would infect.

Mr Kemp stated that you may have your own personal beliefs, but you do not weaponise the licence that has been bestowed upon you. Civil disobedience

does not allow a person to go to extremes. There were ways and means of challenging such as Judicial Review. Lord Sumption had been a vocal advocate against the regulations and Sacha Lord, the night-time economy adviser for Greater Manchester had also taken the government to court to challenge their stance.

Mr Kemp submitted that there was no contrition, there was no I'm sorry and no, I won't do it again. Mr Henderson was still protesting and not only was he putting his patrons at risk but his own members of staff.

Mr Henderson had had numerous warnings and letters. Prohibition Notices, Penalty Notices, Review Proceedings, and he still did not comply. Mr Kemp submitted that revocation was the appropriate sanction given the circumstances.

Mr Kolvin QC on behalf of Mr Henderson stated that there was no evidence that the premise was badly run, there was no record of disorder or underage sales. The premise was well run, well received in the local community, and employed local people.

The world of criminal law was said to be backward looking but the licensing regime was forward looking, the question was what happens next. The Country was at a critical juncture moving from restriction to liberty. The Committee must consider whether Mr Henderson could be trusted in the future. Mr Henderson's actions were not a breach of the licensing act. There was no reason to believe that he would not comply with the licensing act should he keep his licence.

The statutory guidance was clear that the Committee should consider all the powers available with revocation been the ultimate sanction. These were extraordinary circumstances and Mr Henderson did not wish to appear before the Committee again.

The Members of the Statutory Licensing Sub Committee carefully considered those matters brought before them and, in reaching their decision, had regard to their powers under the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the relevant paragraphs of the Guidance Issued under Section 182 of the Licensing Act 2003 (as amended) and the Council's Licensing Policy.

The Committee noted that Mr Kolvin QC had confirmed that he did not dispute any of the evidence presented by the responsible authorities. The Committee noted the following: -

Mr Henderson had broken the law, specifically breaches of the Coronavirus Regulations on three occasions. There was evidence that other breaches may also have occurred.

Mr Henderson was issued with a Prohibition Notice under the Coronavirus Regulations and he had wilfully failed to comply with the requirements of that notice.

Mr Henderson was issued with a Penalty Notice under the Coronavirus Regulations which he had chosen not to pay, as is his right, claiming he wanted

to be prosecuted before the Magistrates Court for the breach.

On more than one occasions Mr Henderson had failed to comply with his licence conditions when requested i.e. in relation to the request for CCTV. This failure had continued after the review proceedings had commenced and after the adjournment of the first hearing of the 19th May 2021.

Mr Henderson had received advice and guidance both orally and in writing from responsible authorities as a stepped approach to enforcement to try and ensure that he acted in a compliant way. Mr Henderson wilfully failed to follow this advice and guidance.

The Committee had regard to the statutory guidance issued under section 182 of the Licensing Act and in particular the paragraphs in relation to the review of premise licences.

The Committee noted a premise licence holder must ensure that the promotion of the four statutory licensing objectives was always a paramount consideration. Mr Henderson had failed in this responsibility.

Mr Paul Henderson was the sole director of the Porky Pint Limited. Mr Paul Henderson was the Designated Premise Supervisor for the Porky Pint.

The Committee noted that Mr Kolvin QC had been frank in stating that he had no clever legal arguments to put before the Committee. None of the evidence was disputed and Mr Kolvin QC did not ask any questions of the witnesses. Mr Kolvin QC accepted that Mr Henderson had broken the law and that the licensing objectives had been undermined. The Committee noted that reference had been made to the fact that public health was not a licensing objective in its own right, however the Committee were satisfied that in particular the licensing objectives of Crime and Disorder and Public Safety were engaged and relevant to the evidence presented.

The Committee noted and gave credit to Mr Henderson that up until the matters which led to this review, The Porky Pint had been run in a responsible manner and did not have a disciplinary history. The responsible authorities had not had cause for concern as to how the premise had operated since its opening.

Since the review proceedings had been commenced, Mr Henderson and his legal representatives had not taken any steps to engage and negotiate with the responsible authorities to try and reach any agreed position. In most reviews the Committee noted that the legal representatives for the parties would seek to engage constructively and attempt to find common ground in order to reach an amicable agreed solution to the issues which led to the review, this had not taken place here. One of the key submissions from Mr Kolvin QC was to suggest that Mr Henderson's licence should not be revoked and, if the Government were to lift all COVID restrictions then Mr Henderson would go back to running a responsible business.

The Committee had regard to the powers available to them when considering what action, if any, to take under the premise licence review process.

- The Committee could take no action. The Committee viewed the behaviour

and actions of Mr Henderson to be extremely serious. The Committee were not persuaded that Mr Henderson had any understanding or awareness as to why the manner he had acted during a time of national emergency was totally inappropriate.

- The Committee could attach further conditions to the licence, the Committee did not feel that this was a case where additional conditions were appropriate to remedy or address the behaviour of Mr Henderson.
- The Committee could remove Mr Henderson as the Designated Premises Supervisor. The Committee considered this but were of the view that that this would not be appropriate given that Mr Henderson remained as the sole director and controlling mind of the Porky Pint Limited.
- The Committee could suspend the licence. The Committee would normally take this course of action if the premise needed to take steps to remedy an issue at the premise. The Committee did not believe that there was a specific issue or issues which a suspension could resolve; or
- The final and ultimate sanction is the revocation of the Premises Licence. This is not a step that the Committee takes lightly and would only be taken in relation to matters which they deemed to be serious breaches of the licensing objectives. The Committee acknowledged that the premise was valued in the local community. In the Committee view Mr Henderson had not given any thought to the community when he had acted in the manner which he did. On the contrary Mr Henderson's actions in refusing to comply with the Coronavirus regulations had the potential to be hugely detrimental to his customers, their families and friends, work colleagues and the wider community of Billingham and the Borough.

The Committee concluded that there were two distinct elements to the actions of Mr Henderson: -

Mr Henderson's deliberate and wilful actions in failing to comply with the Coronavirus Regulations. This was aggravated by the fact that he had done so during a state of national emergency in the COVID pandemic when in excess of 120,000 people had lost their lives. It would not be possible to show that Mr Henderson's actions in operating his premise had led to a spike in coronavirus cases in the Borough, however restrictions were implemented by the Government in order to protect the population of the country and to ensure the NHS would not be overwhelmed. It appeared that Mr Henderson gave no thought to that and engaged in a social media inspired movement 'The Great Reopening' to undermine the efforts been made to control the virus. Mr Henderson posted on Twitter encouraging 'The Great Reopening', stating he was opening his premise and that he hoped hundreds, or thousands would become involved. Mr Henderson gave no thought to whether his customers or staff would spread the virus to more vulnerable members of society. Mr Henderson gave no thought to whether his actions would lead to serious illness or death. Mr Henderson gave no thought to whether his actions would lead to key workers becoming sick or having to isolate and the subsequent impact that would have.

The Committee noted the submissions made on behalf of Mr Henderson that he had the right to take a stand of conscience and to protest. Mr Kolvin QC had likened Mr Henderson's stance to that of the suffragettes. The Committee noted that the cause pursued by the suffragettes did not have the potential to lead to the hospitalisation or death of members of the local community or further afield.

Mr Henderson's behaviour was aggravated by the fact that he had continued to operate his business in a manner which failed to comply with guidance on COVID safety requirements. This had continued since the commencement of the review process and after the adjourned hearing held on 19th May 2021. This was detailed in the additional statement of Licensing Officer Mr Wynn which noted that further intelligence had been received. Mr Wynn then visited the premise on 22nd June 2021. Following the visit Mr Wynn made a request for CCTV footage to be provided in accordance with the premise licence conditions. Mr Henderson refused to provide the CCTV footage as requested.

The second element of Mr Henderson's actions and behaviour was his deliberate and wilful refusal to comply with a condition on his premise licence. Officers acting in the course of their duties had, on more than one occasion, made formal requests to Mr Henderson for him to provide CCTV footage from his premise. The Committee noted the CCTV condition on Mr Henderson's licence. Mr Henderson had failed to comply with this condition. Mr Henderson had also failed to comply since the commencement of the review process and following the visit to the premise undertaken by Mr Wynn on 22nd June 2021.

The Committee viewed this as a separate matter to Mr Henderson's alleged coronavirus regulations protest. It was submitted that Mr Henderson was a responsible licence holder who had not had cause previously to trouble the licensing authorities and would not do so in the future if he retained his premises licence. The Committee were not persuaded by this assurance given Mr Henderson's deliberate failure to comply with request from the licensing authority and him acting in a manner to frustrate their regulatory role.

The Committee noted and took into consideration the representations received in support of Mr Henderson and the premise. More than 40 representations had been received from residents and others who supported Mr Henderson and the premise. These included character references praising Mr Henderson and comments showing that the premise was valued by the local Community. The Committee noted that it was very sad that the local community would lose out if the premise licence was revoked and the premise closed.

The Committee noted that the pandemic had not ended, and case numbers were continuing to rise especially in the North East, albeit the number of hospitalisations did not appear to be increasing. The Committee were not persuaded that Mr Henderson had an awareness of the impact of his actions or that he would not continue to act in such a reckless manner and undermine the licensing objectives in future. Furthermore, even during the review process and since the last hearing had been adjourned, Mr Henderson continued to flaunt requirements as a business to operate in a COVID safe manner as detailed in the additional witness statement of Mr Wynn. Mr Henderson also continued to act in breach of his licence conditions by refusing to provide CCTV when requested by the licensing authority. The Committee were not persuaded that Mr Henderson would act in a different way should there be any further

lockdowns or restrictions imposed in the future. Despite the assurances provided by Mr Kolvin QC on behalf of Mr Henderson these were not persuasive.

The Committee took this matter extremely seriously and were satisfied that this was a case where revocation of the premise licence was a necessary and appropriate sanction. After considering and weighing up all the evidence and submissions made by the parties to the hearing the Committee resolved to revoke the premises licence.

RESOLVED that the Premise Licence for The Porky Pint, 40 Mill Lane, Stockton on Tees, TS23 1HF be revoked for the reasons as detailed above.