

IN THE TEESSIDE MAGISTRATES' COURT

BETWEEN

THE PORKY PINT LIMITED

Appellant

– and –

STOCKTON ON TEES BOROUGH COUNCIL

Respondent

JUDGMENT

Introduction

1. Mr Henderson, as the owner of The Porky Pint, appeals to the Magistrates' Court under s.183 Licensing Act 2003 and Schedule 5 against a decision of the Licensing Committee of the Respondent on 6 July 2021.
2. In these proceedings, the Appellant is represented by Mr Oakley, counsel. The Respondent is represented by Mr Kemp, counsel.

Background

3. The Porky Pint at 40 Mill Lane, Billingham, TS23 1HF had a Premises Licence as outlined at page A21. It is not clear from the bundle provided as to the length of time that the licence had been in existence. This licence allowed the supply of alcohol for consumption on the premises between 10am and 11pm. Mr Henderson was named as the Designated Premises Supervisor.
4. On 11 February 2021, Acting Sergeant 894 Thorpe of Cleveland Police applied to the Local Authority for a review of the Premises Licence (A14). Further representations were received from Trading Standards (B1) and the Licensing department (B21, B36 and B41). In addition, a large number of interested parties contacted the Committee and provided letters and e-mails of support (B42 to B86).
5. As well as representations, there were a number of witness statements which were considered by the Committee:
 - a. A Sgt 894 THORPE (C1)
 - b. PC GLOVER (C7)

- c. SC 4753 WILLIAMS (C9)
 - d. DC 2255 YAU (C10)
 - e. John WYNN, Licensing Officer (C13, C15 and C19)
 - f. Paul HENDERSON, Appellant (C22)
 - g. Jeremy MCMURRAY, personal reference for Appellant (C35)
 - h. Leanne MALONEY-KELLY, Licensing Team Leader (C37)
6. Finally, there were a number of Storm Incident Reports (D1-27a), further correspondence between Mr WYNN and Mr HENDERSON regarding the provision of CCTV (D28-46) and some further exhibits which Mr HENDERSON purported to provide (D56-80). I have also considered these documents.
 7. At the hearing on 6 July 2021, Mr HENDERSON was represented by Mr KOLVIN QC and the Respondent was represented by Mr KEMP.
 8. The notes from the hearing at A33 show that Mr Henderson accepted that he had taken a deliberate decision to disobey the law and he accepted that he had broken the law. The only disagreement was what sanction should be imposed. The committee noted that Mr Henderson up until this review had run the Porky Pint in a responsible manner without any disciplinary history. However, they said that Mr Henderson and his legal representative had not taken any steps to engage and negotiate to reach an agreed position. The committee found that revocation of the licence was justified as these were serious breaches of the licensing objectives. Mr Henderson, in their view, had not given any thought to the community when he acted in the manner in which he did. They found two distinct areas which were relevant: (1) deliberate and wilful actions in failing to comply with the coronavirus regulations and (2) a deliberate and wilful refusal to comply with a condition on his premises licence, namely a failure to provide CCTV when requested.
 9. Mr Henderson exercised his right to appeal the decision of the Licensing Committee to the Magistrates' Court where I heard evidence and submissions on 15 March 2022.

The Law

10. The Licensing Act 2003 ("the Act") provides the statutory framework.
11. The Act details the general duties of Licensing Authorities and by s4(1) a licensing authority must carry out its functions under this Act (licensing functions) with a view to promoting the licensing objectives.
12. By s4(2) the licensing objectives are (a) the prevention of crime and disorder (b) public safety (c) the prevention of public nuisance and (d) the protection of children from harm.

13. By s4(3) in carrying out its licensing functions a licensing authority must also have regard to (a) its licencing statement published under section 5, and (b) any guidance issued by the Secretary of state under s182 of the Act.
14. By s18 of the Act it is open to a licensing authority to attach such conditions to a premises licence as it considers necessary for the promotion of the licensing objectives.
15. Section 51 provides that a responsible authority or any other person may apply to the licensing authority for a review of the licence.
16. Section 52(2) states that the authority must hold a hearing to consider the application along with any relevant representations. The authority must have regard to the application and any relevant representations and can then take any of the following steps:
 - a. Modify the conditions of the licence
 - b. Exclude a licensable activity from the scope of the licence
 - c. Remove the designated premises supervisor
 - d. Suspend the licence for a period not exceeding three months
 - e. Revoke the licence
17. S181 and Schedule 5 of LA 2003 provides for appeals against decisions of licensing authorities. By S181(2) on appeal in accordance with schedule 5 against a decision of a licensing authority, a magistrates' court may (a) dismiss the appeal (b) substitute the decision appealed against for any other decision which could have been made by the licensing authority (c) remit the case to the licensing authority to dispose of it in accordance with the directions of the court.
18. The Secretary of State has made procedural regulations in respect of the applications for premised licenses in the form of the Licensing Act 2003 (Premises Licences and club premises certificates) Regulations 2005. ("the 2005 regulations").
19. At paragraphs 1.9 and 13.8 the s182 guidance reiterates the statutory provision requiring the Licensing Authority and the Court in hearing an appeal to have regard to the relevant statement of licensing policy and the s182 guidance. I am entitled to depart from either if I consider I would be justified in doing so because of the individual circumstances of the case. I am entitled to find that the licencing authority should have departed from its policy or the s182 guidance because the particular circumstances would have justified such a decision. If I do depart from the policy or the s182 guidance I should give my reasons for doing so.
20. I am satisfied that the role of this Court in this appeal is as set out in R (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2011] EWCA Civ 31 and R (OTA

Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2009] EWCA 1996 (Admin).

21. In accordance with the decision of Hope and Glory and those cases that have followed it, the approach I have taken to this appeal is:
- i. The appeal at the Magistrates Court is a hearing de novo.
 - ii. I may hear fresh evidence and take into account events and matters occurring between the decision and the appeal.
 - iii. I can consider matters of law and fact.
 - iv. That evidence may include hearsay evidence.
 - v. I must form my own decision about the merits of the case. In doing so I will consider the evidence before me. I will consider the statutory provisions of the Act and the applicable policies and guidance.
 - vi. The decision I must make is whether, because I disagree with it in light of the evidence before me, the decision of the Licencing Sub Committee is wrong (even if it was not wrong at the time). The case law is clear. It is not sufficient for me to simply disagree with part or all of the decision, I must be satisfied that it is wrong.
 - vii. The burden of proof to show that the decision is wrong lies with the appellant. The standard is on the balance of probabilities.
 - viii. I should not lightly set aside the decision of the Licensing sub-committee.
 - ix. I should pay careful attention to the reasons given by the licensing authority for arriving at their decision under appeal. The weight I should ultimately attach to those reasons is a matter of judgement in all the circumstances of the case.

Witnesses

22. In order to understand the appeal fully, I decided (with the consent of the parties) that the Respondent should outline their case first and I heard from four witnesses: A Sgt Thorpe, James Jones, Leanne Maloney-Kelly and John Wynn. I allowed each witness to confirm their statement as their own and that it was true to the best of their knowledge and belief. To that extent, the statement stood as their evidence in chief and they were each cross-examined. Other statements have been provided by the Respondent and those witnesses have not been required to attend. I have considered those statements as uncontested evidence.
23. A Sgt Thorpe was not directly involved in the observation of any of the alleged incidents at the Porky Pint. He attended for the request of the CCTV. PC Thorpe accepted that the definition of a breach of coronavirus regulations would not satisfy the "serious crime" test

as outlined s.83(2) and (3) of the Regulation of Investigatory Powers Act 2000. A Sgt Thorpe conceded that Mr Henderson had hitherto been a “model publican” and there had been no issues with the Porky Pint before. He accepted that he did not request a closure order or anti social behaviour injunction.

24. James Jones was the Trading Standards Manager. Mr Jones outlined the incidents which were reported to him or which he observed himself in his representations at B2. He assisted in the question of whether Mr Henderson should have been prosecuted for alleged coronavirus regulation breaches. He stated that the public interest test was not met as he was aware that this review had already begun into the Premises Licence. I accepted his evidence that since the aim was compliance with the licence conditions and coronavirus regulations, it is unlikely that the public interest would support prosecuting Mr Henderson as well as reviewing his licence. Given Mr Henderson’s comments to Ms Maloney-Kelly at page B22 where he outlines his views on the validity of the global pandemic, the honesty of the Government and the mainstream media and his disbelief in official statistics as well as being aware of legislation which he believed allowed him to resume restricted services from the premises, it would be clear that any prosecution for breaching regulations would likely result in trials being listed in the criminal courts and further costs being incurred.
25. Leanne MALONEY-KELLY was the Licensing Team Leader. Again, it was put to this witness that she didn’t consider that the matter was serious enough to warrant a closure order or an injunction. Ms Maloney-Kelly explained to me that she was operating the “4 E’s” system – Engage, Explain, Encourage and Enforce. She explained that she viewed the matters as serious but, in the early stages, she focussed on engaging with Mr Henderson in order to explain the position in the hope that he would comply with the regulations and his licence. I accept this position. Considering the chronology, it appears that a large amount of engagement took place before the review was considered. A warning letter was issued to Mr Henderson (B5) on 13 November 2020. When this was unsuccessful, a prohibition notice was issued on 23 November 2020 (B7). Following a longer period without any reports of incidents, an incident on 30 January 2021 resulted in a fixed penalty notice being issued on 9 February (B19). This was preceded by a telephone call and further warning letter on 29 January 2021 (B25). Mr Oakley sought to suggest to all of the witnesses that they were not taking these matters particularly seriously and did not perceive Mr Henderson’s actions to be serious given the lack of action. I do not accept this. In my view, the witnesses were attempting to engage with Mr Henderson before

moving to a final stage of enforcement which came via the fixed penalty notice and review of the licence.

26. The final witness was John WYNN, licensing officer. Again, it was suggested to him that he was of the view that this was not serious given the lack of action on his part. He was in consultation with Mr Henderson regarding the provision of CCTV. He didn't consider the issuing of a closure notice or the request for an injunction. I accepted his evidence when he confirmed that he didn't have the authority to do this in any event. Any decision would have been taken by his manager, Ms Maloney-Kelly.
27. Overall, I took the view that the witnesses for the Respondent were taking these allegations seriously. I accept that they were seeking to engage Mr Henderson initially and encourage him to comply with the rules in force at the time. When they felt that there was no other option as the options had diminished, a fixed penalty was then issued and a review of the licence was undertaken. As I have already explained, I accept the evidence as to why any prosecution for alleged breaches of the legislation did not commence.
28. I found Mr Henderson's evidence more difficult to accept. At the committee hearing, Mr Henderson (through Mr Kolvin QC) purported to accept all of the evidence against him and accepted that he had broken the law. He also accepted that he undermined the licensing objectives. Yet, in the witness box, Mr Henderson told me that he broke the regulations only in so far as he did not post track and trace QR codes as he would be in breach of data protection rules and he did not positively encourage the wearing of face coverings. He stated that he does not accept the evidence in the bundle. He doesn't accept that he undermined the licensing objectives. Mr Henderson, in my view, could not adequately explain why Mr Kolvin QC took this view at the committee hearing. In my view, Mr Kolvin QC can only have outlined this to the committee as these were his instructions from Mr Henderson. Mr Henderson appeared to me to be an articulate individual who clearly has his own thoughts on the regulations and whether they should be in force. I am satisfied that if Mr Kolvin QC was not acting in line with his instructions, Mr Henderson would have raised this with the committee himself.
29. Indeed, the fact that Mr Henderson appeared to accept his actions broke the law is supported by his own witness statement where he states at paragraph 47 "I would like to say at the outset that I am advised and accept that I have broken the law" (C28) and at paragraph 70 "my stance was a conscientious act" (C32). In my view, Mr Henderson was evasive when answering questions in front of me at this hearing. He often gave careful answers which did not answer the question given, i.e. when Mr Kemp asked if he agreed

with a given statement, he answered on more than one occasion that he accepted that the bundle contained that given statement rather than directly answering the question.

Findings of fact

30. On 15 October 2020, information was received to suggest that there was a lack of COVID control measures at the Porky Pint. This was a complaint received into Environmental Health and passed to Trading Standards. As I cannot ascertain the source of the information, I cannot be satisfied that there was a lack of control measures but I am satisfied that the complaint was made. I accept the evidence from Mr Jones that he spoke to Mr Henderson who said that customers are free to choose whether to wear face coverings and/or provide the track and trace information.
31. On 30 October 2020, a complaint was received by the Public Health team which was passed to Mr Jones at Trading Standards that a wedding reception was taking place. Whilst this is hearsay, Mr Henderson accepted in his evidence that this took place. On 30 October 2020, Stockton-on-Tees Borough Council came within the Tier 2 area for the purposes of the coronavirus regulations. Under these regulations, meetings of 2 or more persons were prohibited indoors. However, para 4(10) allowed an exception for a wedding reception whereby a reception could be held provided it did not consist of more than 15 people.
32. On 7 November 2020, Mr Wynn entered the Porky Pint in order to buy a takeaway sandwich. He was asked if he wanted a pint and he noticed others sat with alcoholic drinks. Mr Henderson cannot assist with this as he says that he was not present. In my view, this was against the coronavirus regulations as they were then in force. On 5 November, the 4th set of regulations came into force and required public houses to close. The sale of food or drink including alcohol was allowed under Regulation 17 provided it was off the premises. It was clear that alcohol was not being consumed off the premises resulting in breach of the relevant regulation.
33. On 12 November 2020, the Porky Pint was open and serving alcohol. A report was made via a Storm report (D12) reporting that 10-15 young lads were in the bar and the manager was not wanting to close. This report is supported by the uncontested evidence of PC Glover (C7) who attended the pub on 13 November and saw a TV screen showing sports as well as 6 males drinking alcoholic beverages. Staff members were serving hot food. PC Glover was told by the staff member that she had been told to remain open and provide "Paul's" number if the police attend. Mr Henderson accepts that he spoke to PC Glover and told her that he was not required to shut. He believed that track and trace as well as

social distancing was a breach of his human rights. A warning letter was issued to Mr Henderson (B5).

34. On 20 November 2020, Polly Edwards, licensing officer, attended the pub where officers were already in attendance. Mr Henderson spoke to the officers and told them that he didn't believe in coronavirus. 5 individuals who were drinking alcohol were removed from the premises with a fixed penalty notice issued to one of them. The Storm report at page D26 confirms that Mr Henderson was obstructive to the officers and attempting to get in between the officer and one of the individuals. Whilst Mr Henderson explained that he challenged the officers for their authority to be present on the premises and denied saying that he didn't care about the council being notified or that he would continue to serve customers, I did not accept this evidence. Mr Henderson has never outlined this incident before. It was not mentioned at the committee hearing or in his witness statement. He has chosen not to provide this evidence until the hearing before me. I did not accept his account. A prohibition notice was then issued.
35. On 28 January 2021, Mr Henderson outlined plans via Twitter to open on 30 January (D24). At this point, the country had progressed to the "All Tiers" regulations. All areas of England were in Tier 4 from 6 January 2021. In effect, this continued the previous No 4 restrictions regarding closure of public houses with the exception that sale of food/drink for consumption off the premises was now no longer allowed. According to his Twitter post, Mr Henderson hoped that hundreds or thousands would attend. Ms Maloney-Kelly spoke to Mr Henderson and I am satisfied that the content of that conversation is outlined in her letter at B25 which was sent very close to the date of the telephone conversation. Mr Henderson said that he disbelieved official statistics, had views on the honesty of the Government and validity of the pandemic as well as being aware of legislation which allowed him to resume services.
36. On 30 January 2021, Mr Wynn and DC Yau attended the Porky Pint. He found people in the public house with glasses of alcohol and other drinks. Mr Henderson stated that he was hosting a vulnerable support group and business meetings for potential stakeholders. I am satisfied that Mr Henderson was not holding such meetings on 30 January. This is because
 - a. Individuals were drinking alcohol inside the premises
 - b. The Twitter post said that Mr Henderson wanted hundreds or thousands there. This seems very unlikely if he is concerned about helping vulnerable individuals and thinks that providing a very congested meeting will help such individuals

- c. Mr Henderson was opening as part of “The Great Re-opening”. A document with the same title informs individuals can “circumvent [current legislation] to re-brand your business to one deemed as essential” (B12). The section includes a suggestion to deem a business as an essential ‘business meeting space’.
 - d. When PC Yau spoke to an individual about the reason for his attendance, he replied that he was there for business advice. When informed that Mr Henderson said he had potential stakeholders in the pub, the individual changed his reason to match this.
37. For these reasons, I am satisfied that the business was not open for business meetings or running vulnerable support groups. The evidence leads me to conclude that the pub was open to trade as a public house.
38. In relation to the 22 June 2021 when it is said that Mr Wynn entered the pub and observed staff and customers not wearing face coverings, there is insufficient evidence to be able to determine that conduct should be taken into account. The coronavirus regulations covering the wearing of face coverings required people to wear face coverings in certain settings. There is a list of non-exhaustive reasonable excuses at regulation 4. Without further information, I cannot state that these individuals did not have a reasonable excuse. Indeed, I cannot be satisfied of their characteristics. Nothing was put before me to suggest that Mr Henderson had a legal duty to ensure that people were wearing face coverings – it appears that the regulations require a person to comply individually. Mr Henderson stated to Mr Wynn that his staff “did not have to wear face coverings”. Without more information, I can’t say whether there were reasonable excuses applicable or not.

CCTV request

39. On 12 February 2021, Mr Wynn attended the Porky Pint public house in order to obtain CCTV. On his arrival, he spoke to a female member of staff who stated that only Mr Henderson could access the CCTV system. Mr Henderson was spoken to and he stated that he did not want to release the CCTV due to data protection. Mr Henderson stated that he was not aware of any CCTV conditions on his licence.
40. Mr Henderson stated in his evidence that it is not correct to say that no-one was available to provide the CCTV. He said that the female member of staff was likely to be scared to provide it. He also reiterated that, in his view, he could not release it due to data protection issues.

41. Firstly, I do not accept Mr Henderson's evidence that the member of staff was scared. No adequate explanation was given to me as to why the staff member would be scared. Mr Henderson has also not mentioned this previously either at the committee hearing or in his written statement. I'm satisfied that the member of staff did not hand the CCTV over as there was no-one available to work the system in the absence of Mr Henderson. This constituted a breach of his licence.
42. Mr Oakley on his submissions states that there is no need for CCTV to be handed over due to the licence condition which requires there to be an allegation of "serious crime".
43. The relevant licence condition states "There will be at all times a member of staff on duty who is trained in the use of the equipment and upon receipt of a request for footage from a governing body, such as Cleveland Police or any other Responsible Authority, be able to produce the footage within a reasonable time, e.g. 24hrs routine or less if urgently required for investigation of serious crime."
44. Mr Oakley asks me to consider that the condition should read that the footage must be produced within 24 hours or less if there is a request and it is required for investigation of serious crime. He states that serious crime is outlined in the RIPA 2000 at section 83.
45. In relation to the RIPA section, section 83(2) clearly defines "serious crime" for this Act, i.e. RIPA. There is no attempt to state that "serious crime" is defined in the interpretation section for every reference to serious crime. It is only as far as RIPA extends.
46. In any event, I am not satisfied that the condition requires there to be an allegation of serious crime. To adopt the interpretation in section 83 would mean that many offences would not meet this definition, i.e. matters of drunkenness, disorderly behaviour, underage alcohol sales etc. It would also require the licence holder to assess if the allegation would result in an adult with no previous convictions receiving a custodial sentence of at least three years before deciding whether to disclose. This would be a near impossible task for a lay person without relevant legal experience. It would also render useless the term "routine" as it would not be needed. Whilst I agree with Mr Oakley that the phrase is rather messy, my interpretation of this condition is that a request for CCTV must be met within 24 hours as routine. If serious crime is alleged, less than 24 hours is appropriate. This would particularly be appropriate in cases where an allegation is made against an individual in police custody for whom a 24 hour time limit applies.
47. I also do not accept that Mr Henderson would be unable to provide the CCTV for data protection reasons. If this was so, no licence holder would be able to provide CCTV as, unless the public house was very unsuccessful, one would expect patrons to appear on

the CCTV at some point. As a licence holder, it should be expected that signs are displayed explaining that CCTV is in use and may be provided to the police or authority on request. I accept the proposition from Mr Kemp that CCTV from a football match would never be able to be used if data protection laws were interpreted in the way I am invited to consider.

48. As a result, I am satisfied that Mr Henderson's refusal to hand over CCTV was unsustainable and his refusal constitutes a further breach of his licence.

Human Rights

49. Mr Oakley asked me to consider a number of human rights issues outlined in his skeleton argument.

50. I accept that section 6 Human Rights Act 1998 requires me (as it required the licensing committee) to ensure that I am not acting in a way which is incompatible with a Convention right.

51. Mr Oakley submits that there is unlawful interference with Mr Henderson's Article 6 rights. He states that this is because Mr Henderson was denied a fair and public hearing with regard to his fixed penalty notice which he did not pay. I accept that the issuing of a fixed penalty notice does not have an appeal process but Mr Henderson was at liberty to refuse to pay the notice, which he did, and leave himself open to prosecution for the offence. The Local Authority and police chose not to prosecute Mr Henderson for any alleged breaches of coronavirus legislation. For the purposes of my decision today, I cannot see how Mr Henderson's Article 6 rights have been interfered with. The decision not to prosecute means that Mr Henderson does not have to pay his fixed penalty notice and does not need to attend court in order to answer any summons, where he would have a fair and public hearing. In any event, Article 6 (2) and (3) rights centre round criminal offences. I am not dealing with criminal offences in this appeal and my findings do not find anything proved to a criminal standard. Mr Henderson's Article 6(1) rights in this appeal have been preserved by ensuring that he has enjoyed a fair and public hearing before this court.

52. The fact that Mr Henderson has not been convicted of an offence to the criminal standard does not mean that I cannot rely on such evidence in determining this matter as was accepted in final submissions relying on R v Crown Court at Maidstone ex parte Olson [1992] COD 496.

53. Mr Oakley also asks me to consider that Mr Henderson's Article 1 Protocol 1 rights have been interfered with as "every natural or legal person is entitled to the peaceful

enjoyment of his possessions” and “No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law”. The point was not argued in detail in front of me but Mr Oakley relies on *Tre Traktörer Aktiebolag v Sweden* EWHC (10873/84) to support the proposition that a company enjoys the protection of the Human Rights Act (or at least human rights legislation in Sweden). In any event, I am satisfied that there has been no unlawful interference with Article 1 Protocol 1 rights. The submission is made that the Regulations do not mandate the possibility of revocation of the rights to peaceful enjoyment. They do not but it is the Licensing Act which I am concerned with in this appeal. Section 52(2) of that Act clearly outlines that on a review of the licence, it is open to an authority (or court on appeal) to revoke the licence. Porky Pint Limited are entitled to a licence which has previously been granted up to the point that a review is undertaken. If sufficient reasons are given for revoking the licence, this will satisfy the public interest test. This is in accordance with the law and satisfies the Protocol 1 right. Therefore, provided I am also satisfied that it is in the public interest weighing up the competing interests, any deprivation of the licence is lawful.

54. The remainder of the arguments contained within the skeleton argument are not matters for this court to consider. That is because they do not suggest that a convention right has been interfered with which would enable me to consider it due to section 6 HRA 1998. Mr Oakley accepted in his closing submissions that this court cannot consider the provisions of section 4 HRA 1998 in determining whether legislation (either primary or secondary) is compatible with convention rights. No declaration of incompatibility has been brought to my attention regarding the Licensing Act or the relevant coronavirus regulations. In my view, arguments that the relevant coronavirus regulations in place at the time were either disproportionate, made outside of the parameters set out in primary legislation or made when the Secretary of State could not justify them are arguments to be had in the High Court via judicial review proceedings of the regulations themselves, not the magistrates’ court.

Licensing objectives

55. Of the four licensing objectives, it is clear that two of them do not fall to be considered in this appeal: prevention of public nuisance and protection of children from harm. A Sgt Thorpe accepted that and Mr Kemp has not sought to argue against this. In my view, I have to consider the prevention of crime and disorder as a relevant objective. Breach of the coronavirus legislation was at the time a criminal offence, punishable on summary

conviction to a financial penalty. The breach of the CCTV licencing condition also means that I need to reconsider the crime and disorder objective.

56. In relation to public safety, Mr Oakley argues that public health cannot fall into this category as a result of para 2.7 in the s.182 guidance. Mr Kemp argues that this guidance is only guidance and was produced before the coronavirus pandemic occurred so needs to be read in light of that.

57. Paragraph 2.7 states:

“Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above.”

58. In my view, public safety can incorporate the transmission of coronavirus. The guidance clearly states that licence holders have a responsibility to ensure the safety of those using their premises. The transmission of a virus in circumstances where it was necessary to bring into force specific regulations and in circumstances where there was no known cure or effective treatment when these incidents started in 2020 means that the safety of others using the premises must be considered. The guidance goes on to state that physical safety includes the prevention of other immediate harms – in my view, this would also include the transmission of coronavirus.

Conclusions

59. In my view, the conduct of Mr Henderson and the Porky Pint public house was serious at the time. Mr Henderson had no intention of complying with the relevant legislation regarding coronavirus regulations and “lockdowns”. Mr Henderson outlined in his witness statement that he worked closely with the local police and licensing when he worked as a SIA door supervisor and developed a deep and lasting respect for them as well as an appreciation of the difficult jobs they did. Mr Henderson also gave an outline in that statement of the work he undertook in a lengthy career. During this time, Mr Henderson states that whenever he challenged national governments, corporations and institutions on behalf of others, he did so within the context of an overriding respect for legal rules. This is not supported by his witness statement where he states that he accepted that he broke the law on the occasions outlined to me. It is clear to me that Mr Henderson has

firm views about the coronavirus and does not believe that the current Covid-19 outbreak is one which justifies the measures put in place. Neither does he accept that it is a serious transmissible disease.

60. The country has moved on from the previous position where lockdown measures were necessary and in force. Now, the country enjoys a position where almost all restrictions have been lifted in relation to COVID-19. But I have to consider the position as it was when Mr Henderson was running the Porky Pint in 2020 and 2021. I can consider new evidence which was not before the committee – I have done so by listening to Mr Henderson’s evidence in the witness box – but I can only change the decision of the committee if I am satisfied that it was wrong (even if it was not wrong at the time).
61. I would also add that Mr Henderson has held responsible positions in his career which is outlined in his witness statement. And until these incidents has run his public house without any incident occurring. Indeed, A Sgt Thorpe says that he is a “model publican”. I also consider that he is well respected in the area of Billingham given the number of statements in support which have been provided in these proceedings.
62. Mr Henderson has been described in these proceedings as a conscientious objector to coronavirus legislation. This is not a description which I would disagree with. However, as a publican, it is important that the public know that relevant rules and regulations are being followed within these establishments. Mr Henderson did not agree with the regulations so chose not to follow them – in my view, this undermines the objectives to prevent crime and disorder and promote public safety. Should a similar circumstance arise where Mr Henderson chooses to take a spirited stand against laws, I cannot be satisfied that he would overcome them and ensure that his customers and staff abide by them. Mr Henderson told me in the witness box that his stance was a political one intended to stand up for the small business owners of the country. Mr Henderson is perfectly entitled to his views on this but the correct way to hold the authorities to account for their actions is through judicial review rather than a refusal to comply.
63. The issue with the CCTV is also a significant one. A condition was put in place for CCTV to ensure that there is a deterrent for crime and to ensure that customers are protected by preventing crime particularly if individuals know that their actions will be captured on CCTV. This is undermined where the licence holder refuses to hand the CCTV over stating that there are data protection issues. In such cases, it means that Mr Henderson is unlikely to ever hand over CCTV and Mr Henderson accepted to me that he would seek to remove or change this condition on his licence.

64. Mr Henderson tells me in his witness statement that he is “a person who can be trusted to work in a responsible, mature and professional way with the licensing authority”. His actions during these incidents, his dealings with the local authority throughout this review process and his evidence before me shows that this is not the case.
65. I have considered the reasons given by the licensing committee at A38. In my view, they were detailed and explained that whilst they had considered each alternative sanction, revocation of the licence was the only one open to them.
66. For all of the reasons outlined above, I am not satisfied that Mr Henderson has shown to me that on a balance of probabilities the decision of the licensing committee was wrong. I am also satisfied that for the purposes of Article 1 Protocol 1, the revocation of the licence was proportionate and in the public interest. His appeal against the decision of 6 July 2021 by the licensing sub committee of Stockton on Tees Borough Council is dismissed.

District Judge (MC) HOOD

16 March 2022