

Between:-

Herefordshire Council

V

The Live Inn Whitbourne (Mr. Nicholas Western-Kaye)

Representations made on behalf of the Premises Licence Holder

A. APPLICATION

1. The application to review relates to the licensing objective of the “prevention of crime and disorder”.
2. The premises licence holder (PLH) and designated premises supervisor (DPS) (one and the same) has been referred for review due to an assault at the premises when the premises was open for licensable activities on 24.12.2020 at The Live Inn, Whitbourne (a licensed premises).

B. BACKGROUND

3. NWK retired and wanted a change of direction with a life in the countryside where he could become part of local community life. An opportunity arose through the premises The Live Inn in Whitbourne to experience country life in Herefordshire and become a PLH and DPS.

NWK is not able to simply retire without working as he has experienced a recent expensive divorce.

4. NWK applied for the transfer of the premises licence on 14.08.2019, following the transfer of the lease to him for The Live Inn, Whitbourne. He also applied to be specified as the Designated Premises Supervisor at the same time with immediate effect. The premises licence was ultimately confirmed as been transferred to NWK on 08.10.2019.
5. Under the premises licence, “each individual required to carry out a security activity must be licensed by the Security Industry Authority”. However, under Schedule 2 to the Private Security Industry Act 2001, para 2(6), an activity of a security operative “does not apply to the activities of a person who, incidentally to the carrying out of activities which...are not wholly or mainly the activities of a security operative, responds to a sudden or unexpected occurrence”. Under common law, a licence holder (or his/ her agent) are entitled to use reasonable force to eject a person from the licensed premise (see *Seample v DPP* [2009] EWHC 3241 (Admin)) and thought to be good law, and referred to in that case is excessive force (see *Sealey v Tandy* [1902] 1 KB 296).

C. CORONAVIRUS

6. This fledgling business was severely impacted financially by the pandemic by being closed on order of the Government.

The following sets out the key dates:-

- (a) On 20.03.2020, the pubs were ordered to close by the Government.
- (b) Restrictions were only eased on 04.07.2020 with the Chancellors' promotion of "Eat Out to Help Out" starting in August 2020.
- (c) On 22.09.2020, a 10pm curfew was introduced to the pubs.
- (d) On 31.10.2020, a 4-week lockdown started.
- (e) On 02.12.2020, a 3-Tier System was strengthened.
- (f) On 26.12.2020, the third lockdown commenced.
- (g) On 12.04.2021, the outside gardens of pubs have been allowed to open for the first time. It is hoped that indoor service will resume on 17.05.2021.

D. CRIMINAL ACTIVITY THAT AFFECTED THE LICENSED PREMISES

7. October 2019: Theft of £2,000 from wooden box and wallet from private flat above the licensed premises.

NWK secures a confession from [REDACTED] and calls 101 3 times. The promise of police officers attending is not actioned. Culprit is interviewed 10 days later and retracts confession. The Police officer in charge is [REDACTED]. NWK made an official complaint about the delay and failure to interview the chef who was present at the time of the admission to the theft made by [REDACTED].

8. March 2020: Theft of £365 taken from the till (no CCTV in the pub at this stage).
9. 13.08.2020: [REDACTED] fails to pay for £13.60p worth of drinks (placed on a tab).
10. 17.08.2020: [REDACTED] fails to pay £21.65p for drinks and consumables (placed on a tab).
11. 11.09.2020: [REDACTED] fails to pay for drinks, meals and consumables in the sum of £202.55p (placed on a tab).
12. 25.09.2020: [REDACTED] fails to pay for drinks and meals to the sum of £188.25p and is served by the barmaid, [REDACTED], and is allowed to put that on tab.
13. 03.10.2020: Theft of £350 caught on CCTV. One 15-year-old youth admits the offence (others were thought to be involved but not identified) and is diverted via a community resolution and the Crime Ref number is [REDACTED]. Officer in charge is [REDACTED].

E. FACTS OF 24.12.2020 INCIDENT

14. There were previous issues in relation to a number of youths, but in particular two, this is [REDACTED]. These two individuals had failed to pay in accordance with an agreed payment plan of £20 per week the monies that were outstanding. [REDACTED] in her statement confirms that both knew that they were barred from the pub and they had not visited the pub until the incident occurred on 24.12.2020.
15. All their friends were at the pub on Christmas Eve enjoying the festive period. Notwithstanding the barring order, they attended the pub, ordered drinks which they failed to pay for and when challenged refused to leave.
16. The incident itself is captured on CCTV.
17. 28.01.2021: Theft of two cast iron cooking pots from the front of the premises (valued approximately £200). Culprits came in pick up and removed. Caught on CCTV. Reported to the Police.
18. NWK was cautioned on 23 April 2021 for a Common Assault on [REDACTED] where the assault consists of a kick to the inner thigh. There was No Further Action in respect of any allegation in respect of [REDACTED].
19. The matter has been referred immediately for review without any warning given informally or in writing by the Licensing Officer to the DPS requiring improvement. Such warnings "are an important mechanism for ensuring licensing objectives are effectively promoted". This procedure has been completely by passed in this case. No opportunity has been given to DPS to address his approach in such a situation. Whilst it is accepted that the police can "seek a review of a premises licence on any grounds relating to the licensing objectives if problems arise relating to the performance of a DPS", this is one incident where it is submitted appropriate advice could have been given as a proportionate response.
20. There has been no meeting between the Herefordshire Licensing Officer with the DPS.

JUDITH KENNEY
JUDITH KENNEY SOLICITORS
28.04.2021