

Before Licensing Sub-Committee for Herefordshire Council

Between:-

West Mercia Police

(Applicant)

v

Nicholas Western-Kaye (PLH & DPS)

(Respondent)

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Submissions regarding Application to Review Premises Licence  
The Live Inn, Main Street, Whitbourne, WR6 5SP "The Live Inn"

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1. West Mercia Police has applied for review of the premises of The Live Inn following an incident on 24<sup>th</sup> December 2020 at the licensed premises at which the Respondent assaulted a patron.
2. The Application to Review relates to the licensing objective of the prevention of crime and disorder (see page 123 of the Agenda Pack).
3. West Mercia Police is requesting that the Committee remove the Respondent as the DPS and for him to relinquish all public facing duties during licensable hours.
- A. INCIDENT OF 24<sup>th</sup> DECEMBER 2020
4. The chronology in relation to this incident is already set out in the Submissions by the Respondent's legal representative on 28<sup>th</sup> April 2021.
5. There is 3 minutes and 59 seconds of CCTV from The Live Inn which covers the visual of what occurred on 24<sup>th</sup> December 2020.
6. In summary, this CCTV footage shows:-
  - a) Two males sitting and drinking in a room of The Live Inn, later joined by a female.
  - b) At 01.57, the door to this room of the premises is opened.
  - c) At 01.58, the male (Male 1) sitting in the seat is looking towards the doorway, presumably in conversation with a person off camera.
  - d) At 02.02, Male 1 takes a sip of his drink.
  - e) At 02.18, DPS enters from doorway with a baseball bat in his right hand.
  - f) At 02.19, DPS waves bat once.
  - g) At 02.20, DPS hits the back of Male 1 with the bat, who is still sitting.

- h) At 02.21, Male 1 stands up (still with his glass in his hand) and drops the glass and attempts to grab baseball bat off the DPS.
  - i) At 02.22, DPS moves baseball bat away from Male 1 preventing him from taking hold of the bat.
  - j) At 02.23, struggle between Male 1 and DPS with Male 1 trying to take hold of bat and DPS attempting to push Male 1 away.
  - k) At 02.25, another Male (Male 2) joins in in attempting to take the baseball bat from DPS
  - l) At 02.26, struggle between all three males.
  - m) At 02.34, DPS attempts to pull the baseball away from the two males who are attempting to take the bat off him.
  - n) At 02.35, a third male (Male 3) attempts to take bat from DPS.
  - o) At 02.38, DPS punches at Male 1 with his right hand, which catches him on the side of head.
  - p) At 02.41, DPS punches out again at Male 1 with his right hand. This does not connect.
  - q) At 02.42, Male 3 grabs hold of DPS' right hand.
  - r) At 02.43, Male 1 grabs hold of DPS' right hand.
  - s) At 02.44, Male 2 and Male 3 are still attempting to take the bat from DPS. Male 1 still has hold of DPS' right hand.
  - t) At 02.59, Male 1 releases DPS' right hand.
  - u) At 03.01, Male 2 pulls DPS towards him by pulling the bat, which DPS still has hold of.
  - v) At 03.02, Male 2 and Male 3 continue to try to take bat from DPS.
  - w) At 03.11, two females attempt to intervene.
  - x) At 03.19, DPS kicks Male 2 with his left leg to the upper part of Male 2's right leg.
  - y) At 03.20, DPS continues to hold onto bat and is struggling with Male 2, Male 3 and another female.
  - z) At 03.32, Male 2 lets go of bat and walks away. Male 3 and female are still holding onto the bat, as is the DPS.
  - aa) At 03.54, DPS lets go of bat, which Male 3 and female have hold of.
  - bb) At 03.58, Male 3 walks off with the bat further into the premises.
7. Male 1 and Male 2 are patrons of The Live Inn, who have an outstanding bill at the premises and a member of staff has served these patrons in contravention of the direction from the DPS that these patrons should not be served further until the outstanding bill has been discharged.
  8. The DPS was not working on that evening and was upstairs in his accommodation above the licensed premises.
  9. The summary of this incident was that:
    - (a) DPS was informed that Male 1 and 2 were drinking in the licensed premises having been served by one of the bar staff.
    - (b) DPS came downstairs with a baseball bat. He brought the baseball bat downstairs as he believed that there would be "trouble" in either getting Male 1 and 2 to pay or removing them from the licensed premises if they did not.

- (c) DPS opens the door to the room where Male 1 and 2 were seated. There is a discussion between Male 1 and the DPS. DPS asked Male 1 and 2 what they were doing there. Male 1 states that they were "having a drink in our pub". DPS stated that it is not their pub. DPS gave them the opportunity to pay the outstanding bill or leave. Male 1 said "make me".
  - (d) DPS approaches Male 1 and hits him on the back with the baseball bat. This is not with considerable force. Male 1 then gets up with his glass in his hand and then drops this and tries to take hold of the DPS' bat.
  - (e) DPS resists Male 1 grabbing hold of his bat as he believes that he will take this off him and use it against him.
  - (f) Male 2 then joins his friend (Male 1) and attempts to assist taking the bat off the DPS. Another patron from the pub (unconnected with the other two males) (Male 3) then grabs hold of the bat.
  - (g) However, Male 1 then says to the DPS "I'm going to get you and teach you a lesson". DPS therefore continues to refuse to let go of the bat and punches Male 1, which glances over the left side of his face, but does not hit him with full force.
  - (h) Male 1 said that he was going to give the DPS a "good hiding". DPS attempts to hit him again but misses and his right hand is grabbed hold of by Male 3. Male 1 then also grabs hold of DPS' right hand.
  - (i) Male 1 lets go of DPS' right hand and Male 2 is still attempting to get hold of the bat.
  - (j) DPS kicks Male 2 to the upper right leg out of frustration as he is being pulled backwards and forwards in a tug of war over the bat.
  - (k) Male 2 then lets go of the bat and goes back to drinking his drink whilst standing up. DPS asks him to leave.
10. The Police attended the premises and the DPS provided the CCTV of the incident and was spoken to, and said the following:
- "I did lose it. They pissed me off by walking into the pub. It's like someone coming into your house after robbing you and sitting down and having a drink."
- He also states that he is sorry.
11. The Respondent was interviewed on 02.03.2021 at Leominster Police Station.
12. The Respondent issued with a Simple Caution on 14.04.2021 in respect of one common assault in relation to the kick to Male 2.
13. In essence, the Respondent brought the bat downstairs and into this incident for two reasons:-
- (a) A persuasive tool in order for Male 1 and 2 to pay the outstanding debt or leave;
  - (b) Protection for himself as a result of the request for Male 1 and 2 to pay or leave and their reaction to that.

14. The Respondent resists Male 1 and 2's efforts to relieve him of his bat and "loses it" as a result of Male 1's comment that he was going to get him, teach him a lesson and give him a good hiding.
15. In the case of Semple v DPP [2009] EWHC 3241 (Admin), para 1.11, it states "the right of a licence holder to eject a customer whom he does not wish to remain on the premises arises at common law. At common law an occupier of a premises – whether licensed or not – has the right to ask a person to leave and the right to eject him using reasonable force if he refuses". At para 1.12 "in exercising that common law right the licence holder may use at least reasonable force. I say "at least" because there is some very old authority suggesting that he may not be liable even for excessive force used (Sealy v Tandy [1902] 1 KB 296...)".
16. The Respondent admitted the caution as a result of his actions being over the top by losing it in this incident, which is of a very short duration.

#### B. THE LIVE INN, WHITBOURNE

17. The Respondent is 58-year-old male, who is divorced and resides on his own above the Live Inn.
18. The Respondent is both the Premises License Holder (PLH) Designated Premises Supervisor (DPS) for the Live Inn.
19. The Respondent employs a number of part-time staff, as bartenders and waiters/waitresses.
20. The licence for The Live Inn was transferred to the Respondent on 16<sup>th</sup> August 2019.
21. On 20<sup>th</sup> March 2020, all pubs nationwide were ordered to close by the Government due to the Covid-19 pandemic. The restrictions are still in place to date and this has meant that this licensed premises (like all others) has not been able to operate to full capacity.
22. This means that not only is this business a fledgling enterprise, but it has been marred by a pandemic where the whole country went into lockdown, causing considerable damage to the financial success of a business.
23. The Respondent cannot afford to employ a full-time Designated Premises Supervisor and therefore this is not an application to review this licence by West Mercia Police, but an application to close this business.

#### C. GENERAL SUBMISSIONS

24. West Mercia Police have made this application on the basis of an isolated incident. Ordinarily the Police would provide information to the Licensing Committee regarding the "track record" of the premises rather than relying on an isolated incident. The only time that they seek review of a licence on a single

incident is due to the incident being of a serious crime or serious disorder or both (see Section 53A(1)(b) of the Licensing Act 2003). The definition of serious crime is defined in Section 81(2) and (3) of the Regulation of Investigatory Powers Act 2000 as a “conduct which constitutes one or more criminal offences...” and “the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more” or “the conduct involves the use of violence...or is conduct by a large number of persons in pursuit of a common purpose”.

25. This isolated incident is not a serious crime or disorder. The caution is for a single kick and the offence is common assault.
26. It has now been 6 ½ months since this incident and there has been no further incident.
27. The Committee must consider whether it is proportionate and appropriate in the circumstances of this particular case to remove the Respondent as the DPS, who is a 58-year-old man of previous good character, due to this single incident in order to prevent crime and disorder from occurring at The Live Inn.
28. This is an individual who required guidance from the authorities about how to deal with customers who did not pay outstanding bills.
29. In terms of the Herefordshire Council's Licensing Policy, there is no mandatory requirement to remove the DPS from his position as a result of a caution for common assault, which caused no physical injury. Common assault would not fall within the relevant offences as defined by Schedule 4 of the Licensing Act 2003, in particular:
  - a) Paragraph 19: “A violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person...”
  - b) Paragraph 19A: “An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences)” (which does not include common assault).
30. It is not alleged that the Respondent has breached any of the terms of the premises licence.

**JUDITH KENNEY**  
**JUDITH KENNEY SOLICITORS**

**12<sup>th</sup> July 2021**