

Minutes

Licensing Sub-Committee

Venue:	Microsoft Teams - Remote
Date:	Monday, 15 March 2021
Time:	10.00 am
Present remotely via Teams:	Councillors S Duckett, J Cattnach and P Welch
Officers present remotely via Teams:	Alison Hartley, Head of Licensing, Jade Reynolds, Solicitor and Legal Advisor to the Sub-Committee, and Dawn Drury, Democratic Services Officer
Others present remotely via Teams:	Sharon Cousins, Licensing Manager, Selby District Council, Ben Hymers, Environmental Heath Team Leader, Selby District Council, Sergeant Jackie Booth, North Yorkshire Police, PC Deborah Chadwick, North Yorkshire Police; and PC Dave Furlong, North Yorkshire Police
Others present remotely via Teams:	Bay Horse Hotel: Campey Estates Limited - Ian Campey, Premises Licence Holder, Jade Campey, Designated Premises Supervisor: and Paddy Whur, Solicitor – Legal Representative, Woods Whur 2014 Limited
Public:	0
Press:	0

1 ELECTION OF CHAIR

It was proposed, and seconded, that Councillor Paul Welch be elected as Chair for this meeting.

RESOLVED:

To appoint Councillor Paul Welch as Chair for this meeting.

2 APOLOGIES FOR ABSENCE

There were no apologies for absence.

3 DISCLOSURES OF INTEREST

There were no disclosures of interest.

4 PROCEDURE FOR A LICENSING HEARING

The Licensing hearing procedure had been circulated as part of the agenda pack. The Chair summarised the procedure, to which there were no objections.

5 REVIEW OF THE BAY HORSE HOTEL, 57 - 59 MICKLEGATE, SELBY, YO8 4EA

The Chairman confirmed that following the publication of the Sub-Committee agenda pack on Friday 5 March 2021, additional information had been submitted and circulated as set out in appendices K, L and M which included CCTV footage. The Sub-Committee confirmed that it had the opportunity to read and consider this information and to view the CCTV footage.

The Chairman introduced all the parties present at the meeting and summarised the Licensing hearing procedure which had been circulated as part of the agenda pack. All parties confirmed that they had received a copy of the hearing procedure. Furthermore, upon the request of Mr Whur, it was agreed by the Sub-Committee to extend the time each party had to present their case to 40 minutes due to the volume of documentation.

The Head of Licensing presented the report which outlined the details of the application for a review of the premises licence for the Bay Horse Hotel, 57 – 59 Micklegate, Selby, YO8 4EA. The hearing had been necessitated by a representation which had been received from North Yorkshire Police, along with representations from the Licensing Authority and Environmental Health as the Responsible Authorities, in support of the review application.

Members noted that the application for the review of the premises licence had been made on the grounds of the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. It was further noted that the Council had received 15 representations in support of the premises licence holder.

The Sub-Committee heard that over a five month period persistent breaches of the Covid regulations had taken place and these had occurred despite a stepped approach of engagement, advice, warnings and a fine, all of which were said to undermine the licensing objectives.

The Head of Licensing stated that North Yorkshire Police had put forward additional conditions that would satisfy their concerns, such that revocation would not be sought, however the premises licence holder did not agree to these additional conditions. Therefore, the matter had been brought before the Sub-Committee on the basis that North Yorkshire Police were seeking a revocation of the premises licence.

The Sub-Committee listened to evidence from the North Yorkshire Police (NYP) Licensing Manager, Selby District Council Licensing Manager, Selby District Council Environmental Heath Team Leader, the Solicitor representing the premises licence holder, Mr Whur, and the Designated Premises Supervisor (DPS), Jade Campey.

The NYP Licensing Manager informed the Sub-Committee that the premises licence (PLH) for the Bay Horse Hotel was held by Campey Estates Limited and advised that they also held the premises licence for a number of other premises within the Selby district, some located in close proximity to the Bay Horse Hotel.

Members heard that since the restrictions imposed by the government in response to the Covid pandemic had been lifted, when the premises reopened on 4 July 2020 NYP received reports that the premises had persistently operated in breach of the Regulations and guidance. It was confirmed that these measures were intended to protect the health and safety of the staff, customers and the wider community.

It was further confirmed that the breaches were not considered a one-off event, or an unavoidable minor breach or an innocent misunderstanding, and that the breaches continued despite engagement, advice and warnings from the Responsible Authorities who had invested a significant amount of time trying to work with the premises licence holder to ensure compliance and to protect the local community.

The NYP Licensing Manager stated that it was considered that the breaches were a result of deliberate, reckless or at the very least grossly negligent action by the PLH in order to further the company's commercial interest and further, that the premises had no regard to the consequences of their actions to the wider community, and therefore the NYP view was that this was a serious matter that undermined the Licensing Objectives.

The Sub-Committee were advised that there appeared to be very little effective managerial control of the premises since the current Designated Premises Supervisor (DPS) had taken over at the premises on 9 July 2020. It was further explained that the DPS was also a DPS at another premises, whereby Campey Estates Limited was the PLH and therefore, the DPS was dividing her time between each of the premises.

Members were informed that two assaults had taken place on 4 July 2020 and subsequently a third assault on 25 July 2020 when an SIA door supervisor working at the premises assaulted a customer and has since been charged with a serious assault. Neither the DPS or PLH had been

working at the premises when the incidents occurred and the CCTV, although not a condition on the licence, was installed, but was not working. When questioned the DPS did not know how long the CCTV system recorded or how much of the system currently worked.

The NYP Licensing Manager highlighted that following these incidents on 9 July 2020 she attended the premises to speak with the person who had applied to the local authority to be the DPS and advised that although CCTV was not a condition on the premises licence, if it was installed then it should be in full working order to promote the licensing objectives. The prospective DPS stated that one of the first things she would rectify, when and if she became the DPS, would be to ensure that the CCTV was fully operational.

The Sub-Committee noted that in December 2020 when North Yorkshire was placed in Tier 2 for licensed premises NYP started to see more of a lack of effective management at the premises.

It was explained that on the 3 December 2020 due to rising concerns around the premises compliance with the current Covid regulations, the NYP licensing team along with Council officers engaged with the DPS. The Sub-Committee were referred to pages 112 – 117 of the agenda pack, which contained an email exchange which clearly cited the Regulations required to be complied with.

Members heard that a joint visit to premises across the Selby district took place on 11 December 2020 with officers from NYP and the Council, when attending the Bay Horse Hotel the DPS was not present. The Sub-Committee's attention was drawn to page 188 of the agenda bundle, the witness statement of the Council Licensing Manager, which documented the concerns from the visit namely, the lack of social distancing, and a group of individuals who walked into the premises, passed the track and trace signs but were not challenged by the staff.

NYP raised concerns that this appeared to be a reoccurring theme when officers from the responsible authorities were present at the premises.

The Sub-Committee noted that officers revisited the premises later that evening at 22.20 hours, and their attention was drawn to the witness statement of one of the NYC Licensing Team, in which the following concerns were identified; the SIA door staff members were not wearing face masks, there was a group of 18-20 people in a small area where no social distancing was taking place, and intoxicated customers had become argumentative.

It was confirmed that the DPS, at the time, was contacted by telephone by the NYP Licensing Officer to make them aware of the concerns. It was further confirmed that the group of people were encouraged to leave the premises and at that time no Fixed Penalty Notices were issued, due to the argumentative nature of the individuals and the level of intoxication.

The Sub-Committee were informed that on the 15 December 2020 the DPS had given permission to Council officers to view the CCTV footage taken on 11 December 2020 regarding the concerns raised, and in particular, the second visit at 22.20 hours, on this occasion, again, the CCTV covering the snug area was found not to be working.

Members noted that on 16 December 2020 the premises had been attended by a member of NYP and a Council enforcement officer and again concerns were raised regarding the lack of social distancing, people mixing from different households and when customers were spoken to, they were abusive and not willing to accept what the Regulations stipulated.

Member's attention was drawn to assurances made by the DPS, and received by email, in relation to staff training on the Covid regulations in which it was stated "*all of the staff have had thorough training as well as our door staff which we have on Fridays and Saturdays*". However, in a further email the DPS stated "*unfortunately the guidelines are vague, but all areas are being covered to my best of abilities*". Members noted that both the NYP Licensing Team and Council officers had made it clear to the DPS what the regulations were and that it was the responsibility of the DPS to ensure compliance with those regulations from both the staff and patrons.

In relation to the wearing of face masks, the NYP Licensing officer referred Members to the body worn footage submitted on 19 December 2020, which clearly showed two members of SIA door staff not wearing face masks, it also showed the DPS, who was present, walk past both of the SIA door staff members at which time they were not challenged about not wearing face masks.

The witness statement of the Council's Senior Enforcement Officer highlighted, that from a visit on 18 December 2020, which was after previous failures have been highlighted from the 11 and 16 December 2020 to the DPS and a Fixed Penalty Notice had been issued, the premises were found to have persons at the bar area, a large number of people in the snug area, no social distancing; and six males were seen entering the premises not wearing face masks and were not challenged by any staff.

It was explained that when asked, the staff member stated that she had not received any training on the Covid guidance and that it was all very confusing to her and other staff members. The NYP Licensing Manager advised that there was a clear contradiction between what the DPS and the staff felt regarding staff training on Covid regulations, and what was observed by NYP and Council officers during their visits, and that the staff appeared to have little or no control of the premises.

It was further explained that the Risk Assessment shown at Appendix K, page 364, of the agenda pack was not signed by the DPS or any staff members and no record of training had been submitted as part of these

review proceedings, therefore NYP would conclude that this was not effective management.

Members noted that of the 15 representations in support of the PLH, ten of those representations had been received from customers of the premises and it was questioned, and the Sub-Committee asked to consider, if these were the same individuals who had breached the Covid rules, ignored advice and became abusive during the visit to the premises on the 18 December 2020.

The Sub-Committee were advised that NYP Licensing had no confidence that the PLH had either the competence or willingness to promote the licensing objectives, in particular, in relation to prevent crime and disorder, public nuisance and public safety. And further, nor did NYP have any confidence that the PLH would abide by any regulations and provide a Covid secure premises given the government roadmap strategy if the premises were permitted to open for licensable activities in the forthcoming months.

Members were informed that a breach of the Regulations was a criminal offence and therefore it engaged the Prevention of Crime and Disorder Licensing Objective. It was further stated that all licence holders, regardless of the Covid pandemic, were subject to a general duty under the Health and Safety at Work Act 1974 to protect the health, safety and welfare of their employees and other people who might be affected by their business, including staff, customers, and the wider community.

The Sub-Committee were advised that NYP Licensing Team had tried to reach out to the PLH's legal representative to see if the PLH would be willing to review the proportionate and appropriate conditions which would seek to remedy the cause of the issues. It was confirmed that the PLH had not been amenable to any of the suggested conditions which were highlighted at appendix M of the agenda pack.

The NYP Licensing Manager concluded that should the Sub-Committee be minded not to revoke the licence, even though NYP deemed the PLH had been afforded every opportunity to address concerns, that the Sub-Committee consider the suggested conditions put forward to the PLH by NYP Licensing, along with the removal of the current DPS.

In response to a Member query regarding how long Campey Estates Limited had been the PLH of the premises and who had issued the fine, it was confirmed that the PLH had been running the premises since July 2019 and that it was the Council who had issued the Fixed Penalty Notice for the sum of £1000, for breaching the Tier 2 regulations in December 2020.

The Chairman queried if other licensed premises in Selby district had observed the rules and followed advice, Members heard that a joint partnership initiative had been organised to visit a number of premises on the 11 and 18 December 2020 which involved NYP Licensing Team and

the Council Licensing Team. In respect of the visits on the 11 December 2020, a fine was issued by the Council to another premises within the town centre, but there had been a general compliance of the Covid restrictions. It was stated that a stepped approach was taken, and officers had engaged with Campey Estates Limited over a period of months to provide advice about the regulations.

In relation to the other premises that had been served a Fixed Penalty Notice, Members queried if the premises had improved their actions, it was confirmed that in follow up visits the premises was found to be in compliance with the regulations and the officers were able to check this due to them having CCTV as a condition on their licence, this allowed NYP to dip sample to check compliance when not present.

The Licensing Manager for the Council started the representation by stating that the Licensing Authority (LA) was in full support of the review of the Bay Horse Hotel submitted by NYP on the grounds of the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance, due to concerns regarding the conduct and management of the premises during Covid.

The Sub-Committee were advised that in March 2020 a government lockdown began, and the Coronavirus Health Protection Regulations came into effect which required the closing of specified businesses to include public houses. Premises were permitted to re-open on 4 July 2020, whilst following government guidance which, at that time, included track and trace, table service and ensuring social distancing was being adhered to.

Members heard that the Licensing Manager had attended the premises on 4 July 2020 along with a senior Environmental Health Officer to see how the premises were operating under the new Regulations. It was found that the premises was busy with customers, there was a track and trace book at the entrance to the premises but no member of staff with it; hand sanitiser and a one-way system were in place. It was confirmed by a member of staff that table service was being carried out, that the premises would be closing at 8.00 pm that evening, and that a member of door staff would be on duty later in the day.

The Sub-Committee were informed that NYP had requested a copy of the Premises Licence for the Bay Horse Hotel on the 6 July 2020, as two assaults had taken place at 9.15 pm on the day of re-opening, 4 July 2020; this contradicted the information the officers had been given earlier in the day, namely, that the premises would be closed at 8.00 pm.

On the 9 July 2020 an advisory visit was made by the Licensing Manager, the Senior Environmental Health Officer and two NYP officers to meet with the proposed DPS, at this time the Environmental Health Officer checked the premises risk assessment and noted that it was adequate but lacked detail.

Following this on the 23 July 2020, NYP informed the licensing team that customers were using the roof terrace on the first floor of the premises, the licensing team contacted the DPS to make them aware that they could make a variation to the Licence to include this area.

Members were advised that the licensing team and NYP officers had visited the premises again on the 1 October 2020 as there had been an allegation of the premises being open until the early hours of the morning, however the CCTV was viewed, and it showed that the premises had been closed as required by the Regulations.

The Licensing Manager informed the Sub-Committee that officers visited the premises at 9.00 am on 3 December 2020 to see how they were operating under the new tier 2 regulations, which required alcohol to only be served with a table meal. At that time there were approximately eight customers with drinks only, and no food, the DPS was asked to explain how they were operating the business under Tier 2 regulations. The DPS stated that the premises was open from 9.00 am and customers could order their food and start to drink, but the food would not be delivered until 10:30 am from an outside caterer, therefore customers had been permitted to drink alcohol for one hour and 30 minutes with no food present. The Licensing Manager emailed the DPS on 4 December 2020 regarding concerns about customers drinking without food being present and to clarify how the DPS was operating in accordance with the new regulations.

Members attention was drawn to the statement within the agenda pack made by the Licensing Manager following two visits which had been made to the premises on 11 December 2020, one at 1850 and one at 22:20 hours. In summary, during the first visit the premises had been found to be very busy with customers, with a large group of people in the snug area drinking, who had just one plate of food on each table which contained limited food. The DPS was not on site but the Officers concerns were left with the person in charge, who said the DPS would be advised. Upon returning to the premises at 22:20 hours the front door was locked, however once entered the premises it was found to be busy. There were 20 customers in the snug area with only drinks, watching football on the television; the door staff member was stood with them, talking to the customers. The DPS was telephoned by the Officer and updated of the concerns.

The Sub-Committee heard that the Licensing Manager and Officers had returned to the premises on the 15 December 2020 to view the CCTV for the night of 11 December 2020 to see if any drinks had been served after 10.00 pm. It was noted that the CCTV had the incorrect time showing, as one hour ahead, and no sales could be seen to have taken place from the camera near the snug area. The PLH was informed about the incorrect time on the CCTV. When the Duty Manager was asked how the food service worked at the premises the response was that customers could stay as long as they wanted to, but they must order food, however, there was no restriction on the number of drinks they could purchase.

Members were informed that, at this time, the decision had been taken by the Environmental Health Team to issue a Fixed Penalty Notice (FPN) to the PLH.

Members were informed of further infractions at the premises following a visit by Officers on the 16 December 2020 where they had identified issues with the numbers of customers within the snug area, customers mixing with each other, and a lack of Covid measures. On the 18 December 2020, there had been two NYP reports made of the premises not complying with the Tier 2 regulations. Finally, on the 22 December 2020 a Coronavirus Improvement Notice was issued.

The Licensing Manager concluded that all relevant agencies had worked with the premises over a period of months to address any concerns and advise on areas of improvement, however, repeated breaches of the Covid Regulations had continued. It was stated that the Licensing Authority was satisfied that the premises had not promoted the licensing objectives and due to failure on the part of both the PLH and the DPS to respond to engagement with the Council and NYP, the Licensing Authority supported the application made by NYP to revoke the Premises Licence.

The Environmental Health Team Leader for the Council stated that the Environmental Health Team were in full support of the review of the Bay Horse Hotel submitted by NYP, and that the Environmental Health Team's representation mainly related to the licensing objective of the Prevention of Public Nuisance.

The Sub-Committee were appraised of the number of cases of Coronavirus recorded for the Selby area in July and December 2020 and advised that controlling the spread of Covid-19 was necessary to prevent Public Nuisance.

The Sub-Committee noted that Selby District was placed in Tier 2 on 2 December 2020 and outlined the main restrictions for the premises within the guidance, namely, the restriction of opening hours, provision of table service, reasonable steps to be taken to ensure that customers remain seated, alcohol only to be served as part of a table meal; and gatherings of two or more households were not permitted.

Members were informed that during December 2020 the Environmental Health Team received a number of complaints which stated that the premises were allowing groups from different households to mix, serving alcohol that was not part of a table meal, and track and trace details were not being taken. During the month of December, the Environmental Health team made four visits to the premises to investigate the complaints. Over the course of the visits concerns were raised as it was found that on the 3 December 2020 alcohol was being served without being part of a table meal. On the 11 December 2020 at 22.20, it was noted that the premises were busy, customers were stood around the

room with drinks in their hands, watching football and consuming alcohol with little or no food. On the 16 December 2020, the DPS was not on site, twelve customers were sat in the snug area with little food in sight. When questioned the customers confirmed that they were a group of friends who had come to the premises to watch football, it was also noted that they were from different households.

Lastly, on the 18 December 2020, the DPS was not on site, two individuals were seen purchasing drinks from the bar, six customers entered the premises unchallenged, and other customers were moving around the premises not wearing masks; it was noted that none of the staff challenged these customers.

It was noted that the main areas of concern were that customers not from the same household were allowed to mix and gather in large groups, alcohol was served that wasn't part of a table meal, no or few rules were being enforced, there appeared to be a lack of control of what was happening at the premises, and staff seemed to be unclear of what the government guidance entailed.

The Sub-Committee were advised that following the visits in December 2020 it was considered that formal action was necessary, and the premises were served with a Fixed Penalty Notice and a Coronavirus Improvement Notice.

The Sub-Committee's attention was drawn to the risk assessment for the premises at Appendix K, Page 364. The Officer highlighted that employers have a legal duty under the Health and Safety at Work Act 1974 to control risk, which included carrying out a risk assessment by a competent person that must be suitable and sufficient. The officer stated that in his opinion the risk assessment was poor and not sufficient and referred the Committee to some examples of deficiency within the document.

Members heard that the risk assessment failed to specify the number of customers limited to be inside and outside of the premises at any given time, it did not specify the safe distance and no plan was provided. Throughout the document it referred to monitoring, however there was no logbook to identify who carried out the monitoring and what action was taken. Furthermore, the document had not been signed and there was no indication of who had drafted it or what made them competent to do so.

In conclusion the Environmental Health Team Leader stated that there was a lack of proper management and controls and therefore supported NYP's suggested conditions, and the requirements for a dedicated DPS.

The Solicitor representing Campey Estates Limited, Mr Whur, firstly thanked NYP for agreeing to have dialogue with him in terms of the review papers which asked for a revocation of the premises licence, then stated that he would set out for Members why a revocation of the licence would be disproportionate remedial action.

Mr Whur stated that 2020 had been an exceptionally difficult year for everybody, with government guidance changing rapidly, some of which had since been accepted to be wrong, such as the government requiring the need for a substantial meal to be provided to have alcohol served with it. This requirement was challenged at the High Court on 1 March 2021, at which time the High Court Judge said that it was arguably discriminatory and there was no evidence to show that the requirement created a safe environment.

Members heard that Mr Campey had first contacted Mr Whur following notification from the Council that the premises would not be allowed to open due to the fact that the premises did not contain a kitchen. Mr Whur advised Members that the government had advised that public houses could open but that they must find an outsourced resource to deliver food to the respective premises.

The Sub-Committee were referred to pages 215 to 347 of the agenda pack, The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, and it was stated that it was a large technical document and parts of these regulations had been challenged at the High Court.

Mr Whur asked that the Sub-Committee, when determining what remedial action to take, took into consideration section 52(3) of the Licensing Act and the relevant sections of the 182 guidance at pages 366 and 367 of the agenda pack, and in particular, paragraph 11.20 which stated “In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible to seek to establish the cause or causes of the concerns that the representation identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.” Mr Whur stated that remedial action should not be seen as a punishment, and that the Committee should be guided by this document to determine what remedial action was appropriate and proportionate to promote the Licensing Objectives.

Mr Whur advised Members that although Campey Estates Limited had been the PLH at the premises since July 2019, Mr Campey had in fact operated the premises for 9 years under different company names and that he also held the premises licences for seven other premises in the local area. It was noted that Mr Campey was heavily involved in the operation and management of two of the public houses in particular, the Bay Horse and The Comus.

Mr Whur addressed the concerns raised by NYP that the DPS was diluting her time between the Bay Horse and the Comus Inn, by stating that the Comus Inn was currently closed and undergoing refurbishment, and that it was the intention, once the Comus Inn reopened, that a new DPS would be employed at the Comus Inn, with the current DPS retained

at the Bay Horse premises only.

Members attention was drawn to the 15 positive representations received by the Council at pages 157 to 177 of the agenda pack, and it was stated that the premises were popular and well supported by its customers, and that Mr Campey invested money into the premises to ensure that a safe environment was created for its customers. To this end there were both internal and external CCTV installed at the premises, and door supervisors were employed at key times, neither of which were a condition on the licence.

The Sub-Committee were informed that there had not been a focus on financial gain to the management of the premises, on the part of Mr Campey, and that he had worked to the best of his ability, in difficult circumstances, to provide a safe environment for the customers.

In terms of the Fixed Penalty Note (FPN) which had been issued by the Council and to date remained unpaid, Members were advised that Mr Campey would challenge the FPN if he were to be prosecuted as a result of today's Licensing hearing, due to, what Mr Campey felt were, inaccuracies in the evidence produced by NYP and the Council.

In relation to the mention of customers using the roof terrace at the premises, Members were referred to the photograph at page 189 of the agenda pack which showed there was clear signage that the roof terrace belonged to the hotel and not to the public house. It was explained that the roof terrace was used on just one occasion, on the first weekend of reopening, the DPS felt that the premises was busy and to aid with social distancing the decision had been taken to move a group of customers to sit outside.

Mr Whur went on to highlight the suggested issue with the premises risk assessments which had been described as inadequate by the Environmental Health Team Leader. Mr Whur stated that following the inspection by Council officers on the 3 December 2020, there had been no suggestion that the risk assessments were deemed insufficient, and that a document had been left at the premises by the officers which recorded that no further action needed to be taken.

Members were taken through the list of transgressions alleged to have taken place during December 2020 at the premises, as highlighted earlier in the hearing by officers of NYP and the Council, along with inaccuracies in some of the statements contained within the agenda pack, which Mr Campey wished to address, as follows:

- The statement provided in the agenda bundle stated that on the 11 December 2020 an excessive number of customers had been found to be stood around watching football, with no food. The Committee were referred to photographs taken from the CCTV footage at the premises at pages 360 to 363 of the agenda pack which showed no football on the TV screen, and no customers

stood. Customers were finishing their drinks and food which was on the table in front of them, some customers were leaving, there was a member of staff cleaning, and there were officers from NYP and the Council stood near the bar area.

- Two members of door staff were not working that evening, only one member of door staff, and they were not wearing a facemask as they had a valid exemption from doing so.
- The person named as the member of door staff working, was not working at the premises that evening.
- In respect of the number of people in the snug area, the PLH had been advised by different parties that they could have 16 people in the snug area, this figure then reduced to 12, then again to 8 people. As such the numbers allowed in the snug area of the premises were amended every time the PLH was advised to do so.
- At page 128, paragraph 2.1, Jade Campey was not the DPS at the Bay Horse at that time.
- At paragraph 2.4, regarding breakfast service, the ordering had been amended to ensure that the food was available straight away.
- In terms of ascertaining identification (ID) from customers, differing advice had been given, some staff had been told they could not ask for ID as it was considered to be a breach of Data Protection rules, and some were told you should take that information. It was noted that this had been an issue across the North Yorkshire area with people travelling from areas in Tier 3 to areas in Tier 2 to access premises serving alcohol.
- At paragraph 2.11, it was clarified that the member of staff had not been exasperated about the day to day management of the premises, but rather because of the quick changes in government guidance, and keeping abreast of the regulations.
- At paragraph 3.5, the FPN had been served on 15 December 2020, and not on 15 December 2021.

Mr Whur took this opportunity to thank the officers from NYP for the discussions that had taken place prior to the review being called and the conditions which they had proposed at pages 373 and 374 of the agenda pack. Members were advised that Mr Campey had made the decision not to accept the suggested conditions as he felt that he had complied with guidance put forward by the licensing authority, and he already voluntarily complied with the conditions proposed by NYP in terms of risk assessing the need for door supervisors and having working CCTV at the premises.

In relation to condition number 10, it was noted that the premises had

held a pavement licence in the past which allowed for tables and chairs outside at the front, and that this was something that the PLH may look to re-instate in the future.

Finally, Mr Whur stated that Mr Campey was determined to work with the Authority's to ensure compliance with future regulations and engender a strong positive relationship with both the Council and NYP; and in view of the fact that Mr Campey felt that the proposed conditions were already complied with voluntarily, there was not a need to impose conditions on the premises licence.

In response to Member queries regarding why Mr Campey had not accepted the proposed conditions when he was already voluntarily complying with the conditions, that Mr Campey could apply for a pavement licence in respect of condition 10; and lastly did Mr Campey accept that mistakes had been made. Mr Whur stated that he could understand the comments but that he could not add anything further to what had already been provided other than to say that Mr Campey and the DPS had worked their hardest to create a safe environment at the premises in what had been exceptional and difficult circumstances,

In response to a question from the Environmental Health Team Leader regarding when Mr Campey had first contacted Mr Whur to request advice on how to comply with the regulations. Mr Whur confirmed he was first contacted by Mr Campey when he had been told by the Council that the premises could not open as they did not have a kitchen area. Following that Mr Whur had become involved again when the review hearing was instigated.

At this point in the hearing the DPS for the premises requested to speak.

The DPS re-iterated the statement made on the PLH's behalf by Mr Whur, that the PLH did not want conditions attached to the premises licence, and went on to query the following:-

- Both NYP and the Council had stated that the CCTV at the premises was not working regardless of this not being conditioned on the premises licence. However, Police officers had not worn body worn cameras apart from on the day NYP had attended the premises regarding a complaint made by the DPS, the NYP statements advised that body worn cameras were not available or not working.
- Why there had been a delay in the Police Officers writing up their witness statements.
- In relation to not being allowed to take home addresses from customers to check if they were from the same household or lived within the Tier 2 area. From the NYP statement it was noted that Police Officers had asked customers if they were from the same

household, the individuals had confirmed that the premises staff had asked them if were from the same household, but the customers eventually admitted that they had not told staff members the truth. The DPS stated that it would aid licensed premises and be more of a deterrent if the customers were fined by NYP.

The DPS informed the Sub-Committee that she had regularly liaised with both NYP and Council officers in regard to any changes in the guidance, and to keep officers aware of when the premises would be open and serving food, and that all advice which had been offered had been taken, as the DPS wished to work with officers.

In relation to the claim that the PLH had operated for financial gain during the pandemic, regardless of possible Covid breaches, the DPS stated there had been no financial gain as the premises had worked at a 5th of its capacity, had to employ more staff to facilitate table service for both food and drink, along with extra door staff to patrol the area.

The Sub-Committee heard that the premises was a community hub for people who lived on their own, and the relationship between the customers, the DPS and staff members provided these customers with support with their mental health.

Members had noted that the DPS had said that she had received no help, advice or support, but when officers for NYP and the Council had visited the premises and given advice, there have been no noticeable improvement. It was queried if the DPS had asked for more help and advice from officers, as Members were sure that extra help would have been offered.

In response to Members the DPS confirmed that she had always asked for advice, and that during November 2020 she had telephoned NPY and the Licensing Manager to ask for advice on reopening the premises, food service, and the regulations in force at that time. However, the DPS stated that there had been confusion around some of the regulations as they had been told to do different things, by different officers, on different visits, particularly in relation to customer identification and the numbers of customers allowed in the snug area of the premises.

In response the Licensing Manager stated that the regulations had been very complicated, and conversations had taken place with the DPS to offer advice, however, individual premises risk assessments were a duty purely for the premises PLH.

The Licensing Manager informed Members that the main issues at the premises had started in December 2020 when Selby moved into Tier 2. When officers from NYP and the Council had attended on 3 December 2020 no further action had been taken as officers were trying to work with the PLH and DPS. To this end, the visit had been followed up by emails asking the PLH and DPS for clarification on how they were abiding by the new regulations and raising the concerns of officers where there had

been 1 hour 30minutes of drinking alone time; there was no further action taken on the matter. The Licensing Manager also wanted to clarify her findings at the premises on the 11 December 2020, and stated that football had been playing on the television and that her statement was correct.

The Environmental Health Team Leader confirmed that the record of inspection on the 3 December 2020 clearly stated that “it did not indicate compliance with any of the above legislation or regulations thereunder” and that the document was purely a record that an inspection had taken place.

In response to a query from the Environmental Health Team Leader as to whether the PLH had sought independent legal advice from Mr Whur on the regulations, the DPS confirmed that legal advice had been taken. Mr Whur confirmed that his first contact with the PLH had been around the issue of the premises not having a kitchen facility and the lack of food, then again shortly before the review had been launched.

The NYP Licensing Manager responded to the comments made by the DPS, in relation to the query regarding when customers were not from the same household. The Police had been advised by the National College of Policing to follow the rule of the four E’s, which are to Engage, Educate, Explain and as a last resort to Enforce. The Licensing Manager stated that an assessment was made by the officer’s present at the premises on the 16 December 2020, after the customers admitted that they had lied about being from the same household, the customers were separated out. One customer became abusive to one of the officers, and at that time a risk assessment was undertaken on how to deal with those matters and with the resources available; it was felt at that time the best option was not to escalate the situation. Secondly, Police Officers were not required to make statements at the date and time of an actual incident, officers carry pocket notebooks and statements are usually produced from those notes at a later date.

Finally, the NYP Licensing Manager addressed the submission in respect of the body worn footage and referred the Sub-Committee to where in the footage the Police believed there to be two members of door staff present. The DPS responded and stated that it was a customer that could be seen in the footage and not another member of door staff. The Committee agreed to watch the CCTV footage again, outside the meeting, for clarity.

In summing up on behalf of NYP, the Licensing Manager stated that a significant amount of engagement had taken place with the PLH of the premises and NYP Licensing Team had put forward proportionate and reasonable conditions to mitigate the concerns raised. The proposed conditions would also protect the PLH themselves, in relation to the CCTV aspect, should any future allegations be made in respect of the premises. In terms of the Health Protection regulations, they had been very difficult for all responsible authorities to navigate, however NYP had to enforce

the regulations to ensure compliance.

The Licensing Manager for the Council asked that the Sub-Committee consider all the evidence provided by NYP, the Licensing Authority and Environmental Health which clearly showed that the PLH and DPS had not promoted the licensing objectives.

The Environmental Health Team Leader expressed disappointment that robust, independent legal advice had not been sought by the PLH on the Health Protection Regulations.

Mr Whur, summing up on behalf of the PLH, asked that Members consider section 182 of the Licensing Act 2003, and what was the most appropriate legal action to be taken in this review proceedings. Mr Whur stated, that in his opinion, the DPS had been in control and knew what she would like to achieve. Members were also asked to consider all the points that had been raised during the hearing.

The DPS thanked the Sub-Committee for allowing her to speak at the hearing and commented that the Bay Horse Hotel had been operating for nine years with no previous problems, as had the Comus Inn where she was also DPS.

The Chair confirmed with all parties that they had said all that they needed to say in relation to the review.

The Chair thanked all parties for attending the Licensing Sub-Committee and requested that they leave the remote meeting. It was explained that the Members of the Sub-Committee would retire together with the Democratic Services Officer and Solicitor to consider the review, and in doing so Members would consider the written and oral representations as well as the operating schedule, the Licensing Act 2003 having regard to the Secretary of State's Guidance issued under section 182 of the same, and the Council's Statement of Licensing Policy when arriving at the decision.

It was further explained that all parties would be notified of the outcome of the hearing in writing, within five working days, along with the right of appeal.

The Sub-Committee decided that it was appropriate and proportionate, having considered all representations, all the evidence presented and the promotion of the licensing objectives, to modify the conditions of the Premises Licence as set out in Appendix M, with additional wording to number 4 of the conditions*.

RESOLVED:

To modify the conditions of the Premises Licence as set out in Appendix M, with additional wording to number 4 of the conditions*:

1) CCTV:

i. A colour digital CCTV system will be operational at the premises at all times when licensable activities are being carried out and at any other times where members of the public are present on the premises.

ii. The CCTV system shall contain the correct time and date stamp information.

iii. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence.

iv. The CCTV system must be capable of providing quality images of good evidential value. The CCTV system will have sufficient storage retention capacity for a minimum of 28 days continuous footage.

v. The CCTV footage will be controlled and kept in a secure environment to prevent tampering or unauthorised viewing.

vi. The data controller who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of an authorised officer or an officer of North Yorkshire Police, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.

vii. The CCTV system will be adequately maintained and be capable of transporting recorded material onto a removable media. The CCTV system replay software must allow an authorised officer or an officer of North Yorkshire Police to search the picture footage effectively and see all the information contained in the picture footage for the purposes of detecting, investigating and preventing crime. It must be possible to replay exported files immediately e.g. no indexing of files or verification checks.

viii. No device shall be permitted that could in any way adversely affect or impede the quality of the images recorded by the CCTV system, e.g. smoke or dry ice machines.

2. A Personal Licence Holder will be on duty at the premises at all times when licensable activities are taking place.

3. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

4. A Refusal Register and an Incident Report Register shall be maintained at the premises. Such registers will record incidents of

staff refusals to under age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises. Such Registers shall be kept for a minimum of one year. For the avoidance of doubt, the one year period relates to each respective entry in a Register and runs from the date of that particular entry in the Register.

***To permit, within a reasonable time, on the lawful request of an authorised officer, Responsible Authority or an officer of North Yorkshire Police to inspect such Registers.**

5. 2 x SIA registered door supervisors will be on duty at the premises on a Saturday night from 10pm until close, at all other times the requirement for door staff shall be risk assessed by the manager on duty or DPS.

6. North Yorkshire Police can reasonably request door supervisors be employed at the premises during special events in the town and bank holidays. A minimum of 14 days written notice will be given to the premises prior to this request.

7. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-

- retail sale of alcohol;**
- age verification policy;**
- conditions attached to the Premises Licence;**
- permitted licensable activities;**
- the licensing objectives; and**
- opening times for the venue.**

with such records being kept for a minimum of one year. For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry;

8. Members of the public will not use the roof terrace, only residents staying at the premises can use this area.

9. Only alcohol in sealed containers can be removed from the premises.

REASONS FOR DECISION:

The Sub-Committee considered that it was necessary, appropriate and proportionate to address the causes of concerns by imposing the Conditions as set out at Appendix M, as amended, on the Premises Licence. The Sub-Committee agreed that these conditions would promote the licensing objectives and should remedy the concerns identified. The Sub-Committee noted in particular that the CCTV condition would protect a number of parties from any future allegations made.

The Sub-Committee did consider the PLH request not to include the condition referred to at number 10 (which is now number 9 due to

Appendix M having incorrect numbering) on the Licence, however, the Committee concluded that the PLH did have the ability to apply for a Pavement Licence which would allow customers to sit outside to have a drink, so resolved that it was proportionate and reasonable to include this condition on the licence.

The meeting closed at 11.55 am.