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**Kent
Police**

Application for the review of a premises licence under section 53A of the Licensing Act 2003

Application for the review of a premises licence under section 53A of the Licensing Act 2003 (premises associated with serious crime, serious disorder or both)¹

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

I Superintendent Hine 15035

[on behalf of] the chief officer of police for the police area apply for the review of a premises licence under section 53A of the Licensing Act 2003].

1. Premises Details

Postal address of premises, or if none or not known, Ordnance Survey map reference or description: The Hop and Rye, 4 Wainscott Road

Post town: Rochester

Post code (if known): ME24LB

2. Premises licence details:

Name of premises licence holder (if known): Michael Knight

Number of premises licence (if known): 19/01090/LAPL01

3. Certificate under section 53A(1)(b) of the Licensing Act 2003 [Please read guidance note 1]:

I confirm that a certificate has been given by a senior member of the police force for the police area above that in his opinion the above premises are associated with serious crime or serious disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)



¹ SCHEDULE 8A Regulation 16A



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4. Details of association of the above premises with serious crime, serious disorder or both: [Please read guidance note 2]

This application is being made as a result of the Hop and Rye Public House, 4, Waincott Road, Rochester, Kent, ME2 4LB breaching Corona Virus legislation, thus putting the public at risk of serious harm. Whilst this is an unusual step to seek an emergency licence suspension when no actual violence has been caused to any individual, this application should be considered in the context of the global pandemic that we currently find ourselves in and the unprecedented steps the UK government has had to take to protect its citizens. Emergency legislation was enacted, restricting people's movements and activities.

The fast pace of the changing climate has meant several changes to legislation and variations in the level and types of restrictions being enforced. However, certain messages have remained clear and consistent; the rule in relation to social distancing; hand washing and later the wearing of face masks. There has been high media coverage and signage in all public spaces. The emphasis being, individual responsibility to adhere to the rules to save lives.

A second national lockdown specific to England came into effect on 5th November 2020 and was expected to last until 2nd December 2020. This most recent lockdown was deemed an essential and necessary step to reduce the spread of Covid-19. During this time, licensed premises such as pubs and restaurants were permitted to open but only permitted to offer a delivery or takeaway service. As such, any alcohol sales must be made on an "off-sale" basis and are not permitted to consume on the premises.

On 29th September 2020 the Hop and Rye Public was visited by Medway Trading Standards and warned regarding non compliance and provided a notice providing guidance.

On 26th November 2020 the government announced that the county of Kent would enter Tier 3 (Very High Alert) restrictions, commencing on Wednesday 2nd December. Tier 3 restrictions would follow on from the lockdown measures put in place on Thursday 5th November. The decision to keep Kent under tight restrictions is due in part to the soaring Covid-19 infection levels across the County. It should also be noted that Medway is amongst the highest areas in the Country for Covid-19 related infections.

The initial incident which predicated this application is as follows:

At approximately 20:15hrs on Friday 27th November 2020, a passing police patrol conducting Covid-19 compliance checks observed lights on inside the Hop and Rye Public House. Upon investigation officers found the doors to the front of the premises locked. The premises have two bar areas. One to the front and one to the rear. The front bar area was closed with tables and chairs stacked and the lights switched off. However, the lights to the rear were on and this drew the officer's attention. It was immediately apparent that people were inside. Once inside the premises officers noted seven people, including the business owner, the premises licence holder and 5 other customers. Alcohol was being consumed and it was later established that this had been purchased and supplied by the premises. The



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sale and supply of alcohol within the premises is evidenced by CCTV. This is in contravention of the restrictions imposed by The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020 and is a criminal offence.

Customers and those identified as staff appeared intoxicated and the owner of the premises was obstructive, suggesting persons were simply helping to put up the Christmas tree and Christmas decorations. He then implied the police should have more important jobs to be doing. It was also noted that none of the individuals were wearing face masks, they were not observing social distancing and were not following Covid-19 guidance. All the breaches are evidenced on the CCTV seized by police.

A review of the CCTV system shows that in addition to the rule breaches witnessed by police on 27th November there were a further 4 separate breaches during this latest period of national lockdown.

In addition, and increasing the levels of concern, the CCTV also evidences further breaches of Coronavirus regulations earlier in the year, prior to the second lockdown. There were 5+ breaches relating to the rule of 6, social distancing, the wearing of face masks and table service (rules/legislation that was clearly intended to curb the spread, protect the public and avoid further lockdowns).

Other licensing offences are being considered. It is understood that the person currently named as the Designated Premises Supervisor (DPS) does not have an active involvement in the day to day running of the premises and is simply DPS in name only.

It is vital and imperative that the hospitality industry comply with the rules and legislation set by government. These rules are deemed essential measures that are required to help control this deadly virus. It is incumbent upon regulating and enforcement bodies to ensure that as much as possible these rules are being followed. Blatantly ignoring the restrictions and legislation puts lives at risk, sends a poor message to the community and increases the risk of the infection spreading. At the time of writing Medway along with the rest of Kent is under Tier 3 restrictions and is one of the highest effected areas in the Country.

The Hop and Rye Public House is a freehold. Therefore, there are not the same assurances in relation to compliance as may be expected from affiliation with a larger organisation, who could self-police.

This application links the risks of the spreading of the disease to causing a "public nuisance". In the case of *R vs Rimmington and Goldstein* (2005) UKHL.63, it is quoted the leading modern authority on public nuisance as *Attorney General v PYA Quarries Ltd* (1957) 2 QB 169.

The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or emission is to endanger the life, health, property, morals or comfort of the public, or to obstruct the

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public in the exercise or enjoyment of rights common to all Her Majesty 's subjects" (Rimmington at (3)).

Public nuisance is a common law offence which can carry a penalty of life imprisonment. It is the stance of Kent Police that a serious crime has been committed in these circumstances, as evidenced above. The test for Serious crime has also been met. Serious crime is defined in S.81 of RIPA Act 2000 as an offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more.

It is my belief that the premises owners/managers have shown a blatant disregard to the rules and legislation. Their actions demonstrate deliberate acts designed to ignore the emergency measures put in place to control the spread of the virus and protect the public. There is evidence that in excess of 200 people were subject to breaches of the rules in various guises, placing them, staff and the wider community at risk. My concern is heightened as the premises was visited by Medway Trading Standards and warned about their lack of compliance, given guidance and informed of the penalties for breaching. The evidence is clear they were aware of the rules and their duty to comply and have chosen to ignore it. This application seeks to prevent the business operating in the short term as an emergency measure to control the premises pending a full review.

Signature of applicant:

Date: 3rd December 2020

Capacity: Divisional Superintendent

Contact details for matters concerning this application: PC HUNT 11044

Address: Medway Police Station

Telephone number(s): 01634 792388

Email: licensing.north.division@kent.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means: -

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- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder, or both. "