

# MEDWAY COUNCIL

## DECISION OF LICENSING HEARING PANEL

<b>Date of hearing:</b>	4 December 2020
<b>Premises:</b>	The Hop and Rye, 4 Wainscott Road, Wainscott, Kent, ME2 4LB
<b>Panel:</b>	Councillor Fearn (Chairman) Councillor Adeoye Councillor Browne
<b>Representatives of Kent Police:</b>	PC Chris Hill PC Dan Hunt
<b>Premises Licence Holder:</b>	Michael Knight
<b>Representative to the Premises Licence Holder:</b>	Mark Greenfield (Co-owner)
<b>In attendance:</b>	Franco De Fazio, Senior Licensing Officer Wayne Hemingway, Principal Democratic Services Officer Vicky Nutley, Assistant Head of Legal Services

The Senior Licensing Officer outlined the matter before the Panel. He stated that, in accordance with the Licensing Act 2003, the Council had received an application for an expedited (summary) review from Kent Police in relation to the premises licence for the Hop and Rye, 4 Wainscott Road, Wainscott, Kent ME2 4LB, as the premises had been associated with serious crime and disorder. He explained that the Licensing Act 2003 required expedited premises licence review applications to be considered within 48 hours, pending a full review hearing within 28 days of the date that the application was served.

The Senior Licensing Officer stated that the purpose of the hearing was for the Panel to determine what interim steps to take, pending the full review hearing, and explained that the options were:

- (a) the modification of the conditions of the premises licence;
- (b) the exclusion of the sale of alcohol by retail from the scope of the licence;

- (c) the removal of the designated premises supervisor from the licence;
- (d) the suspension of the licence.

The following documents were included in the agenda pack: -

Appendix A - pages 15 to 19, the Application for Summary Review  
Appendix B – page 21 to 22, the Certificate.

The Senior Licensing Officer also referred to representations received at 22:25 via email the previous evening which highlighted some media articles relating to the use of prohibition notices for similar matters together with some comments from Mr Greenfield (the co-owner of the premises). The Principal Democratic Services Officer displayed this information at the meeting including the representations from Mr Greenfield.

PC Hunt explained to the Panel this expedited review was taking place in the context of the global pandemic and as such was different to previous expedited reviews, on the basis that there had been no major disturbance, or serious public order incident or even a serious assault which had led to an injury to anyone. He considered that the Panel should not treat this request any less seriously though.

PC Hunt explained the impact of the global pandemic including the various emergency measures introduced by the Government and that the vast majority of people had complied with them. He detailed some of the specific measures introduced during the year including the national lockdown, the introduction of a geographical three tier system, the second national lockdown, and lastly, the current geographical three tier system for which Kent and Medway was operating in tier three (the highest alert level). He explained the impact on pubs and restaurants of these measures. He also referred to increasing infection rates in the Medway area which had seen it experiencing among the highest infection rates in the country. PC Hunt also referred to the various publicity measures in place and the support being provided by Kent Police and the Council's Trading Standards team.

PC Hunt explained to the Panel the specific incident on Friday 27 November 2020 (20:15) when PC Hill and he, when passing the premises, had noticed lights on. Having been allowed entry to the rear bar area of the premises he provided a description of the incident as set out on pages 16-17 of the agenda. Once the premises were closed, he explained that just PC Hill, Mr Knight (the Premises Licence Holder (PLH)) and himself remained, that Mr Knight appeared nervous and that he could not locate the Premises Licence and claimed he did not know the names of anybody named on the licence. On the return to the Police Station and reviewing the licence, it was established that they had been speaking to the PLH. A review of the CCTV confirmed this incident to be a "lock in". PC Hunt explained to the Panel some of the activity taking place in the premises including the payment for alcoholic drinks. He explained that he had subsequently seized the CCTV hard drive and had carried out a review of some of the footage which showed a number of examples of non-compliance with the relevant rules at the time during the pandemic. He was unable to play any of the CCTV footage at the hearing as there was

insufficient time to transfer the footage to a playable format. He stated that this would be available for the full review hearing.

PC Hunt questioned the premises' likelihood to comply with the current tier 3 rules, therefore, he recommended that the Panel consider take interim steps pending a full review. He also referred to the Council's Trading Standards team who had visited the premises on 25 May and 29 May 2020 where it was established that a QR notice was not in place. Trading Standards then visited the premises on 3 October to check the notice was in place. Trading Standards then called the premises on 2 November to discuss the second national lockdown. PC Hunt also stated there had been six other telephone conversations between Trading Standards and Mr Greenfield (the co-owner) since May.

PC Hunt also informed the Panel that the person named as the Designated Premises Supervisor (DPS) on the premises licence had never worked at the premises and was not in any day to day control of the premises.

PC Hunt concluded by linking this application to the spread of the virus and to public nuisance, which was a common law offence, for which a person could receive up to life imprisonment. A serious crime was punishable by imprisonment of three years or more, therefore, the threshold for this review had clearly been met. He recommended to the Panel that the premises licence be suspended pending a full review.

At this point of the hearing, Mr Knight (the PLH) informed the Panel that he would be represented by Mr Greenfield (the co-owner). Neither Mr Knight nor Mr Greenfield had any questions for the Police.

In response to questions from members of the Panel, PC Hunt referred to further recent incidents at the premises on 26 November (12:38-19:00), 22 November (14:10-18:31), 21 November (16:38-18:48) and 20 November (16:13-17:40). On each occasion, people had been permitted to purchase and consume alcohol in the rear bar area. He also clarified that this only represented an initial review of the CCTV footage available. PC Hunt also advised that Kent Police had not previously visited the premises.

Mr Greenfield, the co-owner, stated that he had provided a full explanation to PC Hill and PC Hunt (PC Hunt confirmed this to be the case later in the hearing but added that the onus was on Mr Greenfield to reference the discussion as part of his representations). He explained that he had been in Spain for two months whilst this was happening. He had taken on the premises on 1 December 2019 as a business opportunity as an initial year let and he explained his own background running boot fairs. He explained that Mr Knight had worked for him and had some previous experience of working in pubs. He described Mr Knight as an honest person. He explained that he had made a mistake on having a co-owner on the lease, Mr Wilson, who had been present on the premises on 27 November. He explained that Mr Knight was the employee in this situation and that Mr Wilson was his boss and that as a consequence of the incident, he had severed his link with Mr Wilson. He understood the seriousness of the incident and highlighted that there had been no problems previously with the premises and that there was no threat from the

premises. He stated that this type of incident would never happen again. He referred to prohibition notices issued to other businesses in Medway and that he hoped to be given a second chance.

Mr Greenfield did refer to the steps put in place on the premises, such as screens put up at the bar, the availability of masks, tape on the floor and signage. He also referred to his discussions with Trading Standards and referred to a visit from them in September where they were given a leaflet.

Mr Knight informed the Panel that he had felt intimidated by the other co-owner and felt he had been obliged to do what he was told by him.

In response to a question from PC Hunt regarding enforcement of the rules on the premises, Mr Greenfield stated that non-compliance was an issue generally and he referenced his observations of masks not being worn in the local Co-op store. He referenced that whilst Kent Police had highlighted non-compliance from the CCTV footage, there would be plenty of examples of customers following the rules on the footage. He reiterated the steps that the premises had taken including a track and trace system on a laptop computer in the bar. He informed the Panel that the incident on 27 November consisted of Mr Wilson and his friends and was not a free for all.

In response to a question from PC Hunt regarding Mr Wilson's involvement, Mr Greenfield confirmed that Mr Wilson was no longer involved with the business. Mr Greenfield had spoken with the landlord of the premises and it was confirmed that any future lease on the premises would not include Mr Wilson.

In response to a question from PC Hill, Mr Knight confirmed he was responsible for the day to day running of the premises. Mr Greenfield confirmed that he was the joint leaseholder (with Mr Wilson) and that he had run the business since last December and that the current lease had now expired (it was for an initial one year lease). He reiterated his previous comments that there had been no previous problems with the premises and the issues had been caused by Mr Wilson.

In response to questions from PC Hill regarding the premises licence, and in particular, the status of the DPS (referred to as Graham during the hearing), Mr Greenfield confirmed that given that there were some licensing issues with Mr Knight's status as a DPS, regarding his status as a DPS, Graham had agreed to be the DPS to help Mr Greenfield but had only visited the premises on a small number of occasions. Mr Knight subsequently undertook the relevant training to enable him to be a DPS. Mr Greenfield stated that he had then he had tried to take steps to replace Graham on the licence with Mr Knight (although this had not been achieved). Mr Greenfield confirmed that it was his intention for Mr Knight to be the PLH and DPS for the premises. There followed some discussion between PC Hill and Mr Greenfield regarding whether the premises was running well and Mr Knight's ability to act as the PLH and the DPS.

In response to a question from PC Hill regarding the incident on 27 November, Mr Knight stated that whilst he did not know on the night of the incident who the DPS was (and that he did not confirm that he was the PLH), he had this information

written down, and that nerves may have been the reason he was unable to answer questions. He denied that he was drinking and socialising with customers on the night of the incident.

In response to questions from Panel Members, Mr Knight confirmed that he was responsible for the premises on the night of the incident and that Mr Wilson was the co-owner. Mr Knight had asked Mr Wilson to leave the premises and he had refused to leave. Mr Knight confirmed that he was the PLH for the premises. He stated that he understood some of the mandatory conditions of the licence. Under further questioning, Mr Knight stated that he had assumed the role of the DPS at the premises and that he had passed the exams to be the DPS. He explained that he was nervous on the night of the incident with regards to his inability to explain who was named on the premises licence. He reiterated that he had been trying to get the licence rectified to name himself as the DPS. In response to a question regarding his knowledge of the events, Mr Greenfield stated that as he was in France/Spain for nearly two months, Mr Knight had not informed him as to the events which were taking place and that he was not aware that Mr Knight was being intimidated by Mr Wilson. In response to a further question regarding Mr Knight's ability to run the premises in the future, Mr Knight stated that he would not feel intimidated by Mr Greenfield and that it was only Mr Wilson who he had felt intimidated by.

In response to a question from a Panel Member regarding the non-display of a QR code, Mr Knight explained that Trading Standards had visited the premises and thanked them for displaying the QR codes throughout the premises.

In response to a question from a Panel Member, PC Hunt confirmed that Mr Wilson had been abusive to the Police on the night of the incident, including an accusation that they were not real police officers. PC Hunt also confirmed that Mr Wilson was intoxicated on the night of the incident.

In response to a question from a Panel Member regarding action taken against Mr Wilson, Mr Greenfield confirmed that he had now separated himself from Mr Wilson, that the lease had been expired, and that should it be renewed it would be solely in his name (Mr Greenfield). In addition, Mr Wilson would no longer be welcome at the premises.

Summing up, PC Hunt referred to both the incident and the global pandemic. He had presented his concerns on the evidence available to date within the time constraints and that further evidence would be made available at the full review. He stated that there must be consequences when covid-19 rules and regulations were ignored. It was probable that the actions at these premises had contributed to the area moving from tier one at the beginning of the second national lockdown to tier 3 at the end of the lockdown.

PC Hill stated this was a serious matter and that this request was for interim steps to be taken pending a full review. He explained that of the options open to the Panel, that most of the steps were not suitable, therefore, the Police were seeking a suspension of the licence. He did not consider the premises were able to comply with the current and future restrictions and he considered that the PLH was open to be manipulated or intimidated in enforcing the restrictions.

Summing up, Mr Greenfield stated he had run a successful boot fair in Medway for over 30 years and there had never been any incidents. He stated that he did not accept the Police's views about the premises given that the premises had been run well without any problems until this incident. Mr Knight stated that he would be confident running the premises now that Mr Wilson was no longer involved.

The Panel resolved to exclude the press and public from the meeting during the Panel's deliberations and decision making.

**Decision:**

1. In considering the application for an expedited review of the premises licence for the Hop and Rye, 4 Wainscott Road, Wainscott, Kent ME2 the Licensing Hearing Panel had regard to the Licensing Act 2003, the statutory guidance issued under S182 of the Act, the Council's Statement of Licensing Policy and all matters before it, both written and oral.
2. In light of the Panel's lack of confidence in the ability of the current management to manage the premises safely in the accordance with licensing legislation and coronavirus legislation, the Panel suspended the premises licence, pending a full review hearing

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**Note:**

The premises licence holder may make representations against the interim steps taken by the licensing authority. There is no time limit for the premises licence holder to make representations on the interim steps, although in practice this would need to be completed within 28 days of the application being received by the licensing authority when the full review hearing will take place. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt. When calculating the 48 hour period, any non-working day can be disregarded