

LICENSING ACT 2003 – REVIEW OF A PREMISES LICENCE

Name and address of premises

The Hop & Rye, 4 Wainscott Road, Wainscott, Kent. ME2 4LB

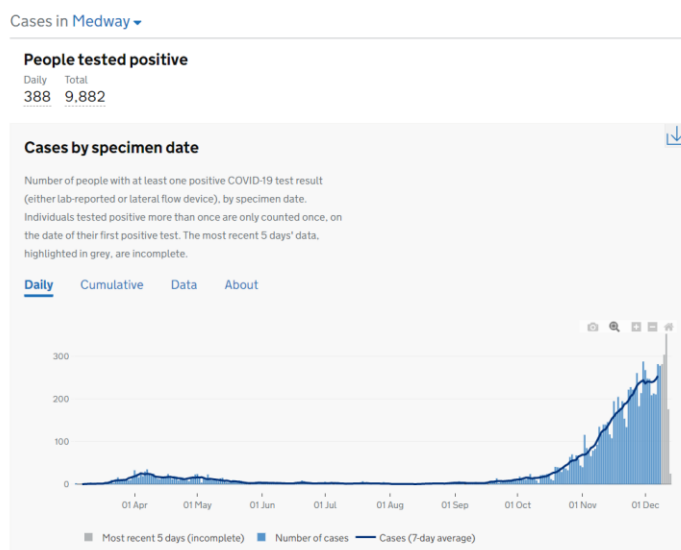
The Director of Public Health is making representations in response for the review of the above premises licence by Kent Police. The representations are made against the following licensing objectives:

- The prevention of crime and disorder
- The prevention of public nuisance

Background

These representations are intended to be considered in the context of the global Covid 19 pandemic and the current levels of infection Medway is experiencing. All graphs and data were taken from the official UK Government Coronavirus (Covid 19) website on Wednesday 15th December 2020 (<https://coronavirus.data.gov.uk/details/cases>).

The following graph show the number of positive tests of people in Medway during the course of the pandemic.



Since the beginning of October, the number of positive tests has steadily increased and was at a 7 day average of 231.3 cases by 27th November 2020, which is the date of the alleged incident. The most recent 7 day average recorded for the 7th December is 254.1, showing a continuing steady increase in number of positive tests.

The rate of infection per 100,000 of population in Medway is 618.2 per 100,000 population and is currently the second highest 7 day rolling rate of Covid 19 infections in England after Swale.

Cases by area (last 7 days)

Total number of people with at least one positive COVID-19 test result (either lab-reported or lateral flow device) in the most recent 7-day period. The rates per 100,000 resident population give a fairer comparison of the number of cases in each area but they do not take account of the different rates of testing or differences in the age and sex of the local populations. Data shown are cases by specimen date and because these are incomplete for the most recent dates, the period represented is the 7 days ending 5 days before the date when the website was last updated.

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Area	Cases	Rate per 100,000 population
Swale	966	643.6
Blaenau Gwent	448	641.3
Medway	1,722	618.2
Basilston	1,150	614.3
Torfaen	523	556.6
Dover	613	518.9
Havering	1,321	509

On the 15th December 2020 England had a rate of 173.3 per 100,000 of population.

The prevention of crime and disorder

On the 5th of November 2020 a second national lockdown came into effect in England due to increasing rates of coronavirus infections and measures deemed necessary to reduce infection rates were imposed by government under The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020. These regulations made it an offence for a person responsible for carrying on a restricted business, or providing a restricted service, to continue with that business or service. A public house is a 'restricted business' and the sale of alcohol for consumption 'on' the premises is a 'restricted service', as is shown below in the regulations.

Restrictions on service of food and drink for consumption on the premises

15.— (1) *A person responsible for carrying on a restricted business, or providing a restricted service, must—*

(a) close any premises, or part of the premises, in which food or drink are provided for consumption on those premises, and

(b) cease providing food or drink for consumption on its premises.

By carrying out the sale of alcohol for consumption on the premises the premises licence holder is clearly breaching the above regulations, which shows a complete disregard for the promotion of the prevention of crime licensing objective.

The prevention of public nuisance

R v Rimmington; R v Goldstein [2005] UKHL 63; [2006] 2 All ER 257A defines a public nuisance as being

'committed when a person acts in a way not warranted by law or omits to discharge a legal duty, with the effect that the act or omission endangers the life, health, property or comfort of the public or obstructs the exercise of common rights.'

By allowing the public house to open and sell alcohol to customers the premises licence holder clearly omits to discharge the legal duty under The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020 requiring the closure of the public house and to cease providing drink for consumption on the premises.

Additionally, by failing to ensure that people in the public house were not wearing face coverings; failing to follow social distancing; and allowing more than 6 people to be in a confined space, the risk of community transmission of the virus was increased. Covid 19 is easily transmittable and there would have been a significant risk to those in the premises through the spread of infection. By allowing the situation described in the police application the premises licence holder has shown a disregard for the public nuisance licensing objective.

Summary

The evidence from the police indicates the premises licence holder has an ongoing pattern of indifference to adhering to both legislation and guidance concerning the safe running of the public house during the pandemic and to the safety of staff and customers.

The Government has produced '*Working safely during coronavirus (COVID-19). Restaurants, pubs, bars and takeaway services: Guidance for people who work in or run restaurants, pubs, bars, cafes or takeaways*' (<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/restaurants-offering-takeaway-or-delivery#takeaways-2-6>). This clearly sets out how customers and staff can be kept safe while attending and working in public houses during the pandemic. The advice includes the wearing of face coverings, use of PPE and the need for social distancing, which does not appear to have been followed.

The police evidence also states the premises licence holder had, previously to this incident, been warned by Trading Standards concerning a similar incident and offered guidance and

advice, which, again, appears to have been disregarded. This shows a wilful neglect of the safety of both staff and customers at the public house.

The failure of the premises licence holder to promote the licensing objectives has created a serious public health risk, particularly at a time of increasing numbers of infections in the Medway area. This is compounded by the fact that the police have found CCTV evidence of a significant number of other earlier breaches of regulations throughout the pandemic period. Neither the crime nor public nuisance licensing objectives have been promoted.

The Director of Public Health believes the types of action shown by the premises licence holder at this public house had the real potential of increasing wider community transmission of the virus, which in turn may have led to an increased risk of fatalities associated with Covid 19 in Medway.

The Director asks the committee as to consider the revocation of the premises licence due to the seriousness of the actions of the premises licence holder.

James Williams

15th December 2020

Director of Public Health

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