

Rother District Council
 DECISION NO: WK2020024217

**GENERAL LICENSING PANEL
 DECISION NOTICE**

Date of General Licensing Panel Meeting: 21 August 2020

Remote Meeting

Date of Decision: 21 August 2020

**NAME AND ADDRESS OF
 PREMISES:**

Red Lion Inn, Brede Hill, Brede, East Sussex, TN31 6EJ

NAME(S) OF APPLICANT:

Environmental Health Team (Food and Safety) of Rother District Council

REASON(S) FOR REPORT:

The report had been made on the grounds of the failure of the Premises Licence Holder to uphold the 'prevention of crime and disorder' and 'public safety' licensing objectives.

DECISION MADE:

That Ms Campbell-Crabb be removed as the Designated Premises Supervisor of the Red Lion Inn, Brede.

DECISION MADE AND REASONS FOR IT:

The Panel was asked to consider a Review Application from Rother District Council's Environmental Health Division, supported by evidence from Sussex Police, for the Premises Licence for The Red Lion, Brede Hill, Brede. The Panel had been provided with a bundle of evidence that included a detailed Police statement and information concerning a reported breach of the Coronavirus Regulations by the unlawful sale of alcohol and an unlawful gathering at the premises during the Covid-19 lockdown phase, imposed by Regulatory restrictions. In considering the case, the Panel also had regard to the Council's Statement of Licensing Policy and the Secretary of State's S.182 Guidance, in particular the chapter on Reviews.

The hearing was facilitated by use of Microsoft Teams software, and in attendance to support the Panel were a number of Council officers. Additionally, in attendance were the applicant for the review represented by Una Kane, Environmental Health Manager, Police Constable (PC) Jeffrey of Sussex Police, the premises licence holder (PLH) Ms Campbell-Crabb was represented by John Wallsgrove, Solicitor, and finally the PLH's partner Mr Graham.

The Chairman of the hearing, Councillor Curtis, explained the procedure to be followed for the hearing, emphasising that there would be full opportunity for parties to engage in the discussion led process. The Panel then heard from the Senior Environmental Health Officer (Licensing) who outlined the report before the Panel, with details of the current premises licence and the complaint history for the premises. It was stated that there had been no officer involvement in complaints since 2015 and none since the current PLH had taken control of the premises in October 2018.

The application for the review had been made by the Environmental Health Division as a Responsible Authority, following a Police visit made on Friday 8 May 2020, VE Day. Ms Kane outlined the chronology for the Government's lockdown procedure at the end of March and the subsequent regulations that closed businesses. As part of the support for businesses during this time, the Council had paid the PLH a Retail, Hospitality and Leisure Grant of £25,000, which it was said effectively paid them to be closed. On the 17 April 2020, the Environmental Health Division issued a written advisory letter to all premises outlining the guidance they would need during the closure, to explain what they could and could not do. Furthermore, the letter made a clear statement that those premises that did not comply would be served with a Prohibition Notice under the regulations and would face review proceedings upon their premises licence. In order to give context to the severity of the situation at the time, it was said that 27,000 people had died from the virus by the 9 May stage, and public concern over the spread was very high. Photographs within the evidence bundle showed a large gathering of people outside the Red Lion on the 8 May and was said to be clear evidence that social-distancing measures were being disregarded by the PLH. Also, within the evidence were extracts from social media comments from local people and businesses, outraged at the apparent disregard for the lockdown provisions. Equally apparent in those entries, there was taunting from those drinking outside the premises to those expressing concern.

At this stage in her submissions, Ms Kane introduced PC Jeffrey, the police officer who had attended on behalf of Sussex Police on the 8 May 2020 as part of Sussex Police response to several complaints made by members of the public about activity at the premises. PC Jeffrey stated he had attended at 17:15 hrs with a number of other officers who were all returning from incidents around Camber Sands. On arrival, he had seen approximately a dozen, predominantly male, drinkers outside the Red Lion. He stated there were half empty plates of food on large trays. On arrival, officers were heckled by a number of the drinkers for 'spoiling their party' but having identified Mr Graham as the person in apparent charge, he had gone into the premises to talk to Mr Graham. The drinkers all left the scene quickly once other officers began to arrive at the scene. When asked by the Panel about the numbers of drinkers outside, PC Jeffrey said there were less than the numbers reported earlier in the day by members of the public, but he estimated about 12-15 people. Asked whether they appeared to be two family groups as stated by the PLH in the papers, he stated they did not appear to him to be family groups. He said most were middle aged men and certainly under the influence of alcohol, with several showing signs of sunburn consistent with them being outside all day in the sun, which had been the case on 8 May.

In his discussion with Mr Graham inside, PC Jeffrey stated there were glasses all around the bar area and tables with small piles of cash randomly here and there. The till was not switched on, but there was cash on the bar. He said Mr Graham appeared to be under the influence of alcohol, he criticised the Police for attending and was initially argumentative. Asked about the apparent sale of alcohol, Mr Graham stated they were giving the alcohol away and donations were being given to the NHS. PC Jeffrey stated that there were no posters or flyers visible that suggested this was the purpose of the opening and that none of the patrons questioned outside by the Police had stated it was a fund raising event. Asked by the Panel whether PC Jeffrey considered the pub to be open, he replied yes, he thought it was trading openly.

PC Jeffrey then went on to state that the PLH then appeared in the bar area, and PC Jeffrey stated she too appeared to be under the influence of alcohol to the extent she was struggling with conversation. It was said that the breach of the Coronavirus regulation was made clear to the PLH (who also confirmed she was the Designated Premises Supervisor

(DPS)) but given that the patrons had moved away from the premises, the Police saw no reason to take enforcement action themselves. However, PC Jeffrey did make it clear that the matter would be reported to the Licensing Authority. Through Ms Campbell-Crabb's Solicitor Mr Wallsgrove, PC Jeffrey was asked whether there was any evidence of drinking inside the premises and it was stated that he had not seen anyone inside the premises, but that the inside was full of empty and partly empty glasses and piles of money as stated earlier. He was asked whether any people were in the rear area, and PC Jeffrey stated he had not seen the rear area occupied.

In concluding her submissions, Ms Kane stated there was clear evidence that the premises were open, in breach of the Coronavirus regulations. There was clear evidence from photographs taken on the day, and the Police evidence provided, that there was a breach of the restrictions on gatherings in the regulations, all of which compromised the licensing objectives as set out in the report. Indeed, a Prohibition Notice had been served following the incident to enforce the breaches. The Panel asked Ms Kane whether there was any more evidence concerning 9 May, but it was said that the only report was that of PCSO Collins who stated the mess he saw on 9 May could have been from the day before.

When questioned by the PLH's Solicitor about how many other premises had been reviewed for similar notices, Ms Kane pointed out this was the first that had reached a review. In her submission, Ms Kane stated the PLH had undermined other businesses in the area who had complied with the regulations and had clearly concerned local people and those people travelling through the village on that day, as so many complaints had been made. She urged the Panel to carefully consider the full range of their powers when deciding what sanctions they should impose, if they were satisfied that the licensing objectives had been breached.

The PLH did not attend the hearing as she was unwell and as such, the Panel were unable to fully scrutinise her evidence, as they had been able to do with PC Jeffrey. Mr Wallsgrove made representations on her behalf and began by apologising for the time and effort that had gone into the whole matter and that it was not her intention to cause such an issue. He stated it was not her planned intention or her reckless behaviour to open for trade as stated by the application, and that she complied with all the Government's requirements after 21 March until the Government re-opened premises on 4 July. He stated there had been no complaints about the premises before 8 May and indeed none thereafter, and in that respect he asked the Panel to put the incident in context to that background of good management. He stated that no other Responsible Authorities had made a representation, including Sussex Police and that the delay between the 8 May and the issue of the review application on 30 June suggested that the matter was not that serious. He stated the PLH had invested well over six figures in the premises and that Mr Graham had been unwell for a prolonged period of time with cancer and had only returned to the premises in January 2020. Furthermore, the PLH had herself had family illness and she too had not given the premises her full attention in recent times.

Mr Wallsgrove stated that on VE Day the whole village had decided to celebrate the event by having food outside their houses for the villagers to move along and talk to their neighbours. Mr Graham and Ms Campbell-Crabb had decided to join in the event, and given they lived at the premises, they placed trays of food outside and decided to give away their stores of beer, rather than throwing them away. He stated it was a neighbour's idea to ask for donations for the NHS. Asked by the Panel how much money had been donated, it was stated that they were still collecting money and it had not yet been handed to the NHS, but would eventually be given to the cancer ward where Mr Graham had been treated. Mr Wallsgrove said it was not pre-planned, that his client was unaware that the donations meant it was still a sale of alcohol and he accepted that they were in breach of

the regulations, but emphasised that nobody had gone into the premises, or round the back. He accepted that the PLH should know the law and this was not an excuse, but simply an explanation. He stated they had learnt a salutary lesson. He insisted she was not drunk and that the gathering was two households and one other person. In summary, he stated that the Panel should consider issuing a warning to the PLH for the incident on 8 May and stated there had been no evidence of a breach on 9 May and so that should not be considered. The Panel asked a number of questions to clarify points raised.

Both the applicant and the PLH's representative made short final statements, repeating their respective suggestions on how the Panel should deal with the review.

The Panel were asked to consider whether, on the evidence provided and that heard at the hearing, they considered that the licensing objectives were being undermined by the premises, and if so, what appropriate actions should be considered. The Panel were satisfied, on balance, that whilst some of the evidence was disputed by the parties, the majority of the evidence was undisputed. The Panel accepted the evidence of PC Jeffrey that there were unlawful gatherings at the premises on 8 May, which were supported by the photographs and complaints made to Sussex Police. The Panel found, on balance, that all the drinkers were probably not from two households only. They were satisfied that the speed with which the patrons fled the scene when the Police arrived demonstrated that those individuals knew what they were doing was not permitted. Furthermore, the Panel were satisfied that Mr Graham was doing nothing at all to break up those unlawful gatherings and thereby undermining the licensing objectives with little concern. The Panel were satisfied that the evidence showed the premises were selling or supplying alcohol, in defiance of the regulations, irrespective of the attempt to collect charitable donations. The Panel were of the opinion that had such a collection been made at the time, the money would have been given, and receipted, before the hearing, which was some three months after the collection. In this aspect of the submissions, the Panel would have been interested to hear from either Ms Campbell-Crabb or Mr Graham themselves.

The Panel were satisfied, on balance, that the evidence of PC Jeffrey in connection with the intoxication of Ms Campbell-Crabb was believable and showed little regard for the responsibilities she owed considering the serious breaches that were taking place at the premises. The Panel were told she had not been at the premises all day, but the Panel were satisfied on the evidence provided she certainly was at the premises when PC Jeffrey attended and yet she had done little, if anything, to put matters in order, as expected by the Licensing Authority. The Panel heard no submissions from Mr Wallsgrove that any attempt had been made by Ms Campbell-Crabb on her return from visiting family and that as a licence holder and the DPS, she should have dispersed the gatherings and closed the premises. On the evidence before them, the Panel were satisfied, on balance, she failed to take any action in this regard.

The Panel were not satisfied that the premises had breached the relevant regulations on 9 May and in that respect, they did not consider that part of the review application. In respect of the incidents on 8 May, the Panel were satisfied that some form of sanction should be considered. They accepted the submission made by Mr Wallsgrove that the licensing history to the premises under the current PLH should carry some weight when considering what sanctions to impose. The Panel accepted this suggestion when considering whether it was appropriate to revoke the licence for the breaches. Without doubt these were serious matters and in the context of the death rate at that time being over 27,000, it was clear such breaches had potential catastrophic consequences for some people. Nevertheless, the Panel were satisfied that given the licensing history, revocation of the premises licence, at this stage, would be inappropriate as set out on the Secretary of State's S.182 Guidance at 11.20-11.22. They were however, satisfied that

the cause of the whole issue was the poor management of the premises. In the submissions on behalf of the PLH, it was said that Ms Campbell-Crabb had been distracted recently by family illness and indeed the illness of her partner Mr Graham. Clearly, that distraction had caused manifest failings in the upholding of the licensing objectives. The Panel were satisfied the Council had made it perfectly clear in their letter of 17 April 2020 there would be consequences were a business to defy the regulations. In that regard, the Panel considered it was an appropriate sanction that Ms Campbell-Crabb should be removed as the DPS for the Red Lion, Brede. The Panel were satisfied, on balance, that should a different DPS be appointed to the premises, then the premises should be able to operate more responsibly and ensure that the business survived the difficult times that lay ahead. It was noted by the Panel that should any further report be made in respect of such failings of the licensing objectives at the premises, that the Members of a future Panel may be less generous in their approach to future failings.

Right of Appeal

Under the provisions of Section 181 and schedule 5 of the Licensing Act 2003 there is a right of appeal against the decision of the Licensing Committee if you are aggrieved at the outcome. This right of appeal extends to the applicant in the case of a refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed upon the licence. Full details of all the rights of appeal can be found within Schedule 5 of the Act.

Any appeal should be made to the Magistrates' Court, Edward Street, Brighton, within 21 days from the date of notification of the decision. You must contact the Magistrates' Court to establish the formal procedure for the appeal and the fees for doing so.

A written or electronic copy of this Notice will be publicly available to all parties and published on the Council's website.