

LICENSING ACT 2003 SUB COMMITTEE MEETING

Date: Tuesday 2 May 2023
Time: 10.00 am
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors English, Hinder, Joy and Trzebinski (Substitute Member)

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Election of Chairman
4. Disclosures by Members and Officers
5. Disclosures of Lobbying
6. To consider whether any items should be taken in private because of the possible disclosure of exempt information
7. Application for a premises licence to be varied under the Licensing Act 2003 for Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst, Kent , TN12 0HX 1 - 165

ALTERNATIVE FORMATS

The reports included in Part I of this Agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact Democratic Services at committee@maidstone.gov.uk or call **01622 602899**.

Issued on Friday 21 April 2023

Alison Broom

Alison Broom, Chief Executive

Agenda Item 7

Agenda Item No: 1 - Summary of Report

Licence Reference: 23/00753/LAPRE

Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 2nd May 2023

Report Title: HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE,
STAPLEHURST, KENT , TN12 0HX

Application for: A premises licence to be varied under the
Licensing Act 2003

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Mr Richard Balfour-Lynn
 2. Type of authorisation applied for: To vary a premises licence under the Licensing Act 2003. (Appendix A)
 3. Licensable Activities and hours:

| | | Current Hours | | Hours: New Application | |
|----|--|--|----------------------------|--------------------------------------|------------------------|
| E) | Live Music (Indoors & Outdoors) | Mon - Sun | 10:00-24:00 | No Change | No Change |
| F) | Recorded Music (Indoors & Outdoors) | Mon - Sun | 10:00-24:00 | No Change | No Change |
| L) | Late Night Refreshment (Indoors & Outdoors) | Mon - Sun | 23:00-24:00 | No Change | No Change |
| M) | Supply of alcohol (On & Off the premises) | Off sales Mon – Sun (Online) | 24 hours | Off sales No Change | No Change |
| | | Offsales -Shop Special Events x 12 Non Special Events Fri & Sat only | 10:00-24:00 10:00-23:00 | Offsales - Shop No Changes | No Change No Change |
| | | Mon – Sun Nov-Mar | 10:00-17:00 | | No Change |
| | | Apr-Oct | 10:00-18:00 | | No Change |
| | | On sales Mon – Sun Special Events x12 | 10:00-24:00 | On sales No Changes | No Change |
| | | Non special Sun -Thurs Fri & Sat | 10:00-19:00 10:00-23:00 | | No Change No Change |
| O) | Opening Hours Online Special Events | Mon – Sun 24 hours 10:00-24:00 | | No Changes | No Change No Change |
| | Non special events | Sun -Thurs - 10:00-19:00 Fri & Sat - 10:00-23:00 | | | No Change No Change |

The variation seeks to remove the word "restaurant" from the condition at Annex 4. Condition 1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding or events venue (other than events ancillary to the winery use)

All other conditions to remain.

There are no changes sought to any licensable activity or opening hours

Affected Wards: Staplehurst

Recommendations: **The Committee is asked to determine the application and decide whether to vary the premises licence.**

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

Financial Implications: Costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application it is appropriate to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**other persons**” The procedure for determining licences has a prescribed format to ensure fair representation of the relevant facts by all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers: Licensing Act 2003
DCMS Guidance Documents issued under section 182 of the Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

Contacts: Mrs Lorraine Neale at: lorraineneale@maidstone.gov.uk – tel: 01622 602528

Agenda Item No. 1

Report Title: Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst, Kent , TN12 0HX

Application to: Vary a premises licence under the Licensing Act 2003.

Purpose of the Report

The report advises Members of an application to vary a Premises Licence under the Licensing Act 2003,(Appendix 1), made by Mr Richard Balfour-Lynn for Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst, Kent , TN12 0HX in respect of which 3 responses have been received from other persons (Appendices 3).

Issue to be Decided

Members are asked to determine whether to :

Grant the application as applied for, or

Grant the application and modify conditions of the licence, or

Reject all or part of the application

Background

1. The relevant sections are Part 3 S13 and 34 – 36 of The Licensing Act 2003 and section 4 of The Licensing Act 2003 in particular the Licensing Objectives:

The prevention of crime and disorder;
Public Safety
The prevention of public nuisance; and
The protection of children from harm

2. The application has been correctly advertised in the local press and notices displayed on the premises for the required period.
3. There were no representations received from responsible authorities.
4. 3 responses were received from other persons.
5. The table below illustrates the relevant responses which have been received

| | Responsible Authority /Other persons | Licensing Objective | Associated Documents | Appendix |
|---|---|--|-----------------------------|-----------------|
| | Objections | | | |
| 1 | Mr & Mrs Humphrey | Crime & Disorder Public Nuisance Public Safety | E-mail | 3 |
| 2 | Natasha and Richard Davidson-Houston | Public Nuisance Public Safety Children from Harm | E-mail | 3 |
| 3 | Amanda Tipples | Crime & Disorder Public Nuisance Public Safety | E-mail | 3 |
| 4 | Andrea Hodgkiss and Angus Codd | Crime & Disorder | E-mail | 3 |

| | | | | |
|--|--|----------------------------------|--|--|
| | | Public Nuisance Public Safety | | |
|--|--|----------------------------------|--|--|

Mr Matt Lewin, counsel, acting on behalf of Mr & Mrs Humphrey, Amanda Tipples, Andrea Hodgkiss and Angus Codd has submitted documents which are attached as Appendix 4.

The premises has a current licence, Appendix 4 and current plans Appendix 2. The current licence holder is the applicant

6. The current licence hours are as per the licence attached at appendix 5 and set out at 3 of the summary above. The application seeks to remove the word "restaurant" from the condition at Annex 4. Condition 1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding or events venue (other than events ancillary to the winery use)

All other conditions to remain.

No change to licensable activity or opening hours is sought.

7. **Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is appropriate to do so to promote the licensing objectives.;**

8. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**

Chapters 8 (8.42 onwards) & 9 Premises Licences & Determining Applications

Chapter 10 Conditions.

Relevant policy statements contained in the Licensing Authority's Statement of Licensing Policy:

Relevant policy statements contained in **the Licensing Authority's Statement of Licensing Policy:**

17.10 Crime and Disorder

17.19 Public Safety

17.22. Prevention of Public Nuisance

17.26. Children from Harm

CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

17.10 Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

17.11 Wholesale of alcohol. Since 1 April 2017, businesses which sell alcohol (for

example, retailers of alcohol and trade buyers) need to ensure that the UK wholesalers that they buy alcohol from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique Registration Number (URN) against the HMRC online database. This is an ongoing obligation and if a business is found to have bought

alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face a criminal prosecution and their alcohol stock may be seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses.

17.12 Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC.

17.13 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- Prevention of disorderly conduct and anti-social behaviour
- Prevention of underage drinking
- Prevention of sales of alcohol to intoxicated customers
- Prevention of drunkenness both on and in the vicinity of the premises
- Prevention of drug use and drug dealing
- Restriction to responsible drinks promotions
- Use of safety glass
- Inclusion of a wind-down time following alcohol sales period
- Adequate seating to discourage "vertical drinking"
- The offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.14 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) 'wind down' or 'drinking up' period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.15 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol, have later opening hours and are situated within the Town Centre night time economy area.

17.16 Where appropriate, applicants for licences in the Town Centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.17 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.18 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to promotion of the licensing objectives.

CONDITIONS TO PROMOTE PUBLIC SAFETY.

17.19 The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

17.20 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.

17.21 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.

Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:

- (i) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol.
- (ii) Nightclubs
- (iii) Cinemas
- (iv) Theatres.
- (v) Other premises where regulated entertainment is likely to attract a large number of people.
- (vi) Where conditions of occupancy have arisen due to representations received.

CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

17.22 The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

17.23 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premises
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation
- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (v) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (vi) Availability of public transport to and from the premises
- (vii) Delivery and collection times and locations.
- (viii) Impact of external security or general lighting on residents.

- (ix) History of management of and complaints about the premises.
 - (x) Applicant's previous success in preventing Public Nuisance.
 - (xi) Outcomes of discussions with the relevant Responsible Authorities.
 - (xii) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
 - (xiii) Collection of litter arising from the premises
- 17.24 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.
- 17.25 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

CONDITIONS TO PROMOTE THE PROTECTION OF CHILDREN FROM HARM.

- 17.26 Applicants will be expected to detail any appropriate and proportionate steps to protect children at the premises from any harm. The Licensing Authority recognises the right of licensees (serving alcohol) to allow accompanied children into their premises. The Licensing Authority would not seek to restrict access by children (above that specified in the Act) unless it is necessary for the prevention of physical, moral or psychological harm.
- 17.27 Steps to protect children from harm must be carefully considered for inclusion where:
- (i) There is entertainment or services of an adult nature provided.
 - (ii) There have been previous convictions for under age sales of alcohol.
 - (iii) There has been a known association with drug taking or dealing.
 - (iv) There is a significant element of gambling on the premises.
 - (v) There is a presumption that children under 18 should not be permitted entry such as to nightclubs (apart from when specific events are held for under 18's).
 - (vi) Outcomes of discussions with relevant Responsible Authorities suggest such steps are applicable.
- 17.28 Nothing in the Licensing Act prevents licensees from excluding children from a licensed premises and no condition can be added to require the admission of children.
- 17.29 Where there are no matters that give rise to concern in respect of children at premises the Licensing Authority would expect to see the relevant box on an application form completed to specify NONE.

Options

Legal options open to members -

Grant the variation application as applied for., or

Grant the variation and modify conditions of the licence, or

Reject all or part of the application.

Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority’s responsibility to co – operate in the reduction of crime and disorder in the Borough

Section 17 of the Crime and Disorder Act 1988 states:

"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that it reasonably can prevent, crime and disorder in its area”.

12. **Implications Assessment**

The decision should be made with regard to the Secretary of State’s Guidance and the Council’s Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal/challenge is increased.

13. **Human Rights**

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to Fair Hearing
- Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices

14. **Conclusion**

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

15. **List of Appendices**

| | |
|------------|--|
| Appendix 1 | Application Form |
| Appendix 2 | Plan of Premises |
| Appendix 3 | Representations –Other persons |
| Appendix 4 | Documents submitted by other parties counsel |
| Appendix 5 | Current Premises Licence |
| Appendix 6 | Plan of area |
| Appendix 7 | Human Rights Articles |
| Appendix 8 | Order of Proceedings |

16. Appeals

All parties may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates' Court. Parties should be aware that they MAY incur an Adverse Costs Order should they bring an appeal.

| | |
|--------------------|---|
| Contact: Email: | Senior Licensing Officer lorryneale@maidstone.gov.uk |
|--------------------|---|

The Licensing Partnership

Application to vary a Premises Licence

Sevenoaks District Council, Tunbridge Wells Borough Council, Maidstone Borough Council and London Borough of Bexley have a Licensing Partnership to process and issue licensing applications.

Licensing Officers are located at each local licensing authority, together with admin support to deal with people visiting the Gateways and Tunbridge Wells Town Hall.

Thank you for using the Licensing Partnership self service. Before completing the form, please be aware of the following information:

Form Submission:-

When you have completed the application form please submit it. When you submit the application, you will receive an electronic response which will be sent directly to the email address provided in the application.

Payment:-

If you are submitting an application which requires a payment, please have your credit or debit card to hand as payment can be made upon submitting your application form. Applications requiring a payment will only be validated once payment is confirmed.

General Information:-

If you have any problems with completing the form please contact licensing@sevenoaks.gov.uk

For Official Use Only

| | | | |
|--|-----------------------|----------------|------------------------|
| Title | Customer Name | Form Filename | <input type="text"/> |
| <input type="text"/> | Richard Balfour- Lynn | Form Reference | Richard Balfour- Lynn/ |
| DOB | NINO | Notes | Caps Reference |
| <input type="text"/> | <input type="text"/> | | <input type="text"/> |
| TEL | <input type="text"/> | | |
| Email | <input type="text"/> | | |
| Customer Address | <input type="text"/> | | |
| Hush Heath Winery Hush Heath Estate Five Oak Lane Staplehurst Tonbridge Kent TN12 0HX | | | |
| Date Form Started | 27/02/2023 12:47:05 | | |
| Date of E-signing | <input type="text"/> | | |
| Date Submitted | <input type="text"/> | | |
| Validation Ref | <input type="text"/> | | |
| Occupancy type | <input type="text"/> | | |
| Advisor Name (who started form) | <input type="text"/> | | |
| Advisor Department | Self-Service | | |

Licensing Authority:

Ref:

Application to vary a Premises Licence under the Licensing Act 2003

Please read the following instructions first

Before completing this form please read the guidance notes at the end of the form.

Use the blank page at the end of the form to provide further details if necessary.

When it is complete you can submit the form directly to us - click on the Submit Form button.

You may wish to print and keep a copy of the completed form for your records.

For help information about filling in this type of electronic form, click on the help information button.

I/We **Richard Balfour-Lynn** being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Maidstone Borough Council

[Click here for licence lookup](#)

Premises licence number

20/01678/LAPRE

Part 1 - Premises Details

Postal address of premises or, if none, ordnance survey map reference or description

Hush Heath Winery
Hush Heath Estate
Five Oak Lane
Staplehurst
Tonbridge
Kent TN12 0HX

Post code

Telephone number at premises (if any)

01622832794

Non-domestic rateable value of premises

£ .00

Part 2 - Applicant Details

Title

Mr

Surname

Balfouer-Lynn

Firstnames

Richard

Daytime contact telephone number

01622832794

Email address
(optional)

Current postal
address
if different from
premises address

Balfour Winery
Five Oak Lane
Staplehurst
Kent

Post Town

Postcode

TN12 0HT

Part 3 - Variation

Do you want the proposed variation to have effect as soon as possible?

If not do you want the variation to take effect from

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend

Please describe briefly the nature of the proposed variation (Please see guidance note 1)

We wish to remove the reference to the word "restaurant" in the following condition:

Annex 4. Condition 1.
"The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding or events venue (other than events ancillary to the winery use)."

All other conditions to remain.

Part 4 - Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

Sale by retail of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

To complete this part, choose this option on Page 4

A

| Plays Standard days and timings (please read guidance note 6) | | | <u>Will the performance of a play take place indoors or outdoors or both - please make selection with an "x"</u> <u>(please read guidance note 2).</u> | Indoors | |
|--|-------|--------|--|----------|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | <u>Please give further details here</u> (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | <u>State any seasonal variations for performing plays</u> (please read guidance note 4) | | |
| Thur | | | | | |
| Fri | | | <u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> <u>(please read guidance note 5)</u> | | |
| Sat | | | | | |
| Sun | | | | | |

B

| Films Standard days and timings (please read guidance note 6) | | | <u>Will the exhibition of films take place indoors or outdoors or both - please make selection with an "x"</u> <u>(please read guidance note 2).</u> | Indoors | |
|--|-------|--------|---|----------|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | <u>Please give further details here</u> (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | <u>State any seasonal variations for the exhibition of films</u> (please read guidance note 4) | | |
| Thur | | | | | |
| Fri | | | <u>Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list</u> <u>(please read guidance note 5)</u> | | |
| Sat | | | | | |
| Sun | | | | | |

To complete this part, choose this option on Page 4

C

| Indoor sporting events Standard days and timings (please read guidance note 6) | | | Please give further details (please read guidance note 3) |
|--|-------|--------|---|
| Day | Start | Finish | |
| Mon | | | State any seasonal variations for indoor sporting events (please read guidance note 4) |
| Tue | | | |
| Wed | | | |
| Thur | | | Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list (please read guidance note 5) |
| Fri | | | |
| Sat | | | |
| Sun | | | |
| | | | |

D

| Boxing or wrestling entertainments Standard days and timings (please read guidance note 6) | | | Will the boxing or wrestling entertainment take place indoors or outdoors or both - please make selection with an "x" (please read guidance note 2). | Indoors | |
|--|-------|--------|--|---|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | Please give further details here (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | | State any seasonal variations for boxing or wrestling entertainment (please read guidance note 4) | |
| Thur | | | | | |
| Fri | | | Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list (please read guidance note 5) | | |
| Sat | | | | | |
| Sun | | | | | |
| | | | | | |

To complete this part, choose this option on Page 4

E

| Live music Standard days and timings (please read guidance note 6) | | | <u>Will the performance of live music take place indoors or outdoors or both - please make selection with an "x" (please read guidance note 2).</u> | Indoors | |
|---|-------|--------|--|----------|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | <u>Please give further details here</u> (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | <u>State any seasonal variations for performance of live music</u> (please read guidance note 4) | | |
| Thur | | | | | |
| Fri | | | <u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 5)</u> | | |
| Sat | | | | | |
| Sun | | | | | |
| | | | | | |

F

| Recorded music Standard days and timings (please read guidance note 6) | | | <u>Will the playing of recorded music take place indoors or outdoors or both - please make selection with an "x" (please read guidance note 2).</u> | Indoors | |
|---|-------|--------|--|----------|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | <u>Please give further details here</u> (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | <u>State any seasonal variations for playing recorded music</u> (please read guidance note 4) | | |
| Thur | | | | | |
| Fri | | | <u>Non standard timings. Where you intend to use the premises for the playing of recorded music entertainment at different times to those listed in the column on the left, please list (please read guidance note 5)</u> | | |
| Sat | | | | | |
| Sun | | | | | |
| | | | | | |

To complete this part, choose this option on Page 4

G

| Performance of dance Standard days and timings (please read guidance note 6) | | | <u>Will the performance of dance take place indoors or outdoors or both - please make selection with an "x" (please read guidance note 2).</u> | Indoors | |
|--|-------|--------|---|----------|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | <u>Please give further details here</u> (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | <u>State any seasonal variations for the performance of dance</u> (please read guidance note 4) | | |
| Thur | | | | | |
| Fri | | | <u>Non standard timings. Where you intend to use the premises for the performance of dance entertainment at different times to those listed in the column on the left, please list (please read guidance note 5)</u> | | |
| Sat | | | | | |
| Sun | | | | | |

H

| Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 6) | | | <u>Please give a description of the type of entertainment you will be providing</u> | | |
|---|-------|--------|--|---------|----------|
| Day | Start | Finish | <u>Will the entertainment take place indoors or outdoors or both - please make selection with an "x" (please read guidance note 2).</u> | Indoors | |
| Mon | | | | | Outdoors |
| Tue | | | Both | | |
| Wed | | | <u>Please give further details here</u> (please read guidance note 3) | | |
| Thur | | | | | |
| Fri | | | <u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 4) | | |
| Sat | | | | | |
| Sun | | | | | |
| | | | <u>Non standard timings. Where you intend to use the premises for entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list (please read guidance note 5)</u> | | |
| | | | | | |

To complete this part, choose this option on Page 4

I

| Late night refreshment Standard days and timings (please read guidance note 6) | | | Will the provision of late night refreshment be <u>indoors or outdoors or both - please make selection with an "x" (please read guidance note 2).</u> | Indoors | |
|--|-------|--------|--|----------|--|
| Day | Start | Finish | | Outdoors | |
| Mon | | | <u>Please give further details here</u> (please read guidance note 3) | Both | |
| Tue | | | | | |
| Wed | | | <u>State any seasonal variations for provision of late night refreshment</u> (please read guidance note 4) | | |
| Thur | | | | | |
| Fri | | | <u>Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times to those listed in the column on the left, please list (please read guidance note 5)</u> | | |
| Sat | | | | | |
| Sun | | | | | |

J

| Supply of alcohol Standard days and timings (please read guidance note 6) | | | Will the supply of alcohol be for consumption please make selection with an "x" (please read guidance note 7). | On the premises | |
|---|-------|--------|---|------------------|--|
| Day | Start | Finish | | Off the premises | |
| Mon | | | | | |
| Tue | | | State any proposed seasonal variations for the supply of alcohol (please read guidance note 4) | | |
| Wed | | | | | |
| Thur | | | | | |
| Fri | | | Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 5) | | |
| Sat | | | | | |
| Sun | | | | | |

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8)

L

| Hours premises are open to the public Standard days and timings (please read guidance note 6) | | | State any seasonal variations (please read guidance note 4) |
|---|-------|--------|---|
| Day | Start | Finish | |
| Mon | | | |
| Tue | | | |

L

| | | | |
|------|--|--|---|
| Wed | | | <p>Non standard timings. Where you intend to use the premises to be open to the public at different times to those listed in the column on the left, please list (please read guidance note 5)</p> |
| Thur | | | |
| Fri | | | |
| Sat | | | |
| Sun | | | |
| | | | |

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking

We wish to amend the condition within: annex 4. Condition 1. The premises will not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use) .

The amendment would be to remove the word "restaurant" only.

Please make selection with an "x"

I will enclose the premises licence with the declaration

I will enclose the relevant part of the premises licence with the declaration

Neither of above

If checking this box please fill in reasons for not sending the licence, or part of it, below

Reasons why I have failed to enclose the premises licence or relevant part of premises licence

M Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General - all four licensing objectives (b,c,d,e) (please read guidance note 9)

Balfour Winery has had a premises licence since 20th March 2013 and has received no complaints from Responsible Authorities or any other person or organisation and throughout that period has maintained the highest standards having regard to the four licensing objectives.
The removal of the word "restaurant" from annex 4, condition 1. will have no adverse effect in relation to any of the licensing objectives.
The principles of security and safety will continue to be extended in all dealings with the public as our staff are well trained as detailed in b), c), d) & e) below.

b) The prevention of crime and disorder

Balfour Winery continue to have good security, alarms and CCTV cameras. There will be no unsupervised access. Staff are well trained and ensure that a refusal recording system is in operation and all staff involved in the sale of alcohol are fully trained in the system.
CCTV Equipment is well maintained and in good working order, correctly time and date stamped, recordings are kept on the hard drive for a period of 31 days and can be handed to Police upon reasonable request. The DPS or appointed members of staff are capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority upon reasonable request.

c) Public safety

The Winery forms part of Hush Heath Estate which carries out HACCP thus ensuring public safety, and our staff are trained in this. Staff are also First Aid trained and we have a designated first aid area should an event occur. All staff involved in the sale or supply of alcohol are trained in the "Challenge 25" Scheme, and such training is recorded. All guests are supervised and we can confirm that there have been no instances of problems at the winery or indeed externally.
From the beginning of May until the end of September (our busy period) we will run an hourly transportation service using our electric 8 seater mini van between the winery and Marden train station. This will reduce the number of vehicles on the road from non-local visitors.

d) The prevention of public nuisance

As above, we follow the Challenge 25 rules and our staff are trained in the safe serving of alcohol and do not serve anyone who has had too much to drink. All staff involved in the sale or supply of alcohol are trained in the "Challenge 25" Scheme and such training is recorded.
All customers are requested to leave the premises quietly as per our signage on exit.

e) The protection of children from harm

The typical visitor is 35 years of age plus, although children are allowed under parental or adult supervision during the day and must at all times be accompanied. Hazardous materials located on the premises are kept under child proof lock.
No children under 10 are allowed on the premises during our evening opening hours. i.e 19.00-23.00 Friday & Saturday.

Please make selection with an "x"

- I have made or enclosed payment of the fee
- I have enclosed the plan of the premises
- I have sent copies of this application and the plan to responsible authorities and others where applicable
- I have enclosed the consent form completed by the individual I wish to be premises supervisor, if applicable
- I understand that I must now advertise my application
- I understand that if I do not comply with the above requirements my application will be rejected

I/WE UNDERSTAND THAT IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMMOUNT

Part 5 - Declaration (please read guidance note 10)

Confirmation of applicant or applicant's solicitor or other duly authorised agent. (See guidance note 11) **If confirming on behalf of the applicant please state in what capacity.**

Confirmation

Name Date

Capacity

For joint applications confirmation of 2nd applicant or 2nd applicant's solicitor or other authorised agent. (please read guidance note 12) **If confirming on behalf of the applicant please state in what capacity.**

Confirmation

Name Date

Capacity

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 13)

Name

Address

Post Town

Postcode

Telephone number (if any)

If you would prefer us to correspond with you by e-mail your e-mail address (optional)

For Official Use Only

Form Filename:

Submission Ref:

Applicant Name: **Richard Balfour- Lynn/**

23

Date Submitted:

Use this page if there is any other information that you think we should know about. Information entered on this page will be sent to us, along with the data on the rest of the form when you use the "Submit" option.

Under our current licence we are allowed to serve food during our permitted opening hours. We have no wish to change our opening hours. The reason for the removal of the word restaurant is that there is no clear definition of what a restaurant is and therefore we are concerned that this restriction is confusing and potentially may lead to challenge from external parties. Our food offering only accounts for 3- 4 % of our annual turnover and the removal of the word restaurant will not change this. Our food offering is ancillary to the main business of the winery and will remain so. This amendment will have no negative impact on the four licencing objectives, the same practices will remain in place as described on page 12 to keep the public safe, prevent crime, disorder and public nuisance and protect children from harm. Our intention is to provide a few more options for customers visiting the winery. Wine tours and tastings still remain at the heart of our cellar door offering and the increased food offering will not change this.

Notes for Guidance

This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence you should make a new premises licence application under section 17 of the Licensing Act 2003.

Notes for Guidance

1. Describe the premises. For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies you must include a description of where the place will be and its proximity to the premises.
2. Where taking place in a building or other structure please tick as appropriate. Indoors may include a tent.
3. For example state type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.
4. For example (but not exclusively), where the activity will occur on additional days during the summer months.
5. For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.
6. Please give timings in 24 hour clock (e.g. 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.
7. If you wish people to be able to consume alcohol on the premises please tick on, if you wish people to be able to purchase alcohol to consume away from the premises please tick off. If you wish people to be able to do both please tick both.
8. Please give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups, the presence of gaming machines.
9. Please list here steps you will take to promote all four licensing objectives together.
10. The application form must be signed.
11. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
12. Where there is more than one applicant, both applicants or their respective agents must sign the application form.
13. This is the address which we shall use to correspond with you about this application.

WALL CONSTRUCTION
 Internal Party Walls:
 To be constructed in accordance with BS 5629:2008
 External Party Walls:
 To be constructed in accordance with BS 5629:2008
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

FLOOR CONSTRUCTION
 Ground Floor:
 To be constructed in accordance with BS 8203:2011
 First Floor:
 To be constructed in accordance with BS 8203:2011
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

ROOF CONSTRUCTION
 Main Roof:
 To be constructed in accordance with BS 5533:2018
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

MECHANICAL AND ELECTRICAL
 Mechanical:
 To be installed in accordance with BS 5499:2017
 Electrical:
 To be installed in accordance with BS 7671:2018
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

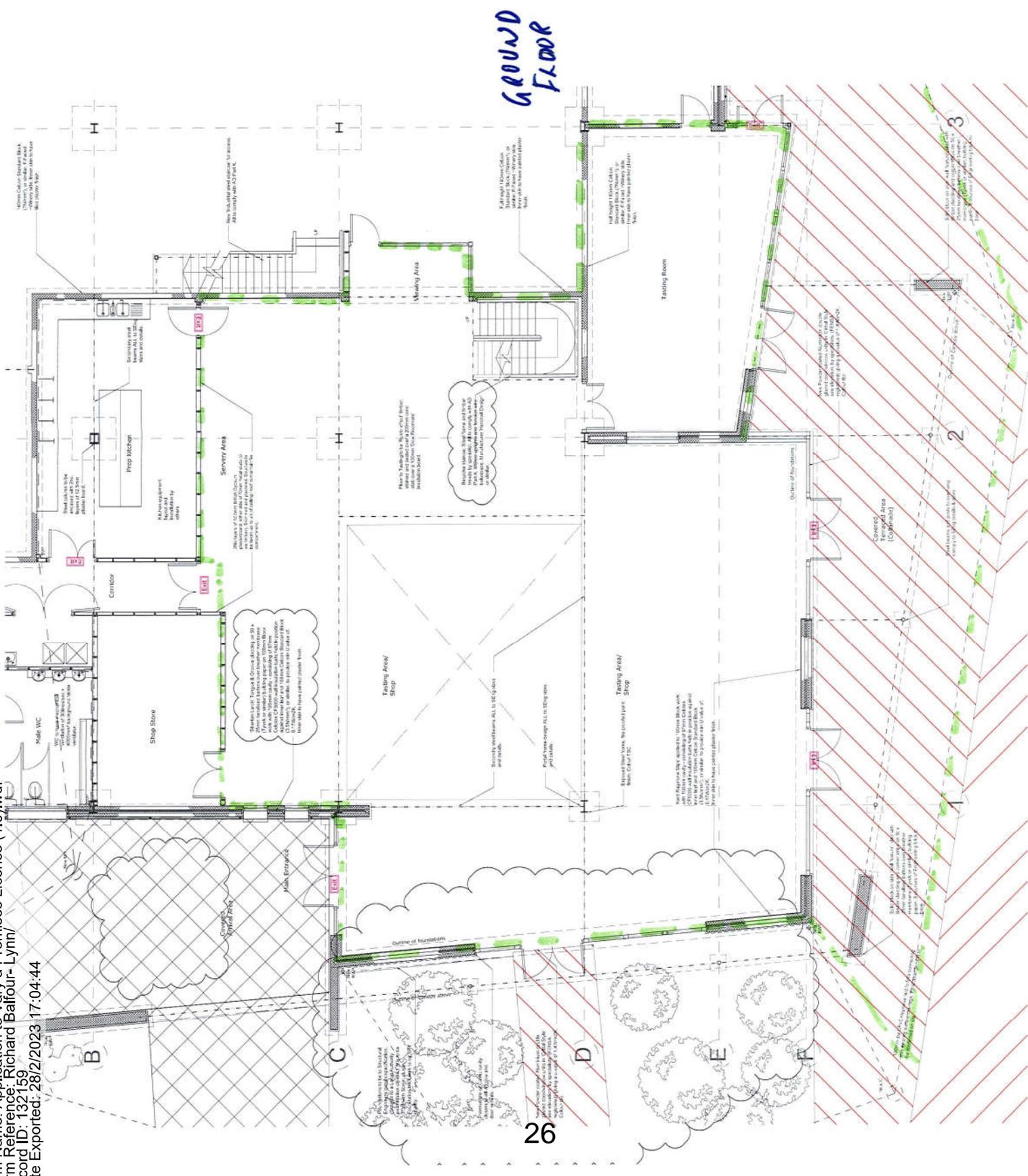
GLAZING
 Windows:
 To be installed in accordance with BS 6891:2011
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

FINISHES
 Walls:
 To be finished in accordance with BS 2799:2015
 Floors:
 To be finished in accordance with BS 8203:2011
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

GENERAL NOTES
 1. All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 2. All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 3. All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.
 4. All construction to be completed in accordance with the relevant Building Regulations and Approved Documents.

PROPOSED GROUND FLOOR PLAN 1 OF 3
 HUSH HEATH WINERY
 FIVE OAK LANE
 STAPLEHURST
 TN12 0HT
 HUSH HEATH ESTATE

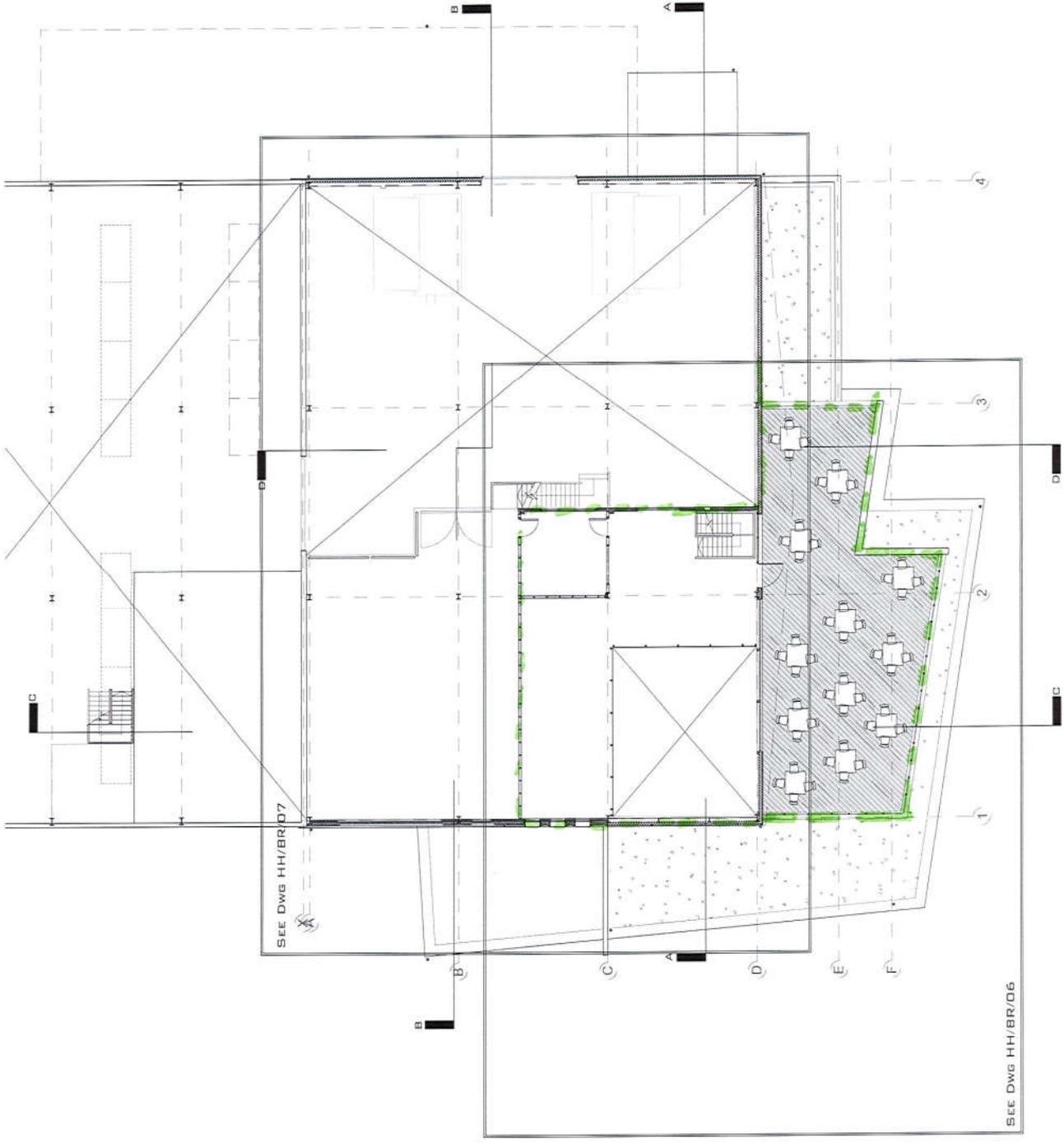
DESIGN QUARTER (UK) LTD
 ARCHITECTURAL DESIGN CONSULTANTS
 110628 BRESB
 1:50 JUNE 17 HH BR 02 A



GROUND FLOOR

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UPPER FLOOR



NO. DATE DESCRIPTION

NO. OF APPROVALS
 REVISIONS

PROPOSED MEZZANINE FLOOR PLAN

HUSH HEATH WINERY
 FIVE OAK LANE
 STAPLEHURST
 TN12 0HT

CLIENT
 HUSH HEATH ESTATE

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 1, 01031 BRIDGEND

WWW.DESIGN-QUARTER.CO.UK

SCALE
 DATE
 1:100 JUNE 17 HH/BR/05

-----Original Message-----

From: Sally Humphrey

Sent: 12 March 2023 12:21

To: Licensing <licencing@sevenoaks.gov.uk>

Subject: Hush Heath/Balfour Winery

EXTERNAL EMAIL: Exercise caution unless you recognize the sender and know the content is safe.

Dear Sir/Madam,

It has come to our attention again, as neighbours of the above mentioned Winery, that a new application has been made to change restrictions already in situ.

My wife and I were under the impression that the current application was binding as all conditions had been carefully discussed at length and were not subject to continual modifications, due to the whims of the directors of the winery, especially as at the hearing their spokesperson maintained that they did not want to run the winery as a restaurant.

As far as we can see, none of the conditions for the original restrictions have changed.

The location of the winery is, as it always has been, in remote and beautiful countryside.

The condition of the roads, or to be exact, narrow country lanes, has markedly deteriorated since the winery's inception. Already in a dangerous condition, these quiet byways have become more and more hazardous for walkers, cyclists and the local running club, especially when used by convoys of cars which we have witnessed, en route to the winery.

We feel that to endorse the application would lead to much more noise and pollution not only from customers at all times of day and night, but also supply vehicles destroying the already fragile ditches and verges.

On the grounds of public nuisance, noise and safety, plus the encouragement of possible drink driving following dining in a restaurant situated in an unsuitable and remote area we would like to lodge our objections. Added to this there is no public transport within two miles and no lighting at all along the lanes.

We hope you will consider these points, thank you.

Mr & Mrs K F Humphrey

From: Natasha Wyeth

Sent: 26 March 2023 11:35

To: Licensing <licencing@sevenoaks.gov.uk>

Subject: 23/00753/LAPRE | Premises Licence | Open for Consultation | Hush Heath Winery Hush Heath Estate Five Oak Lane Staplehurst Tonbridge Kent TN12 0HX

EXTERNAL EMAIL: Exercise caution unless you recognize the sender and know the content is safe.

Dear Sir / Madam

Please find attached our comments on the above application.

Kind regards

Natasha Davidson-Houston

Hush Heath Winery, Five Oak Lane, Staplehurst: 23/00753/LAPRE

Application for variation to Licence Conditions

In September 2020, the Licence Committee considered an application from the Hush Heath Winery (Balfour Winery) to change the terms of the Licence. At the hearing, the Committee carefully and thoughtfully applied a number of conditions to the Licence to enable the Winery to operate subject to a number of conditions. One of these conditions was not to operate the Winery as a restaurant. The Committee gave the reason for these conditions (including not operating the premises as a restaurant) as necessary to adequately prevent public nuisance.

Since the hearing in 2020, there have been no changes to indicate that the concerns carefully considered by the Committee no longer apply and the application does not offer any new measures for preventing public nuisance. The Winery has also extended its premises with the erection of a large marquee which is now used throughout the year.

Whilst we recognise the important of local business and want the winery to succeed, we also want to balance the risks to public nuisance from the continued expansion of the Winery. We believe that the Committee's determination in Sept 2020 remains correct and the condition on the winery not to operate as a restaurant should remain in place.

Public Nuisance

We are concerned that permitting the Winery to operate as a restaurant will be another move towards opening up the premises to become a hospitality venue. The Winery is located in a very rural area, with little passing trade. A restaurant on the site will attract customers coming for the main purpose of socialising. This type of social activity, by its nature, generates noise – the noise of customers enjoying social activity with alcohol, the noise of customers coming and going from the premises and using the car park after a good time out, and the noise of customers using the outside areas (going outside for smoking/vaping and sitting on the terrace and upstairs open balcony areas). The winery has not proposed any additional measures to safeguard local residents from the extra noise that will come from the expanded operation of the premises as a place for primary socialising.

There are a number of homes close by to the Winery, and the landscape is open and flat so sound carries. The site also now includes a marquee which offers no sound protection and any social activities from a restaurant operating indoors in the marquee would pose a substantial risk of noise nuisance, especially in the evenings or at weekends when residents are at home. The Winery already advertises dining club music sessions with live bands and permission to operate as a restaurant may further expand this.



Travel to the premises also remains a problem and has become worse since the last hearing. We welcome the plans to introduce a mini-van service during the summer months, but this will only transport 8 passengers each hour. It is likely that most customers will continue to arrive by private car / taxi as the site is too far to reach on foot and there is no public transport.

Since the last licence hearing, the Winery has also had corporate visitors arriving to the site by helicopters. Expanding the use of the premises to operate as a restaurant, particularly for high-end customers as explained by the applicant, is likely to increase the nuisance caused to local residents from travel of visitors to the winery. Helicopters flying low over homes and gardens close to the Winery to land at the premises are very noisy and disturb residents' ability to enjoy peace and quiet in our own homes and gardens.

Five Oak Lane is a narrow country road. It is single lane in many places including within the immediate vicinity of the winery entrance, and features many blind bends. There are no footpaths for pedestrians and no street lighting, with deep ditches and thorny hedgerows / nettles along the sides. Local people enjoy using the lanes for walking, running, cycling and horse-riding.



Five Oak Lane just along from winery entrance - narrow road bordered by deep ditches

With several farm yards based on Five Oak Lane, the lanes must also accommodate farm traffic, including large tractors, combines, and grain trucks. This is especially the case in the summer months when farm vehicles continue to run throughout the evenings, late into the night, and on weekends. These features of the roads leading immediately to the Winery pose specific challenges for visitors. Cars pull onto our driveways and across our gardens to make way for passing vehicles. Roads can become blocked as visitors unfamiliar with the country lanes do not understand where to wait to allow vehicles to pass. As a country road the national speed limit is in place, so visitors drive fast on these narrow roads, sometimes forcing pedestrians off the road as cars pass by too fast. The rural road surface is poorly maintained, full of potholes and entirely unsuitable for more frequent traffic to the Winery. Drainage ditches are eroded as cars / coaches unfamiliar with the local area pull onto the verges causing them to collapse and become blocked. The area, including by the Winery site

itself is prone to surface water flooding and if the ditch capacity is reduced or blocked by these collapsed verges the lanes become unpassable several times a year at times of high rainfall.



Damage from traffic to verge on Five Oak Lane close to Winery, causing ditches to be eroded and collapse



Winter flooding on Five Oak Lane looking towards Winery Entrance.

Finally, visitors to the Winery often use taxis, or other commercial drivers booked from online apps, that are unfamiliar with the area and this also causes nuisance to local residents. Just recently a taxi driver pulled into our drive [REDACTED] and he knocked at our door asking for directions to the Winery showing an online app with the booking to the Winery. He had another male customer sitting in the back of the car. Whilst of course we want to be helpful to someone that is lost, it is both a nuisance and intimidating to have strangers coming to our door in this way. The relaxation of the Conditions to permit operation of the premises as a restaurant is likely to increase the number of these nuisance incidents as the Winery becomes a destination for people from further afield who are not familiar with the rural nature of the roads, and who are unable to find their way to this remote location.



Lorry waiting by winery entrance showing oncoming car cannot pass

Public Safety

As detailed above, the narrow country lanes pose specific risks for local people using the lanes for walking, cycling, running and horse-riding. A move to allow the premises to operate as a restaurant will result in attracting more visitors who are unfamiliar with the rural nature of this area and will increase the risks to public safety. Our children have to use the lanes to walk to / from the bus stops on A229. The risks are increased during the winter months when it gets dark earlier. We are worried that visitors to a restaurant are much less likely to engage with the fact that this is a rural location with a need to take much more care of the hazards described above than visitors who come to participate in wine tasting and tours and identify as part of this experience that they are visiting an agricultural premises. In addition, the operation of a restaurant provides more flexibility in the types of bookings from customers and so may be likely to increase the number of large coaches bringing visitors, or taxis / commercial drivers who are unfamiliar with the area which would make it more likely that these hazards would have more impact on safety.

Protection of children from harm

As detailed above, the lanes pose specific risks to our children who use these country lanes for recreation, to walk to / from the bus stops on the A229, and to access wider public transport. As the Winery is set within such a rural location and the majority of visitors will access the premises by car / coach along these country lanes, we think it is appropriate to evaluate the protection of children from harm across the nearby lanes and assess the impact of increased traffic generated by a move to operate the premises as a restaurant.

Natasha and Richard Davidson-Houston

██████████

██████████

██████████████████

From: Amanda Tipples
Sent: 29 March 2023 09:56
To: licensing@sevenoaks.gov.uk
Cc: Lorraine Neale <LorraineNeale@maidstone.gov.uk>
Subject: Balfour Winery/Hush Heath Winery - Application to vary Premises Licence - Licence 20/01678/LAPRE

Dear Sirs

I have seen the notice attached to the Balfour Winery identifying that Mr Balfour-Lynn wishes to vary the licence in order to have the word "restaurant" removed from Annex 4, Condition 1. I wish to object to the application. This is because this condition, and the inclusion of the word "restaurant", was imposed following very careful consideration of all the circumstances relating to the premises by the Licensing Committee (Local Authority: Maidstone Borough Council), together with assurances given by Mr Balfour-Lynn that he did not wish to run the winery as a restaurant (made both in correspondence and at hearings). These decisions were made by the Licensing Committee on 28 March 2019 and 15 September 2020 (copies attached), and all the circumstances which arise out of the rural location of the winery, the tranquil surrounding countryside, proximity of neighbouring residential properties, and access roads via very narrow country lanes (with no footpaths, rough verges and ditches, single carriageway in places and unlit, along which children and cyclists pass to and from school and other activities) remain unchanged since those decisions were made. Mr Balfour-Lynn assured all neighbours in a letter dated 4 March 2019 (copy attached), amongst other things, that *"the Winery is not a pub nor a restaurant and has no intention of becoming one ... We own a number of local pubs such as the Goudhurst Inn and Tickled Trout and we encourage our visitors to have lunch or dinner in them and indeed to stay in our boutique hotel rooms above the pubs."* Mr Balfour-Lynn's aspirations greatly to increase visitor activity at the winery continue. Most recently planning permission was obtained on appeal for a marquee to be used as a covered outdoor seating area for by visitors at the winery (copy attached). This application has the clear potential to impact on the three relevant sensitivities ((1) tranquil surrounding countryside; (2) nearby residential dwellings (the nearest is a few metres away); and (3) narrow country lanes being the access road). This is the sixth application in recent years (an application was made earlier this year, but withdrawn) and, in every case, the application has been made contrary to assurances previously given by Mr Balfour-Lynn. I am objecting on grounds of public nuisance, public safety and prevention of crime and disorder. Please acknowledge safe receipt of this email. Thank you very much.

Yours faithfully
Amanda Tipples



HUSH HEATH

ESTATE

SHARE OUR PASSION

4th March 2019

Dear Neighbour,

There has been much speculation and misinformation surrounding the Hush Heath Winery. In order to clarify exactly what our plans are, Leslie and I have decided to write to all our neighbours.

Firstly, we are not changing our opening hours. We are open to the public from 10am - 5pm from October to April, and from 10am - 6pm from May to September. We are not going to change these times either now or in the future. Just for your information our existing premises licence allows us to open for tours and tastings up to midnight daily. We choose not to and to reinforce this message we changed midnight to 7pm in our current application to reassure everyone that we will not be opening in the evenings.

Again, for clarity a number of people believe there is a restriction on our opening days in our planning permission. Our 2013 permission allowed us to open every day for tours and tastings, but the shop had to be closed on Sundays and bank holidays. However, our planning permission granted in 2017 superseded the 2013 permission as the shop and tasting room were in the new building extension and had no restriction on opening hours or days of operation. In other words, we have permission to be open 7 days per week for tours, tastings and the shop.

Secondly the Winery is not a pub nor a restaurant and has no intention of becoming one. Indeed, we have decided to hold no weddings at the Winery as they are too noisy and disruptive. We own a number of local pubs such as the Goudhurst Inn and Tickled Trout and we encourage our visitors to have lunch or dinner in them and indeed to stay in our boutique hotel rooms above the pubs.

What we will do, is serve cold sharing platters at the Winery comprising local cheeses, charcuterie and vegetables (no cooking or chefs involved) between 12pm - 3 pm in winter months and 12pm - 5pm in summer months.

TEL: +44 (0)1622 832794 SALES: +44 (0)1622 832794 [REDACTED] VAT REGISTRATION NO GB795 884058

HUSH HEATH WINERY | FIVE GARDEN LANE STAPLEHURST | KENT | TN12 0HT
WWW.HUSHHEATH.COM

We will also offer private and corporate group winery tour bookings for events linked to wine tasting and tours of the estate and winery. Indeed, we have been running these since we first opened in 2010. We will however, not become a general events venue as usually found in large hotels or tourist destinations. All events open to the public will be linked to and about our wines and winemaking and viticultural education.

The amendment to our licence that we have applied for will allow our existing visitors who come to the estate for tours and tastings to enjoy a glass of our wine or cider in our tasting room and terrace. As we are only serving drinks produced by Hush Heath there are no spirits available. The ability for our guests to enjoy a glass of our wine will not increase our footfall, road traffic or visitor numbers. Again, to be clear we will not become a pub or bar and visitors are not going to drive all the way to the Winery simply to buy a glass of our wine which is available in our local pubs where they can also drink other non - Hush Heath drinks.

Again, for information purposes a large percentage of visitors coming to the Winery are coming from London and abroad, arriving by train to Marden station where they are picked up by local taxi or our own 12-seater mini bus. This reduces road traffic. Furthermore, we have a policy whereby our agricultural vehicles do not use the public roads but travel across the estate tracks and fields. To date since 2010 we have had no incidences of drunk drivers leaving the Winery, road accidents, driving into ditches, accidents or police or KCC highway complaints.

In terms of large 30-seater coaches we have on average one coach per week in the months of May to September visiting the winery from France, Germany or Belgium, and very few coaches during the winter months of October to April. We have no intention of increasing this now or in the future.

We have on average 3 - 4 HGVs per week coming to the Winery to either deliver winemaking materials or to pick up our wines for delivery to customers.

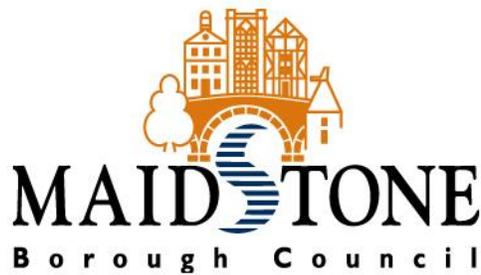
We live in a farming location and there are many agricultural vehicles and HGVs using the roads and it is easy to assume they are all connected with the winery. However, this is incorrect.

Leslie and I live 250 yards from the Winery and are highly conscious of noise and activities surrounding the Winery. We love the area and the whole estate is beautiful, teeming with wild flowers (we have just planted over 15 acres of wild meadow flowers in the fields adjacent to the Winery), bird and insect life as well as many other animals. Conservation and biodiversity lies at the heart of our land. We really hope you will visit us along with your family and friends and enjoy walking through our immaculate vineyards, apple orchards and ancient oak woodlands. We are also immensely proud to have just been awarded a Gold Standard by Visit England for Visitor Attractions. A first for an English Winery.

Kind regards,

Richard and Leslie Balfour-Lynn

TEL: +44 (0)1622 832794 SALES: +44 (0)1622 832794 VAT REGISTRATION NO GB795 884058



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Application Ref No:

Applicant: Mr Richard Balfour-Lynn

Regarding **PREMISE LICENCE (VARIATION)**
Hush Heath Winery, Hush Heath Estate, Five Oak Lane,
Staplehurst, Kent TN12 0HX

Date(s) of hearing: 28 March 2019

Date of determination: 28 March 2019

Committee Members: Councillor Mrs Hinder (Chairman), Councillor Mrs Joy and
Councillor Springett

Legal Advisor in attendance at hearing: Mrs J Bolas

Democratic Services Officer in attendance at hearing: Mrs C Matthews

This was an application for:

Variation

for a

Premises Licence

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

Name: Mr R Balfour-Lynn

Witnesses: Cllr Perry, Ms S. Easton, Cllr Brice, Mr D Curtis-Brignall,
Cllr Greer

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Ms Amanda Tipples, Mr B Tipples Mr & Mrs Stanley, Mr & Mrs Davidson-Houston, Ms Stallman, Ms Hardwick, Mr Rennick, Mr & Mrs Humphrey, Mr Codd & Ms Hodgkiss, Mr F & Mrs Anne Tipples, Ms Martin- Clark, Mr Taylor & Ms Feakin).

Witnesses: Mrs N Davidson-Houston

Representations considered in the absence of a party to the hearing:

In support – Helen Grant MP

Objections - Mr & Mrs Ewbank, Mr Crumpling, Mr Buller, Mr Edmondson, Mr Twyman,
Mr & Mrs Eccles, Mr & Mrs Vesma, Mr Beevor,

Together with all written representations, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in Appendix C of the meeting agenda.

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to licensing objectives ;
Sections 34 - 36 which relate to the variation of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives

Chapter 8 & 9 which relates to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17.9 which relates to prevention of crime and disorder

Chapter 17.16 which relates to the promotion of public safety

Chapter 17.19 which relates to the prevention of nuisance

Chapter 17.23 which relates to the protection of children from harm.

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

N/A

C: Determination:

The Committee has decided to: Grant the Application and

- Vary conditions appropriate for the promotion of the licensing objectives

Mandatory conditions remain; embedded conditions not applicable, current conditions at annexes 3 and 4 to be deleted and replaced with those below.

Hours:

| | |
|---|--|
| Off sales (online) | 10:00 – 00:00 |
| Off sales (shop) | 10:00 – 17:00 November – March and; 10:00 – 18:00 April – October |
| On sales (non special event) | 10:00 – 19:00 |
| On sale (special event) | 10:00 – 00:00 |
| Opening hours (non special event) | 10:00 – 19:00 |
| Opening hours (special events) | 10:00 – 00:00 |
| Opening hours (online sales no public attendance) | 10:00 – 00:00 |

A special event (previously referred to as “event occasion”) is an event at which: recorded or live music is provided after 17:00 or late night refreshment is provided.

The premises shall not be operated as a pub, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery

use).

The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.

There shall be good CCTV coverage of all licensed areas. The CCTV system will be kept in good working order and any images captured will be kept for a minimum of 30 days and supplied to a Police officer or local authority officer upon request.

No customers will be left unsupervised on the premises.

Children will be kept under adult supervision at all times.

All hazardous materials will be kept under child proof lock.

A Challenge 25 proof of age scheme shall be operated at the premises, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with PASS hologram.

The premises licence holder shall organise a meeting with residents living within 800 metres of the Hush Heath Estate once per calendar year to discuss any impact of the premises on the promotion of the licensing objectives. (See also informatives).

The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'

The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and vinicultural and viticultural education.

There shall be no external advertising generally or at the premises, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him, including on any signs or any website.

Special Events may be held at the premises subject to:

- a) Special Events shall be limited to 12 per calendar year.
- b) Special Events shall not occur on consecutive weekends.
- c) Special Events shall be notified by letter or email to neighbours within 800 metres of the premises a minimum of 7 days before the event.
- d) The supply of alcohol shall be restricted to products produced by Hush Heath Winery and shall not include spirits.
- e) After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.
- f) Live and recorded music will end by 23:45.

- g) All visitors to the premises will leave the premises and parking area by midnight.
- h) Signage will be placed at the exits of the premises asking visitors to leave quietly and respect neighbours.
- i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

Informatives:

If issues should arise during the operation of a licence which are related to licensable activities at the premises and promotion of the licensing objectives, application may be made for a review of a premises licence in accordance with the Licensing Act 2003.

Any term or condition of the premises licence does not confer planning permission for the activity licensed and should any conflict arise implementation of the licence may put the licensee at risk of planning enforcement unless appropriate planning permission is obtained.

Any issues arising or complaints may be raised with the premises licence holder as they arise and not await an organised meeting, to facilitate constructive discussion at the time.

Reasons for conditions:

Members of the Licensing Sub Committee considered that all the conditions attached to this licence are appropriate and proportionate to the scale of this premises and nature of its operation as a winery with tours, tastings and wine related education and activities, including a limited number of special events ancillary to its main function. They are such as to continue to promote the licensing objectives of prevention of public nuisance and public safety, following addition of the amendment to hours and permitted sale of alcohol for consumption on the premises without restriction to tasting samples only.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 3 September 2018, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The conditions restricting operation of the premises, licensable activities to those ancillary to the winery function ,type of alcohol that may be sold and supervision of those drinking or smoking outside the premises are considered appropriate and proportionate to promote the licensing objective of prevention of public nuisance. By ensuring limitations on unrestricted licensable activities at the premises creating a venue attracting significantly more visitors for general activities where there would be a reasonable likelihood of public nuisance arising from noise and disturbance with

attendant nuisance to nearby residents from music, clientele in spaces outside the premises and arriving/leaving.

The condition restricting advertising externally the sale of alcohol for consumption on the premises was also considered appropriate and proportionate for the same reasons, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than tasting samples provided as ancillary to services intended by the winery operation.

Finally the requirement to organise an annual meeting with those residents residing within 800 metres of the Hush Heath Estate was considered appropriate and proportionate to promote the licensing objective of prevention of public nuisance by providing a forum for residents to provide feedback on the impact of licensable activities and the Licence holder to provide information on forthcoming activities and give assurance in relation to any concerns. It was felt that with the informative in respect of any general issues and contact with the licence holder this would be sufficient without additional formal meetings.

Members gave consideration to requests from objectors for a condition restricting types of vehicle attending the winery on the basis of public safety but did not believe this to be proportionate in relation to the intention of that objective or appropriate as it would not be within the licence holder's power to control.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and many of those in support of his application and read all the representations made, (see lists above), Members of the Sub Committee took account of the lengthy and detailed evidence where relevant to promotion of the licensing objectives and impacts relating to this variation application .

They also took into account that there were no representations from Responsible Authorities.

Members have carefully balanced the stated requirements of the applicant in operating his winery business and ancillary licensable activities against the concerns of neighbours likely to be affected by uncontrolled licensable activities which have a reasonable likelihood of not promoting the licensing objectives.

Prevention of Crime and Disorder

There were some concerns expressed that making alcohol consumption available on the premises, other than tasting samples, would increase drink driving in an area without viable public transport. However, there was no evidence that any issues have arisen with current operations or that sale restricted to visitors attending the premises for winery tours, tasting and education would give rise to this. There was evidence that taxi details are made available and dedicated drivers are encouraged. It was not

considered to be appropriate or proportionate to refuse or condition the licence in respect of this objective.

Protection of Children from Harm

In respect of protection of Children from harm it was noted that concerns related to road safety and were not in respect of direct issues covered by Guidance, such as: underage drinking and adult entertainment. Members, therefore, noted the concerns related to children and considered them as part of their consideration of the public safety objective.

Public Safety

In respect of public safety the points made by the objectors related to the safety of the road network surrounding the winery and used for access to it. Members read, saw and heard much on the nature of the roads from all directions including photographs and of the experience of the residents and general road users including children on school journeys etc. However, Guidance refers to safety considerations being on and near the premises and specifically related to its activities. Members however, went on to consider that should the wider road network be considered in respect of this application and licensable activities; were the concerns raised such that they should refuse the application or condition the licence in respect of the hours for on licensed sales? In Members view there was no clear evidence that allowing sale of restricted products, linked to tours, tastings and education to 19:00 hours would increase traffic significantly beyond current levels.

The number of visitors per year is currently under 10, 000 and the applicant confirmed that the figures indicated in press articles were not quoted by him. There was no quantification of increased level of vehicles that could be said to be reasonably likely or that the perceived increase in HGVs or coaches could be linked to the Winery. Evidence was heard that working vehicles for the winery are whenever weather conditions are suitable carried out on estate, not public, roads, the level of HGVs would not increase significantly and that levels of coaches currently received do not match the advertisements by coach companies for tours. It was understood that advertisements produced in evidence were not placed or controlled by the applicant and in any event it was not believed that the variation would affect the likely uptake of any such tours. The applicant confirmed that coaches received are 1 per week in summer and 1 per fortnight in winter, which come from abroad. Evidence was not clear that HGVs in the area are winery related and indeed evidence was given by a Councillor that she is currently involved in seeking a Google maps change in directions to Lorries generally to use roads around the winery area, which may result in additional HGV traffic.. Members also considered that in winter in darkness the level of visitors to the winery would be likely to be at its lowest after dark. It was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective.

Prevention of Public Nuisance

Members are aware that public nuisance can be caused by traffic but for the above reasons related to public safety did not consider that separate conditions on traffic matters were appropriate or proportionate in this case.

However, they went on to consider public nuisance in relation to noise and disturbance in and around the premises arising from visitors, licensable activities and any reasonably likely increases arising from hours of on sales and consumption other than tasting samples. The current hours for on sales were until 00:00 but operationally had been maintained at 17:00 Nov –Mar and 18:00 Apr – Oct other than online sales. The intention of 19:00 for on sales at the premises was stated to be to allow flexibility for any visitors staying a little over time and to provide assurance for neighbours that it would not extend in to the evening, particularly outside the premises. Sales from the shop were agreed to remain at the current operational hours and although not matching the on sales elsewhere it was felt that this could be accommodated by sufficient notice to visitors on the premises. There was no evidence that if the on sales were restricted as to type of product, visitors linked to tours, tastings and education and advertisement was controlled that there would significant increases in visitors and thereby likelihood of nuisance to neighbours. There was also evidence that sound insulation inside the premises and types of music played would not be excessive, despite the tranquil nature of the surrounding area. Members were of the view that conditioned restrictions already in place and some additional ones are sufficient in this instance to promote prevention of public nuisance.

Noting the nature of the area and concerns of residents likely to be affected by any impacts and the agreement of the applicant to restrict his operations to his intended business activities Members conditioned the type of licensable activity allowed, that it be ancillary to the winery use, that there be no external advertising of non shop on sales and supervision of outside areas. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS HINDER

Signed [Chairman]: A copy of the original document is held on file

Date: 28/03/2019



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Application Ref No: 20/01678/LAPRE

Applicant: Mr Richard Balfour-Lynn

Regarding **PREMISE LICENCE (VARIATION)**
Hush Heath Winery, Hush Heath Estate, Five Oak Lane,
Staplehurst, Kent TN12 0HX

Date(s) of hearing: 10th September 2020

Date of determination: 10th September 2020

Committee Members: Councillor Mrs Joy (Chairman), Councillor Mrs Sams and
Councillor Mrs Springett

Legal Advisor in attendance at hearing: Mr Robin Harris

Democratic Services Officer in attendance at hearing: Miss Oliviya Parfitt

Online Meeting Facilitator: Mr Ryan O'Connell

This was an application for:

Variation

for a

Premises Licence

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

Name: Mr R Balfour-Lynn

Witnesses: Cllr Perry, Cllr Riordan Staplehurst Parish Council

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.)

Witnesses: Mrs N Davidson-Houston

Representations considered in the absence of a party to the hearing:

In support – Staplehurst Parish Council

Objections – Ian and Liz Tipples, Guy and Janice Barkaway, Brenda Webb and Darryl Evans, Marcus Rennick

Together with all written representations received, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in the agenda papers at appendix 3

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to the licensing objectives;
Sections 34 - 36 which relate to the variation of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives

Chapters 8 & 9 which relate to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17.9 which relates to prevention of crime and disorder

Chapter 17.16 which relates to the promotion of public safety

Chapter 17.19 which relates to the prevention of nuisance

Chapter 17.23 which relates to the protection of children from harm.

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

N/A

C: Determination:

The Committee has decided to: Grant the Application and

- Vary conditions appropriate for the promotion of the licensing objectives

Mandatory conditions remain; embedded conditions not applicable, current conditions at annexes 3 and 4 to be deleted and replaced with those below.

Hours:

| | |
|---------------------------------------|--|
| Off sales (online) | 00:00 – 00:00 (24 hours) |
| Off sales (shop) | 10:00 – 17:00 November – March and; 10:00 – 18:00 April – October |
| Off sales (shop) (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| Off sales (shop) (special event) | 10:00 – 24:00 |
| On sales (non special event*) | 10:00 – 19:00 Sunday to Thursday and; |
| On sales (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| On sales (special event*) | 10:00 – 00:00 |
| Late night refreshment | 23:00 – 00:00 |
| Live and recorded music | 10:00 – 24:00 |
| Opening hours (non special event*) | 10:00 – 19:00 Sunday to Thursday and; |

| | |
|---|--|
| Opening hours (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| Opening hours (special events*) | 10:00 – 00:00 |
| Opening hours (online sales only no public attendance) | 00:00 – 00:00 |

* as defined below

A special event (previously referred to as “event occasion”) is an event at which: recorded or live music is provided after 17:00 or late night refreshment is provided and are subject to the additional conditions imposed by condition 12 a-i.

A non special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00 subject to the conditions imposed by condition 13 a-f. All other non special events refer to occasions where there is not a special event or a non special event with extended hours.

The following conditions apply at all times:

1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).
2. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.
3. There shall be good CCTV coverage of all licensed areas. The CCTV system will be kept in good working order and any images captured will be kept for a minimum of 30 days and supplied to a Police officer or local authority officer upon request.
4. No customers will be left unsupervised on the premises.
5. Children will be kept under adult supervision at all times.
6. All hazardous materials will be kept under child proof lock.
7. A Challenge 25 proof of age scheme shall be operated at the premises, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with PASS hologram.
8. The premises licence holder shall organise a meeting with residents living within 800 metres of the Hush Heath Estate once per calendar year to discuss any impact of the premises on the promotion of the licensing objectives. (See also informatives).

9. The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'
10. The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and vinicultural and vinicultural education.
11. There shall be no external advertising generally or at the premises, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him, including on any signs or any third party website. The website for the premises may advertise the services and hours that are available at the premises.

The following condition applies during special events as defined above.

12. Special Events may be held at the premises subject to:
 - a) Special Events shall be limited to 12 per calendar year.
 - b) Special Events shall not occur on consecutive weekends.
 - c) Special Events shall be notified by letter or email to neighbours within 800 metres of the premises a minimum of 7 days before the event.
 - d) The supply of alcohol shall be restricted to products produced by Hush Heath Winery and shall not include spirits.
 - e) After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.
 - f) Live and recorded music will end by 23:45.
 - g) All visitors to the premises will leave the premises and parking area by midnight.
 - h) Signage will be placed at the exits of the premises asking visitors to leave quietly and respect neighbours.
 - i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

The following condition applies during non special events with extended hours as defined above

13. Non Special Events (Extended hours on Fridays and Saturdays)
 - a) The extended hours to 23:00hrs apply only on Fridays and Saturdays, but are available all year round.
 - b) The premises may only be opened for extended hours on a Friday or Saturday where there are pre-booked activities.
 - c) The maximum number of customers during extended hours is limited to 60 persons.

- d) Licensable activities during extended hours will occur indoors only.
- e) The supply of alcohol during extended hours shall be ancillary to a full table meal only.
- f) Off sales during extended hours are only available to persons taking part in the pre-booked activities.

Informatives:

If issues should arise during the operation of a licence which are related to licensable activities at the premises and promotion of the licensing objectives, application may be made for a review of a premises licence in accordance with the Licensing Act 2003.

Any term or condition of the premises licence does not confer planning permission for the activity licensed and should any conflict arise implementation of the licence may put the licensee at risk of planning enforcement unless appropriate planning permission is obtained.

Any issues arising or complaints may be raised with the premises licence holder as they arise and not await an organised meeting, to facilitate constructive discussion at the time.

The premises licence holder is strongly recommended to engage fully with local residents prior to making any further applications.

Reasons for conditions:

Members of the Licensing Sub Committee considered that all the conditions attached to this licence are appropriate and proportionate to the scale of this premises and nature of its operation as a winery with tours, tastings and wine related education and activities, including a limited number of special events ancillary to its main function and the new addition following this hearing of extended hours for on and off sales that are permitted on Fridays and Saturdays. They are such as to continue to promote the licensing objectives, following the addition of extended hours on Fridays and Saturdays.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 28th March 2019, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The condition limiting extended hours to Fridays and Saturdays only was appropriate and proportionate to promote the licensing objective of preventing public nuisance. The Sub-Committee were of the view that three nights a week including a night during the ordinary working week could lead to public nuisance due to the increase in customers attending the premises later in the evening.

The condition limiting the number of customers allowed during extended hours was appropriate and proportionate for the same reason and also for the promotion of the

public safety objective, in respect of an increased volume of traffic, in so far as that is relevant. The Sub-Committee noted that the applicant requested 10 tables and in the current climate that sets a maximum of 60 people and that number going forwards was appropriate for the promotion of the licensing objectives.

The other on sales extended hours conditions are consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours as they continue to promote the licensing objectives going forwards.

The condition relating to off sales during extended hours is appropriate and proportionate to promoting the licensing objective of preventing public nuisance and consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours. The Sub-Committee confirmed that it was not mistaken when it set the hours for the shop previously and these hours remain unchanged.

The existing condition restricting advertising externally the sale of alcohol for consumption on the premises remains appropriate and proportionate to prevent public nuisance, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than for wine tasting experiences provided as ancillary to services intended by the winery operation. However, the Sub-Committee considered the amendment to allow advertising of services and hours on the premises website to strengthen this condition as it would limit speculative visits to the premises and support the pre-booking condition.

The Sub-Committee felt that a further informative in respect of the premises licence holder engaging with residents prior to any application would be helpful.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and those in support of his application and read all the representations made, (see lists above), Members of the Sub Committee took account of the lengthy and detailed evidence where relevant to promotion of the licensing objectives and impacts relating to this variation application.

They also took into account that there were no representations from Responsible Authorities.

The Sub-Committee noted that there was no objection to online sales being 24 hours a day.

Members have carefully balanced the stated requirements of the applicant in operating his winery business and ancillary licensable activities against the concerns of

neighbours likely to be affected by uncontrolled licensable activities which have a reasonable likelihood of not promoting the licensing objectives.

Prevention of Crime and Disorder

The Sub-Committee noted that there were no representations under this licensing objective.

Protection of Children from Harm

The Sub-Committee noted that there were no representations under this licensing objective that would meet the definition in the guidance. However, reference to child safety generally, particularly on the roads was raised and was therefore considered under the public safety objective.

Public Safety

In respect of public safety, the Sub-Committee noted that the objectors' main concerns centred around the potential of this variation to create a substantial increase in visitor numbers, leading in turn to an increase in traffic on the small local roads, during evening hours which they state is the time of highest risk. A witness was able to point to a specific example of a vehicle departing the winery causing a hazard, which had been reported to the Parish Council.

Further, objectors were concerned regarding the safety of the public when moving around the site after dark, due to the potential planning limitations on the use of the external lighting at the premises.

In response, the applicant stated that they had a well run premises, there was no history of public safety issues at the site and where residents had raised concerns these had been responded to, for example by purchasing a minivan and routing this vehicle from Marden rather than Staplehurst. The applicant suggested conditions in relation to public nuisance which were also relevant to this licensing objective, namely a limitation on the number of customers and operating a pre-booking system.

The Sub-Committee noted that there was no representation from any responsible authorities on this issue and given the representation from the Parish Council, there was a range of opinion, even among local residents in respect of public safety on the roads.

No party produced expert evidence in respect of the proposed variation on visitor numbers or traffic flows.

The Sub-Committee was satisfied that there is adequate lighting available at the premises. The Sub-Committee draws attention to the informative regarding the relationship between planning and licensing that was made at the previous hearing and remains extant.

Taking into account all of the above, the Sub-Committee were of the view that the proposed variation was likely to increase visitor numbers in the evening. However, due to issues of road safety not being evidenced as occurring on the premises or the immediate vicinity of the premises, or linked to the proposed variation, it was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective, but, the Sub-Committee felt that conditions that were appropriate to the promotion of the prevention of public nuisance also assisted in respect of this licensing objective, in as far as it is relevant.

Prevention of Public Nuisance

The Sub-Committee noted that the objectors main concerns around this issue were related to a potential increase in visitors, which had the risk of increased noise and disturbance in an area which is both rural and tranquil and further, that the proposed variation was indicative of a move away from services ancillary to a winery towards an operation akin to a hospitality venue, with a more social experience, which would by its nature be a noisier enterprise.

The representations made both at the hearing and in advance of the hearing pointed to previous assurances by the applicant that there was no intention to change the existing licence.

Representations noted that the applicant had not used his quota of 12 special events but now wanted to increase late night openings 14 fold.

The applicant responded that the changes were not planned and that he had been genuine when he had given assurances previously. However, the impact of the Covid-19 pandemic required a response and there was also a change in the demand from customers, which as a business the premises had to respond to or the business could fail. The applicant noted that neighbouring properties would not be impacted by noise from inside the winery, due to the construction of the winery.

The applicant advised that he felt it unlikely that the hours would be exercised three nights a week, but that the business wanted there to be flexibility. He noted that he is the closest resident to the winery and that he also has an interest in limiting noise from the premises.

The applicant also proposed a condition on the maximum number of guests that could attend later in the evening, along with pre-booking and the suggestion of dimming the lights during the hours of darkness.

The Sub-Committee noted that there was no representation from any responsible authority in respect of this licensing objective.

The Sub-Committee noted the support of the Parish Council to the application.

Taking into account all of the above, the Sub-Committee considered that the application as originally made failed to adequately promote this licensing objective. However, with some of the modifications proposed by the applicant and appropriate conditions applied by the Sub-Committee the application could be approved in part and continue to promote this licensing objective.

The Sub-Committee felt that three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery.

The Sub-Committee permitted off sales to run concurrently with the extended hours, but did not change the hours for other days of the week. The intention of 19:00 for on sales at the premises was stated in the previous application to be to allow flexibility for any visitors staying a little over time. This was not a mistake and has promoted the licensing objectives.

Members amended the no external advertising condition to allow advertising of services and hours on the premises website. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS JOY

Signed [Chairman]:

A copy of the original document is held on file

Date: 15 September 2020

IN THE MATTER OF HUSH HEATH WINERY

LICENSING SUB-COMMITTEE, 10th SEPTEMBER 2020

SKELETON ARGUMENT ON BEHALF OF ANGUS CODD AND ANDREA HODGKISS, KIM AND SALLY HUMPHREY, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Introduction

1. Hush Heath Winery sits on rural land south west of Staplehurst.
2. There are three relevant sensitivities:
 - a. The surrounding countryside is tranquil.
 - b. There are several nearby dwellings. The nearest are a few metres away.
 - c. The access roads are narrow country lanes, with no footpaths, rough verges and ditches, single carriageway in places and unlit, along which children and cyclists pass to and from school and other activities. There is no street lighting. This is particularly dangerous after dark.
3. The owner of the winery, Mr Balfour-Lynn has long-held aspirations greatly to increase visitor activity at the winery. This has the clear potential to impact on the above sensitivities.
4. This is the fourth licence application he has made in just two years to secure that increase, in each case contrary to assurances he has previously given.
5. Most recently, in March 2019, the Licensing Sub-committee considered a 500 page bundle, and conducted a full day hearing, before imposing a balanced code of control which, among other things, permitted just 12 evening events per year. No party appealed.

6. By this application, the applicant seeks permission to increase that to 168 evening events per year, This is contrary to all previous controls and all assurances that he has repeatedly given.
7. The Sub-Committee is respectfully invited to reject this latest attempt. There is no reason based on the licensing objectives to depart from its previous decisions.
8. The Sub-Committee is principally referred to:
 - a. The objections filed to this application at Tab 2 herewith.
 - b. The submissions filed for the hearing on 28th March 2019 at Tab 12 herewith.
9. It should also be pointed out that the local community finds it difficult to keep resourcing objections to these repeated licence applications. While an applicant is entitled to make as many applications as they like, it imposes an unfair time and costs burden on local people to have to keep responding to them.
10. In these submissions, the objectors do not seek to re-argue the case extensively. Rather, they provide brief references to the documents in the bundle a) to refer to the objections they have lodged and b) to underline the history.

The application

11. The application contains three limbs.

(1) Off-licence hours

12. First, in its decision of 28th March 2019, following full argument, the Licensing Sub-Committee required the shop to close at 5 p.m. in November to March and 6 p.m. in April to October (Tab 14). The applicant now wishes to extend that to 7 p.m. He informed the Parish Council that the off-licence hours had been imposed by mistake (Tab 17). However, there was clearly no mistake in the Sub-Committee's decision, and in any case there was no appeal against it. There is no basis for a departure now.

(2) Hours of non-special events

13. Second in its decision, the Sub-Committee imposed a careful code of control, permitting on-sales (non-special events) to 7 p.m. and on-sales (special events) to

midnight but restricted to 12 events per year. This meant that (TENs aside) the applicant was restricted to 12 events after 7 p.m. each year. The rationale for that approach was carefully set out in the decision, and also reflected a previous decision of the Sub-Committee in 2018.

14. The applicant now wants to extend the hours of non-special events on three days per week, i.e. 156 times per year. This would be in addition to the 12 special events, making an increase from 12 evenings to 168 evenings. This is directly contrary to assurances given over the years and to previous decisions of the Sub-Committee, following full hearings. Again, there is no basis for this departure.

(3) External advertising

15. The Sub-Committee gave clear reasons for imposing a condition restricting external advertising, which were not appealed. The applicant seems to propose retaining part of the condition but to delete the words “or at the premises” and “including on any signs or any web-site”. The applicant seems to be suggesting that he should be able to advertise by signage at the winery and also on the web-site, which cuts across the reason for having the condition.

Licence history

16. In 2013, the applicant applied for and was granted a licence on the basis of statements in his operating schedule (Tab 3):

“... limited access to the public....”

“The supply of alcohol will be restricted to members of the public tasting samples.”

17. In July 2018, the applicant applied to vary his premises licence granted in 2013 to accommodate what was described as a tasting room (Tab 4). In the application, he expressly stated:

“The supply of alcohol will be restricted to members of the public as tasting samples.”

18. Following a hearing, the Sub-Committee’s decision (Tab 6) recorded that the proposed licence was primarily the same as the current licence save in the new facility, the business primarily being a winery with tastings to 17:00 hours and with conditions:

- a. Restricting the supply of alcohol to tasting samples only.
- b. Permitting up to 12 events per annum with additional hours.

19. In his submissions, the applicant said he was not planning on having more than 12 events a year and in response to a specific question from the Sub-Committee indicated that he did not object to the number of events going past 6 p.m. being limited to 12 a year.

20. The Sub-Committee permitted the application accordingly, stating that they had:

“... carefully balanced the requirements of the applicant in operating his business as a winery with some events in an extended space and the need for the promotion of the licensing objectives of prevention of public nuisance and protection of public safety to protect the concerns of neighbours likely to be caused nuisance by uncontrolled licensable activities.

“Having considered the topography of the area, the close proximity of residents and the likely travel of sound and the concerns of local residents regarding quiet use of their premises Members have provided conditions to ensure a reasonable balance.”

21. There was no appeal against that decision.

22. However, just two months later, in November 2018, the applicant applied by way of minor variation (Tab 7) to remove the condition restricting the supply of alcohol to tasting samples only, stating in the form that the condition “hampers our operation.” The application was rightly rejected.

23. Two months after that, in January 2019, the applicant applied to remove the “tasting sample” condition (Tab 8). The application form stressed that “Hush Heath is not a public house or restaurant.” A rider to the application stated that the current practice

was to close at 5 p.m. in November to March and 6 p.m. in April to October “and this practice is likely to continue as a general rule.”

24. It is a feature of the applicant’s approach that he claims that the objectors have misunderstood his operation. Therefore, on 24th February 2019, he wrote to the Council (Tab 9) stating:

“First, many complainants have referred to the Winery increasing our opening hours. This is not correct. In the winter months we are open from 10 a.m. to 5 p.m, and in summer from 10 a.m. to 6 p.m. We do not intend to alter this... We are not and have no intention of being open in the evenings, apart from up to 12 permitted events in the year....”

“Equally, we are not, and have no intention of becoming a restaurant. We employ no chefs or cooks...”

25. This was reiterated in his solicitors’ letter of 26th February 2019 (Tab 10) in which they stated:

“The proposed variation has no impact on the number of events that can be held at the premises, which is limited to 12.”

26. This was then backed up again in a personal letter from the applicant to all their neighbours dated 4th March 2019 (Tab 11), again starting with a baseless allegation that neighbours were misinformed:

“There has been much speculation and misinformation surrounding the Hush Heath Winery. In order to clarify exactly what our plans are, Leslie and I have decided to write to all our neighbours.

“Firstly, we are not changing our opening hours. We are open to the public from 10 a.m. – 5 p.m. from October to April and from 10 a.m. – 6 p.m. from May to September. We are not going to change these times either now or in the future....”

“Secondly, the Winery is not a pub or a restaurant and has no intention of becoming one. Indeed, we have decided to hold no weddings at the Winery as

they are too noisy and disruptive. We own a number of local pubs ... and we encourage our visitors to have lunch or dinner in them...

“What we will do, is serve cold sharing platters at the Winery comprising local cheeses, charcuterie and vegetables (no cooking or chefs involved) between 12 p.m. and 3 p.m. in winter months and 12 p.m. – 5 p.m. in summer months.”

27. Relying on those assurances, the objectors helpfully provided a list of suggested conditions which, as the minutes of the hearing (Tab 14) show, the applicant largely agreed. He expressly agree that only 12 events should go past 7 p.m. and that “in relation to safety people would not come in the dark.”

28. The Sub-Committee gave the matter the most careful consideration and imposed a detailed code of control on the basis of which it was prepared to remove the restrictions to tasting samples only. It stated:

“Members of the Licensing Sub-Committee considered that all the conditions attached to this licence are appropriate and proportionate to the scale of this premises and nature of its operation as a winery with tours, tastings and wine related education and activities, including a limited number of special events ancillary to its main function. They are such as to continue to promote the licensing objectives of prevention of public nuisance and public safety, following addition of the amendment to hours and permitted sale of alcohol for consumption on the premises without restriction to tasting samples only.”

29. A condition of the special events was that they must be notified by letter or email to neighbours in advance. The objectors can recall only one such notification since March 2019.

30. In January 2020 there was a community meeting between the applicant and local residents as required by the licence (Tab 15). At the meeting, the applicant again disavowed any intention to expand the licence:

“Q. Are there any plans to vary the licence or increase the number of events under the licence regime / TENS?”

A. *Mr B-L stated that there were to be no more events beyond those allowed under the existing licence and TENS systems. The Winery Manager added that they did not have enough staff to increase the number of evening events.*”

31. The current application was made in July 2020 (Tab 16).

32. On 10th August 2020 the applicant addressed the Parish Council accusing both the objectors and the Licensing Sub-Committee of mistakes (Tab 17). He started by saying “I think, as usual, there is a lot of misconception about what we want to do.”

33. As to the objectors’ “misconception” he said that he wanted to provide a three course meal prepared for visitors in the evenings accompanied by Hush Heath wines, stating that this is not a restaurant. However, whether it is termed a restaurant or a “wine and dine experience”, the environmental impact is the same.

34. As to the Sub-Committee’s “mistakes”, these were:

- Trying to close the shop before the winery. However, the Sub-Committee was perfectly aware of what it was deciding and why.
- Not understanding that the actual visitation is less than the 200 capacity of the tasting room. However, that is the actual capacity of the room as stated on many previous occasions. For example, the winery’s web-site stated on 15th February 2019, the month before the hearing:

“Since October 2017 we have been carrying out a major expansion of our winery and visitor centre at Hush Heath estate. We are proud to now offer the following new facilities:

- *A 200 seater tasting room....*
- *A commercial kitchen ideal for weddings and corporate events.*
- *A large roof-top terrace bar...*
- *Extensive visitor parking.*”

35. In trying to control the operation to an acceptable level, the Sub-Committee was under no illusions as to its capacity.

Other relevant events

36. The applicant installed lighting bollards in breach of planning control and after residents brought this to the attention of the planning authority he made an application for retrospective consent which expressly relied on the paucity of evening events to overcome environmental concerns, including harm to wildlife and the dark environment.

37. The application letter (Tab 18) said:

“... in winter months [the car park lights] are activated at dusk and then turned off at 7 pm when the last member of staff leaves..... It is envisaged that the lighting will not be employed in the summer months... The lighting around the decked area will only be employed on very limited occasions when an event is held in connection with the site’s temporary events licence.”

38. The applicant’s consultant’s report stated expressly

“The site is located in a predominantly rural area with no significant sources of artificial light in the night time landscape, i.e. streetlighting.”

39. The officer’s report (Tab 19) notes that this is an intrinsically dark location, which was material to light impact on the environment including biodiversity. The applicant’s case as recorded was that there would be little impact because the lights would be turned off by 7 p.m. when the last member of staff leaves. The planning assessment was that the application could be granted because of the limited number of evening uses of the lighting. Conditions were imposed on the planning consent accordingly (Tab 20).

40. I.e. the applicant procured planning permission for a lighting scheme by relying on a code of licensing control restricting the number of evening events, but is now seeking to increase the number of events by a factor of 14.

Conclusion

41. The objectors' simple request is that the Sub-Committee stick to the careful licence balance it has previously struck and make it clear that applicants should not expect to be rewarded simply for persistence.

PHILIP KOLVIN QC

3rd September 2020

Cornerstone Barristers

London WC1



Appeal Decision

Site visit made on 22 February 2023

by C Hall BSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2023

Appeal Ref: APP/U2235/W/22/3303617

Balfour Winery, Five Oak Lane, Staplehurst TN12 0HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Leslie Balfour-Lynn against the decision of Maidstone Borough Council.
 - The application ref. 22/501047/FULL, dated 25 February 2022, was refused by notice dated 11 May 2022.
 - The development proposed is the retention of a marquee to be sited for a period of 3 years for continued use for ancillary purposes to the existing winery site.
-

Decision

1. The appeal is allowed and planning permission is granted for the retention of a marquee to be sited for a period of 3 years for continued use for ancillary purposes to the existing winery site at Balfour Winery, Five Oak Lane, Staplehurst TN12 0HT in accordance with the terms of the application ref. 22/501047/FULL, dated 25 February 2022, subject to the following list of conditions:
 - 1) The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of that period the use shall be discontinued and the land restored in accordance with a scheme of work, including a timetable for implementation, that shall first have been submitted to and approved in writing by the Local Planning Authority.
 - 2) The marquee shall be used for ancillary purposes to the winery only and for no other purpose.
 - 3) No external lighting shall be installed on the site without the prior written consent of the Local Planning Authority.

Main Issue

2. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

3. Balfour Winery is situated on Five Oak Lane and, amongst other things, comprises a number of large metal and timber framed buildings and a car park. It is located in a wider rural area consisting of sporadic residential properties, fields and woodland.

4. In relation to economic development, policy SP21 of the Maidstone Borough Local Plan October 2017 (LP) states that the Council is committed to supporting and improving the economy of the Borough and providing for the needs of businesses. Amongst other things, this will be achieved through supporting proposals for the expansion of existing economic development premises in the countryside, including tourism related development, provided the scale and impact of the development is appropriate for its countryside location.
5. LP policy DM37 advocates that planning permission will be granted for the sustainable growth and expansion of rural businesses in the rural area, provided the resultant development as a whole is appropriate in scale for the location and can be satisfactorily integrated into the local landscape.
6. I am aware of the current wider economic situation, and the impact of COVID on the hospitality sector. With this in mind, the appellant argues that a covered outdoor seating area for use during tours of the winery would assist in allowing the business to continue to operate in a viable manner.
7. The marquee the subject of this appeal has white plastic walls and triangular roof projections that give it a stark appearance. Nevertheless, its impact is tempered somewhat by its positioning at the rear of the property, with only passing glimpses of it being evident from the public highway along the extensive tarmac driveway into the land.
8. Although it may be more visible from the open fields to the south and west towards Wilden Park Road and Husheath Hill, the development is set against the backdrop of the more substantial barns that make up the overall winery enterprise. There is also a broad expanse of decking with outdoor benches and tables adjacent to the marquee. These serve the shop and tasting area, and to my mind are consistent with the ancillary retail and visitor facilities that form part of the business. Overall, within this context the negative effects of the proposal accrue moderate weight in my reasoning.
9. The national Planning Practice Guidance says, at Paragraph 014 in the section dealing with the approach to be taken to imposing conditions, that circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period. I consider that this advice is relevant to this position, and am aware that the retention of the marquee is for a period of 3 years, which would allow the business time to manage the challenging conditions in the industry. Bearing in mind the policy context and current cost of living situation, I assign substantial weight to the economic benefits of the proposal.
10. An unrestricted permission would not be concordant with environmental objectives for rural areas such as this, as it would make it difficult for the Council to control other similar proposals and cumulatively the impact could be more substantial. Therefore I am satisfied that the 3 year temporary permission is justified; the detrimental effects of the scheme would be temporary, and are outweighed by the economic benefits to the business.
11. Consequently, the proposal would not result in harm to the character and appearance of the the surrounding area. It would meet Policies SP17, SP21, DM1, DM30 and DM37 of the LP and Policy PW2 of the Staplehurst Neighbourhood Plan June 2020, which seek to secure new development of acceptable scale and appearance that integrate into the wider landscape. It

would also be consistent with the advice in the National Planning Policy Framework, which states that good design is a key aspect of sustainable development.

Conditions

12. I have considered the imposition of conditions in light of advice in Planning Policy Guidance and the National Planning Policy Framework. A condition is necessary to control the duration of the development since I have found that a temporary planning permission is appropriate in this case.
13. Additionally conditions limiting the use of the marquee for ancillary purposes only and restricting external lighting are necessary in the interests of the character and visual amenity of the area.

Conclusion

14. Having regard to the above and all arguments put forward, I allow the appeal.

C Hall

INSPECTOR

From: Andrea Hodgkiss

Sent: 30 March 2023 10:23

To: Licensing <licencing@sevenoaks.gov.uk>

Subject: Reference: 20/01678/LAPRE: Hush Heath Winery, Hush Heath Winery Hush Heath Winery Hush Heath Estate Five Oak Lane Staplehurst Tonbridge Kent TN12 0HX

EXTERNAL EMAIL: Exercise caution unless you recognize the sender and know the content is safe.

Dear Sir/Madam

I am writing to object to the amend the existing licencing conditions at this site:

Annex 4. Condition 1 of the existing licence to remove the word 'restaurant' in the following: "The premises will not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use). The amendment would be to remove the word "restaurant" only."

My husband and I, along with our three children, live at -----
-----from Balfour Winery. Any increase in noise levels, disruption and risk to public safety directly affects us and our children in an intrinsically quiet and rural location.

The removal of the word "restaurant" from Annex 4 condition 1 as a major effect in relation to the licencing objectives. Licensing objectives are infringed by this proposal.

This is an application to vary a condition that was imposed after careful consideration and on assurances that the owner did not want to run the winery as a restaurant. We are objecting on the grounds of public nuisance, public safety, and prevention of crime and disorder. The reasons for this are as follows:

- The surrounding countryside is tranquil; there are several nearby dwellings (the nearest are a few metres away)
- Access roads are narrow country lanes, with no footpaths, rough verges and ditches, single carriageway in places, and unlit, along which children and cyclists pass to and from school and other activities.
- There is no street lighting, and this is particularly dangerous after dark.

This was the position when all previous applications were considered and has not changed.

The evidence set out in the submissions filed in Sept 2020 and the decisions made in 2019 and 2020 were carefully balanced decisions in the light of the evidence placed before the committee, and the imposition of the word "restaurant" in the condition, was the result not only of the potential impact on public nuisance, public safety and prevention of crime and disorder but *also* with ongoing assurances provided by Mr Balfour-Lynn himself that he had no intention of operating a restaurant now or at any time in the future and therefore had full clarity about what a restaurant is when making these statements:

Appendix 3

24th February 2019 the applicant wrote to the council stating "Equally, we are not, and have no intention of becoming a restaurant. We employ no chefs or cooks..."

Personal letter to neighbours dated March 4th 2019 "Secondly, the Winery is not a pub or a restaurant and has no intention of becoming one. Indeed, we have decided to hold no weddings at the Winery as they are too noisy and disruptive. We own a number of local pubs ... and we encourage our visitors to have lunch or dinner in them..."

Mr Balfour-Lynn's long-held aspirations greatly to increase visitor numbers. This is the sixth licence application the applicant has made in 4 years to secure that increase, in each case *contrary* to assurances he has previously given.

It should also be pointed out that the local community finds it difficult to keep resourcing objections to these repeated licence applications. While an applicant is entitled to make as many applications as they like, it imposes an unfair time and costs burden on local people to have to keep responding to them.

Your sincerely,

Andrea Hodgkiss and Angus Codd

Members of the Licensing Act 2003 Sub-Committee
Maidstone Borough Council

By email to: licensing@sevenoaks.gov.uk

Cornerstone Barristers
2-3 Gray's Inn Square
London
WC1R 5JH

20 April 2023

**Hush Heath (Balfour) Winery: application to vary premises licence (20/01678/LAPRE)
Hearing: 2 May 2023**

Dear members of the Sub-Committee,

This letter is submitted on behalf of three objectors to this application, all of whom live close to the premises: Andrea Hodgkiss and Angus Codd [REDACTED] Kim and Sally Humphrey [REDACTED] and Amanda Tipples [REDACTED]

This application seeks to vary condition (2) of Annex 4 to the premises licence by deleting the word "restaurant" from the condition:

"The premises shall not be operated as a public house, ~~restaurant~~, drinking establishment, nightclub, wedding or events venue (other than events ancillary to the winery use)."

I ask that you **refuse to grant this variation**, which flies in the face of at least five previous, carefully-considered decisions of this Sub-Committee going back 10 years – all of which concluded that **the prevention of public nuisance licensing objective requires that these premises be used only as a winery.**

Background

The premises is located in tranquil countryside near Marden and Staplehurst, with several dwellings within an 800m radius. The winery has been open to visitors since approximately 2013, when this Sub-Committee first granted a premises licence. The licence at that time limited the supply of alcohol to "*tasting samples*" to members of the public visiting the winery's tasting room.

Since then, the applicant has gradually sought to expand the scope of licensable activities at the premises by applications for both variations to the premises licence and planning permission. In granting various permissions over the years, the Council has always sought to ensure that use of the premises for licensable activities by members of the public remains **strictly ancillary to the premises' primary function as a winery.**

It is also notable that, at each stage, the applicant has given express assurances to the Council that he had no intention of running anything other than a winery business.

Licensing and planning history

- In **September 2017**, the applicant was granted planning permission for (among other things) a new visitor centre. Condition 16 attached to that planning permission provided:

"The retail element approved by this application shall remain strictly ancillary to the primary of the use of the site as a Winery.

Reason: To ensure an appropriate scale of retail use having regard to its countryside location”¹

- In **September 2018**, this Sub-Committee granted a variation of the premises licence, permitting up to 12 events per year with extended hours (but retaining the “tasting samples” condition). In granting that variation, the Sub-Committee noted:

“They have carefully balanced the requirements of the applicant in operating his business as a winery with some events in an extended space and the need for the promotion of the licensing objectives of prevention of public nuisance and protection of public safety to protect the concerns of neighbours likely to be caused nuisance by uncontrolled licensable activities.

Having considered the topography of the area, the close proximity of residents and the likely travel of sound and the concerns of residents regarding quiet use of their premises Members have provided conditions to ensure a reasonable balance.”²

The minutes of that meeting record the applicant’s assurance that *“the nature of their business was not a nightclub, it was a winery where activities were centred around visitors sampling wine in a relaxed atmosphere.”³*

- In **March 2019**, the licence was again varied by this Sub-Committee, this time to remove the “tasting samples” condition (but retaining the limit on 12 events per year).⁴ The minutes of that meeting record that the applicant’s intention in seeking the variation was:

“... simply ... to be able to sell a glass of wine to visitors already there as part of the experience. He stressed that other wineries he knew in Kent sold their visitors a glass of wine after a visit. It was, as far as he was concerned, ancillary to the winery business.”⁵

Indeed, in a letter sent to residents shortly before the hearing, the applicant had stated: *“... the Winery is not a pub nor a restaurant and has no intention of becoming one.”⁶*

The variation was granted subject to conditions (in Annex 4), including:

- (2) *The premises shall not be operated as a pub, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).*
- (3) *The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.*
- (6) *The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and viticultural and viticultural education.*

- In **September 2020**, this Sub-Committee considered yet another application to vary the licence, this time to extend the premises’ opening hours every Thursday, Friday and Saturday night until 23:00 (for on- and off-sales) to offer visitors a “*wine-and-dine experience*” in response to the financial impact of the pandemic.

¹ Document A: Extract of grant of planning permission (17/502611/FULL) (5 Sept 2017)

² Document B: Notice of determination (3 Sept 2018) [p.10]

³ Document C: Meeting minutes (3 Sept 2018) [p.7]

⁴ Document D: Notice of determination (28 March 2019)

⁵ Document E: Meeting minutes (28 March 2019) [p.4]

⁶ Document F: Applicant’s letter to residents (4 March 2019)

The application was granted, subject to a number of significant modifications: conditions (2), (3) and (6) were retained; extended hours were limited to Fridays and Saturdays only; and no more than 60 customers were permitted, by advance bookings only.

The minutes of that meeting record this Sub-Committee's view that:

*"... three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery."*⁷

- In March 2023, a Planning Inspector granted temporary planning permission on appeal for the retention of a marquee at the premises for three years *"for continued use for ancillary purposes to the existing winery"*.⁸

The objection

The applicant explains the need for this application as being that *"there is no clear definition of what a restaurant is and therefore we are concerned that this restriction is confusing and potentially may lead to challenge from external parties."*

That is clearly not the case. There are surely few people who would not be familiar with what a "restaurant" is. If a definition was needed, it can easily be provided: an establishment, open to the public, for the preparation and serving of meals.

Importantly, in licensing terms, a restaurant is something very different from a winery permitted to provide food and drink on an ancillary basis. As the applicant himself put it in 2019, the licence allows him to sell *"a glass of wine to visitors **already there as part of the experience**"*. That is not true of a restaurant, where customers come for the food, not for the winery.

It is very surprising that the applicant would be in any doubt as to what his licence does and does not allow, given (1) the licensing and planning history outlined above and (2) his own express promises to the Council and residents that the premises would be operated as nothing but a winery with no intention of becoming a restaurant.

The effect of granting the variation would clearly undermine the licensing objective of preventing public nuisance:

- **It would enable the premises to be operated as a freestanding restaurant, in addition to the winery business.** When it expressly prohibited the use of the premises as a restaurant in March 2019, this Sub-Committee recognised that uses in addition to the winery use would

*"... [attract] significantly more visitors for general activities where there would be a reasonable likelihood of public nuisance arising from noise and disturbance with attendant nuisance to nearby residents from music, clientele in spaces outside the premises and arriving/leaving."*⁹

- **The premises is in a very sensitive location for noise and disturbance and is not suited to use as a freestanding restaurant.** It is reached along narrow country lanes and is located a considerable distance from the nearest settlements at Marden and Staplehurst. It is in a

⁷ Document H: Meeting minutes (10 Sept 2020) [p.10]

⁸ Document I: Extract of Inspector's decision letter (APP/U2235/W/22/3303617) (20 March 2023)

⁹ See Document D [pp.8-9]

tranquil, rural area. Increased vehicle traffic from visitors coming to and from the restaurant, and from more customers on the premises for the express purpose of socialising, will cause unacceptable levels of noise and disturbance to neighbouring residents.

- **Granting the variation would cause confusion and uncertainty.** It is unclear how removing the word “restaurant” from condition (2) would relate to condition (3) which requires all licensable activities carried out under the premises licence to be “*ancillary to the main function of the premises as a winery*” or condition (6) which limits on-sales to customers “*attending the winery for the purposes of winery tours, tastings and vinicultural and viticultural education*”. This application does not seek any variation to conditions (3) or (6). Leaving the conditions as they are is the clearest and most straightforward way of regulating licensable activities at the premises.

The objectors submit that this Sub-Committee has, in its previous decisions, taken great care to strike a fair balance between the applicant’s commercial aspirations (which is **not** a licensing objective) and the right of residents to live without unreasonable noise and disturbance (which **is** a licensing objective).

Granting this variation would upset that careful balance and – given how the scope of licensable activities has been progressively expanded over recent years – could well lay the groundwork for more applications in future, further intensifying the “retail” use over the “winery” use.

For these reasons, I respectfully ask you to draw a clear line in the sand by refusing this application.

Nonetheless, if do decide to grant the application, it will be essential to ensure there are robust controls to protect residents as far as possible from experiencing public nuisance. To that end, a list of suggested additional conditions is provided at Document J. However, I emphasise that the appropriate decision in this case is to refuse the application altogether.

Potential breaches of the licence

Finally the objectors wish to put on record their concerns that the applicant may be operating in breach of the premises licence. Screenshots of three events advertised for April, May and June this year appear to show that the premises are already being run as a “restaurant” – in breach of the licence.¹⁰ There is no record of any TENs authorising these events visible on the Licensing Register. These events are not ancillary to the winery use and customers are not being invited to visit the premises for the purpose of tours, tastings or education.

Yours faithfully,

Matt Lewin
Cornerstone Barristers

Counsel for:

- (1) Andrea Hodgkiss and Angus Codd [REDACTED]
- (2) Kim and Sally Humphrey [REDACTED]
- (3) Amanda Tipples [REDACTED]

¹⁰ Document K: Screenshots of events advertised at the premises (April, May and June 2023)

List of Documents referred to:

| Document | Description | Date |
|-----------------|---|-----------------|
| A | Extract of grant of planning permission (17/502611/FULL) | 5 Sept 2017 |
| B | Notice of determination | 3 Sept 2018 |
| C | Licensing Sub-Committee meeting minutes | 3 Sept 2018 |
| D | Notice of determination | 28 March 2019 |
| E | Licensing Sub-Committee meeting minutes | 28 March 2019 |
| F | Applicant's letter to residents | 4 March 2019 |
| G | Notice of determination | 10 Sept 2020 |
| H | Licensing Sub-Committee meeting minutes | 10 Sept 2020 |
| I | Extract of Inspector's decision letter (APP/U2235/W/22/3303617) | 20 March 2023 |
| J | Suggested conditions | |
| K | Screenshots of events advertised at the premises | April-June 2023 |

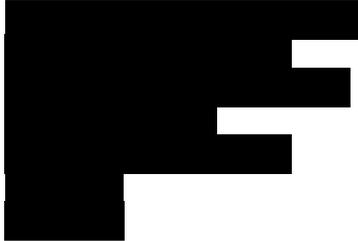
Document A

Extract of grant of planning permission

(17/502611/FULL)

5 Sept 2017

Hush Heath Winery



5 September 2017

PLANNING DECISION NOTICE

| | |
|-------------------------------|--|
| APPLICANT: | Hush Heath Winery |
| DEVELOPMENT TYPE: | Large Maj Office/R&D/Light Industry |
| APPLICATION REFERENCE: | 17/502611/FULL |
| PROPOSAL: | Proposed new processing hall, including visitor tasting room and administration offices. Extension to existing barn for the storage of bottles. |
| ADDRESS: | Hush Heath Winery Five Oak Lane Staplehurst TN12 0HT |

The Council hereby **GRANTS** planning permission subject to the following Condition(s):

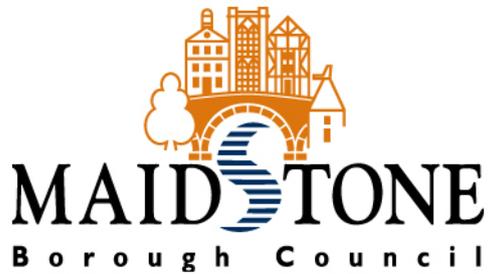
- (16) The retail element approved by this application shall remain strictly ancillary to the primary of the use of the site as a Winery

Reason: To ensure an appropriate scale of retail use having regard to its countryside location

Document B

Notice of determination

3 Sept 2018



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003

LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

NOTICE OF DETERMINATION

Application Ref No:

Applicant: Mr Richard Balfour-Lynn

(see minute for decision on applicant)

Regarding **Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst**

Date of hearing: 3 September 2018

Date of determination: 3 September 2018

Committee Members: [Chairman]: Councillor Mrs Joy
Councillor Mrs Springett
Councillor Garten

Legal Advisor in attendance at hearing: Mrs Jayne Bolas

Democratic Services Officer in attendance at hearing: Mrs Caroline Matthews

This was an application for:

Variation

(see minute for decision on nature of application)

for a

Premises Licence

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

Name: Mr Richard Balfour-Lynn

Witnesses in support of Applicant: Ms S. Easton, Ms V Ash

Responsible Authorities

None

Other Persons

Name: Mr A Codd (on behalf of Ms A Hodgkiss and for Mrs A. Tipples, Mr B Tipples,
Mrs A and Mr F Tipples and Spokesman for Mr & Mrs Humphrey
Mr K Humphrey (and on behalf of Mrs Humphrey)

Witnesses in support of Other Persons N/A

Representations considered in the absence of a party to the hearing:

All representations referred to at Pages 3 and 4 of the agenda, additional letter from Ms Wyeth and two from Mr Stanley. Letter from Mrs Tipples and response (dated 23/8/18). All documents from Mrs Amanda Tipples submitted by Mr Codd at the hearing numbered 0-5.

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to the licensing objectives

Sections 34 and 35 which relate to the variation of a premises licence.

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives

Chapters 8 and 9 which relate to premises licences and determinations

Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17 which relates to the 4 licensing objectives;
17.16 –18 which relates to Public Safety
17.19 – 17.22 which relates to the Prevention of Public Nuisance

C: Determination:

The Committee has decided to:

Grant the variation to the premises licence for the area and activities applied for and additional hours subject to conditions.

Conditions:

All relevant mandatory conditions;
All conditions in the current licence and operating schedule at p20 of the agenda;
Additional conditions, see separate sheet

Reasons for determination:

Having heard Mr Balfour-Lynn and Ms Easton and Ms Ash (witnesses) and two other persons and representations and having read all papers on the agenda., Members of the Sub-Committee have taken account of the evidence relevant to promotion of the licensing objectives of public safety and to prevent public nuisance.

They have taken account that there have been no representations of concern from responsible authorities.

They have carefully balanced the requirements of the applicant in operating his business as a winery with some events in an extended space and the need for the promotion of the licensing objectives of prevention of public nuisance and protection of public safety to protect the concerns of neighbours likely to be caused nuisance by uncontrolled licensable activities.

Having considered the topography of the area, the close proximity of residents and the likely travel of sound and the concerns of residents regarding quiet use of their premises Members have provided conditions to ensure a reasonable balance.

The applicant indicated that he was content to notify residents of events, limit those to 12 a year and wished to be a responsible neighbour. Objectors present confirmed that their concern was the potential for issues with an unrestricted licence.

Members also considered the comments with regard to traffic and felt that traffic beyond the premises was a matter for the behaviour of visitors and beyond the control of the licence holder. It was not felt that further conditions would be appropriate in this regard.

Informative:

If issues should arise during the operation of a licence, which are related to licensable activity at the premises and promotion of the licensing objectives, application may be made for review of a premises licence in accordance with the Licensing Act 2003.

PRINT NAME (CHAIRMAN): Councillor Mrs Joy

Signed [Chairman]: A copy of the original document is held on file

Date: 3 September 2018

Document C

Licensing Sub-Committee meeting minutes

3 Sept 2018

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD ON MONDAY 3 SEPTEMBER
2018**

Present: Councillors Garten, Mrs Joy (Chairman) and Mrs Springett

1. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

2. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

3. EXEMPT ITEMS

RESOLVED: That the item on the agenda be taken in public as proposed.

4. APPLICATION TO VARY A PREMISES UNDER THE LICENSING ACT 2003 FOR HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE, STAPLEHURST, TONBRIDGE, KENT , TN12 0HX

The Meeting commenced at 10.15 a.m.

Mrs Jayne Bolas, the Legal Advisor highlighted an amendment to the report as follows:-

Page 1 – the current opening hours should read – 11.00 to 1700 Mon to Sat and 12.00 to 17.00 Sun not 15:00 as shown.

She also clarified that the Supply of Alcohol limited to tasting samples condition at Annex 3, Page 63 would not be removed by this application.

Mrs Bolas advised that Mrs Tipples, an objector who had indicated her intention to be present, had sent through an email stating that she was no longer able to attend and Mr Codd, also an objector, would be speaking on her behalf.

Mrs Bolas also advised that Mrs Tipples had sent in an attachment to her email and Mr Balfour-Lynn, the applicant advised that he had received the email, along with an attachment, but had not read them in full.

The Legal Advisor reminded the Sub-Committee that ordinarily any documentation to be submitted by any party should be received prior to

the Hearing taking place but if the Applicant was happy to consent to the document being presented then it could be taken into consideration.

Mr Codd advised that the document put forward by Mrs Tipples set out some legal points raised by her since her original letter and he would only be referring to it in his presentation.

Mr Balfour-Lynn was asked if he would consent to the documentation being provided to the participants of the meeting. Mr Balfour-Lynn advised that he was happy to give his consent. He wished to deal with the matter for his business and employees.

Mrs Bolas asked the Members if they wished to go ahead with the meeting or adjourn until they had read the document produced by Mrs Tipples.

The Members agreed to adjourn for 15 minutes to enable them to read the document.

After the adjournment the Chairman referred to the procedure notes attached to the Committee papers and asked everyone present to introduce themselves.

Councillor Mrs Denise Joy – Chairman
Councillor Patrik Garten – Committee Member
Councillor Mrs Val Springett – Committee Member

Mrs Springett indicated that she was substituting for Cllr McLoughlin.

Mrs Jayne Bolas – Legal Advisor
Mrs Caroline Matthews – Democratic Services Officer

Mr Balfour-Lynn – Applicant
Ms S. Easton – for the Applicant
Ms V. Ash – for the Applicant

Mr A. Codd – on behalf of Objector Mrs Andrea Hodgkiss and on behalf of Mrs A and Mr F Tipples and Spokesman for Mr & Mrs Humphrey
Mr K Humphrey – Objector (and on behalf of Mrs Humphrey)

Mrs Bolas referred to the observations made by Mrs Tipples in the document where she questioned whether the application should have been made in Mr Balfour-Lynn's name as the Hush Heath Estate was the trading name published on Companies House (and was the trading name of a limited partnership known as Hush Heath Estate LLP), the registered members of which are Hush Heath Hospitality Limited and Hush Heath Hospitality (Kent) Limited which were appointed as members of Hush Heath Estate LLP in May 2018 in place of Mr & Mrs Balfour-Lynn.

Mr Balfour-Lynn explained that as Hush Heath was owned by his family it seemed appropriate for his name to appear on the licence as all roads lead back to the family.

Mr Codd, in response, disagreed with Mr Balfour-Lynn's statement and said that Mrs Balfour-Lynn was in fact the ultimate person responsible as Mr Balfour-Lynn was not a Director.

Mr Balfour-Lynn referred to a recent change in legislation where every company had to register persons of significant influence, which he felt he was, along with his wife.

Mrs Bolas clarified the position by stating that Section 16 of the Licensing Act 2003 set out who could apply and the Directorship of a company would not mean that another could not be carrying on a business and liability for offences would be for persons carrying on a licensable activity as a matter of fact rather than necessarily the licence holder in any event.

The Members adjourned the meeting to discuss this issue and reach a decision.

Determination

The Applicant

Members accepted that Mr Balfour-Lynn under Section 16 of the Licensing Act 2003 was a person who carried on, or proposed to carry on, a business which involved the use of the premises for the licensable activities to which this application relates.

It was clear that he was the wine producer at the winery and involved in the primary business and also a person of influence in relation to the Company related to the premises, which was also a family business. There was clearly accountability as a matter of fact for licensable activities at the premises.

This was similar to many situations where breweries or store managers are responsible for premises where licences are held by publicans/staff etc and vice versa.

After this decision was made the Chairman outlined the procedures.

Mrs Bolas outlined the application made by Mr Balfour-Lynn, the current licence holder. Members noted that the application covered three issues, an extension of the area to be used for licensable activities, the addition of playing of live and recorded music and the provision of refreshments indoors and outside and extended hours for new activities and opening.

Mr Codd, on behalf of the objectors, advised that residents had received a letter from Ms Easton where she advised that the variation to the licence would include the provision of up to 12 events per year, with the potential to operate an event until 23.45 hours.

Mr Balfour-Lynn, the Applicant, informed the Sub-Committee that as he was not experienced in submitting licensing applications he had asked Ms Easton to speak to Mrs Neale, the Council's Senior Licensing Manager and she had advised them to complete a variation application.

A further point was made that it was not believed that the application should be dealt with by way of a variation such as this, but by a new premises application.

Mr Codd felt that the 'extension to the sample tasting area' should be classed as a new building as it bore no relation to the original drawings and should therefore be treated as a new application. Mrs Tipples had indicated that had there been an application for a new premises there might have been responses from Responsible Authorities and objectors as the matter would appear more substantial.

Mr Balfour-Lynn, in response, stated that he had applied for planning permission, and all the various consultees such as the Council's Planning Department, Fire Authority, District Surveyor etc dealt with it as one building.

Mrs Bolas, advising Members, stated that an assessment had to be made on applications by a Licensing Authority on a case by case basis. She added that there was no evidence to suggest that if the application had come forward as a new application whether there would have been more objectors coming forward. Objections had come forward to the variation and Members had those before them in detail to consider.

Mr Codd, in response, felt that as the application had been made in the Summer, not a lot of people would have had chance to view the application as this was holiday season.

Mr Balfour-Lynn stated that their business had always encouraged tourism into the area, and was busy in the summer months and quieter in winter. The nature of the business had not changed. It grew the grapes, made the wine and sold it in the United Kingdom and overseas and tastings had always happened.

The meeting was adjourned at 11.25 a.m. to make a decision on whether the application should have been a variation or new premises one and reconvened at 12.05 pm

Mrs Bolas read out the decision on behalf of the Sub-Committee.

The Application

The guidance was clear that new premises or major/or significant differences to current ones are dealt with by new licence applications but this is Guidance to have regard to and was dealt with on a case by case basis on the facts.

In this case there was an extension to the existing licenced premises, which was large but remained part of the existing premises building.

Activities according to the application and applicant primarily remained the same as current simply in a larger, better facility and with ability to hold up to 12 events per annum with music, LNR and additional hours. The business remained primarily a winery with tastings to 17:00 hours.

Conditions remained for alcohol supply to be by tasting samples only.

It is also the case that a new licence application received advertisement and consultation in the same way as variation. Members understood the argument that Responsible Authorities or others may have come forward differently but in view of the advertising and consultation provisions and detailed objections received from 6 households, it was not believed that there had been any prejudice to objectors by the use of a variation application.

Members could fully hear objectors' issues and consider all the facts on the application before them.

Mr Balfour-Lynn was asked to give his opening remarks.

He advised the Sub-Committee that he lived 200 yards away from the winery and was probably more vulnerable to the noise than neighbouring properties. He felt he acted in a responsible manner and brought employment to the local community. He believed that he had not received any complaints about noise from neighbours since 2010.

Mr Balfour-Lynn also stated that the estate did not allow picnics to take place within its grounds and was not considered a place for children, merely a place to enable visitors to explore English wine. He advised that the tasting room had been extended and new buildings had also been built. He was conscious that neighbours should not be able to hear any noise as the new buildings were further away than before.

He confirmed that the business was not planning on having more than 12 events a year. Although provision had been made for in the licensing application, he felt it extremely unlikely that weddings would take place there. Although he did indicate that his daughter's wedding had been held there, the guests came in a coach to minimise traffic disruption.

Mr Balfour-Lynn also advised that the business worked closely with Visit Kent and tried to work with the local community, an example given of Goudhurst School being able to walk through the woods in the grounds.

He stressed that corporate events did happen during the week but had not run into the evenings. They provided training for Tesco, M&S and Banks at elegant corporate functions but there would not be wild parties.

Mr Codd was asked if he had any questions. He stated that he did not have any questions.

In response to a question from a Member, Mr Balfour-Lynn advised that they were allowed up to 200 people in the building for tastings at any one time. However, he did not envisage that there would ever be an occasion where there were that many people having tastings. The premises were not on a public highway, it was a destination location.

He envisaged that the odd cocktail party would go on until 8 or 9 o'clock at night with classical music being played in the background. They had evenings for a local wine club. A larger tasting area was needed as the space had been too small to accommodate the separation required by Tesco (they produce their own label sparkling wines), as they have strict regulations for the production area.

In response to a question from a Member, Mr Balfour-Lynn confirmed that he would be content to notify residents of events.

Mr Codd was asked to give his opening remarks.

He felt that the application failed to promote all the licensing objectives or detail the activities that would take place. The application failed to identify how the extension would be addressed to prevent nuisance. He asked for formal written conditions not verbal assurances.

In response Mr Balfour-Lynn stated that he did not want to fall foul of any licensing laws so had sought to cover many possibilities. However, neighbours would have the opportunity to complain if they did not like anything that the business was doing.

Mr Codd stated that at weekends he wished to enjoy his property and had not had any problems with noise from the Hush Heath Winery to date. However, the area was extremely flat to the north and noise could travel which could emanate from traffic or music being played either inside or outside.

Mr Humphrey indicated that his wife had complained once direct to the winery and the matter had been dealt with swiftly. The concern was the 365 days per year nature of the application, he could cope with infrequent events that were not late but his concern was frequency and noise levels.

Both the applicant and the objectors were asked to give their closing speeches.

Mr Codd, the objector, stated that he wished to emphasise that his actions were not undertaken with any malice and he did not wish to obstruct the business of Hush Heath. While he had lived at his present address since 2012 he had not been disturbed but in his view the application did not show due consideration for the 4 licensing objectives. One off events were reasonable but changes to ambient noise might occur and that was a cause for concern. Noise leakage from customers on an outdoor terrace

to midnight could fundamentally change ambient noise. Live and recorded music on an elevated terrace has the potential to change ambient noise and this had no noise assessment. The new building has no detail of noise mitigation, however he had heard at this meeting that it was double glazed but there are large numbers of doors and 78 households within a 1 mile radius. Weddings were advertised as corporate events and noise of those leaving and their vehicles was cause for concern. Transport was also a public nuisance with access by 5 routes and much single track with no pavement or lighting and ditches. There was little public transport so most would be private vehicles. They wanted to resolve a solid framework to live in peace.

Mr Balfour-Lynn, in response, stated that he was glad the neighbours wanted his company to keep the business open and understood their concerns but emphasised that the nature of their business was not a nightclub, it was a winery where activities were centred around visitors sampling wine in a relaxed atmosphere.

He added that the company had just recently planted a native hedge to further reduce the noise impact. The new part of the building was further away from neighbours so should not have a noise impact.

In response to a question from a Member on whether he would have any objections to the number of events going past 6 p.m. being limited to 12 a year, he stated that they were not a 365 day business so would not object.

The Sub-Committee advised that they would adjourn the meeting and reconvene at 2 p.m.

Document D

Notice of determination

28 March 2019



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Application Ref No:

Applicant: Mr Richard Balfour-Lynn

Regarding **PREMISE LICENCE (VARIATION)**
Hush Heath Winery, Hush Heath Estate, Five Oak Lane,
Staplehurst, Kent TN12 0HX

Date(s) of hearing: 28 March 2019

Date of determination: 28 March 2019

Committee Members: Councillor Mrs Hinder (Chairman), Councillor Mrs Joy and
Councillor Springett

Legal Advisor in attendance at hearing: Mrs J Bolas

Democratic Services Officer in attendance at hearing: Mrs C Matthews

This was an application for:

Variation

for a

Premises Licence

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

Name: Mr R Balfour-Lynn

Witnesses: Cllr Perry, Ms S. Easton, Cllr Brice, Mr D Curtis-Brignall,
Cllr Greer

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Ms Amanda Tipples, Mr B Tipples Mr & Mrs Stanley, Mr & Mrs Davidson-Houston, Ms Stallman, Ms Hardwick, Mr Rennick, Mr & Mrs Humphrey, Mr Codd & Ms Hodgkiss, Mr F & Mrs Anne Tipples, Ms Martin- Clark, Mr Taylor & Ms Feakin).

Witnesses: Mrs N Davidson-Houston

Representations considered in the absence of a party to the hearing:

In support – Helen Grant MP

Objections - Mr & Mrs Ewbank, Mr Crumpling, Mr Buller, Mr Edmondson, Mr Twyman,
Mr & Mrs Eccles, Mr & Mrs Vesma, Mr Beevor,

Together with all written representations, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in Appendix C of the meeting agenda.

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to licensing objectives ;
Sections 34 - 36 which relate to the variation of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives

Chapter 8 & 9 which relates to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17.9 which relates to prevention of crime and disorder

Chapter 17.16 which relates to the promotion of public safety

Chapter 17.19 which relates to the prevention of nuisance

Chapter 17.23 which relates to the protection of children from harm.

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

N/A

C: Determination:

The Committee has decided to: Grant the Application and

- Vary conditions appropriate for the promotion of the licensing objectives

Mandatory conditions remain; embedded conditions not applicable, current conditions at annexes 3 and 4 to be deleted and replaced with those below.

Hours:

| | |
|---|--|
| Off sales (online) | 10:00 – 00:00 |
| Off sales (shop) | 10:00 – 17:00 November – March and; 10:00 – 18:00 April – October |
| On sales (non special event) | 10:00 – 19:00 |
| On sale (special event) | 10:00 – 00:00 |
| Opening hours (non special event) | 10:00 – 19:00 |
| Opening hours (special events) | 10:00 – 00:00 |
| Opening hours (online sales no public attendance) | 10:00 – 00:00 |

A special event (previously referred to as “event occasion”) is an event at which: recorded or live music is provided after 17:00 or late night refreshment is provided.

The premises shall not be operated as a pub, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery

use).

The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.

There shall be good CCTV coverage of all licensed areas. The CCTV system will be kept in good working order and any images captured will be kept for a minimum of 30 days and supplied to a Police officer or local authority officer upon request.

No customers will be left unsupervised on the premises.

Children will be kept under adult supervision at all times.

All hazardous materials will be kept under child proof lock.

A Challenge 25 proof of age scheme shall be operated at the premises, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with PASS hologram.

The premises licence holder shall organise a meeting with residents living within 800 metres of the Hush Heath Estate once per calendar year to discuss any impact of the premises on the promotion of the licensing objectives. (See also informatives).

The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'

The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and vinicultural and viticultural education.

There shall be no external advertising generally or at the premises, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him, including on any signs or any website.

Special Events may be held at the premises subject to:

- a) Special Events shall be limited to 12 per calendar year.
- b) Special Events shall not occur on consecutive weekends.
- c) Special Events shall be notified by letter or email to neighbours within 800 metres of the premises a minimum of 7 days before the event.
- d) The supply of alcohol shall be restricted to products produced by Hush Heath Winery and shall not include spirits.
- e) After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.
- f) Live and recorded music will end by 23:45.

- g) All visitors to the premises will leave the premises and parking area by midnight.
- h) Signage will be placed at the exits of the premises asking visitors to leave quietly and respect neighbours.
- i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

Informatives:

If issues should arise during the operation of a licence which are related to licensable activities at the premises and promotion of the licensing objectives, application may be made for a review of a premises licence in accordance with the Licensing Act 2003.

Any term or condition of the premises licence does not confer planning permission for the activity licensed and should any conflict arise implementation of the licence may put the licensee at risk of planning enforcement unless appropriate planning permission is obtained.

Any issues arising or complaints may be raised with the premises licence holder as they arise and not await an organised meeting, to facilitate constructive discussion at the time.

Reasons for conditions:

Members of the Licensing Sub Committee considered that all the conditions attached to this licence are appropriate and proportionate to the scale of this premises and nature of its operation as a winery with tours, tastings and wine related education and activities, including a limited number of special events ancillary to its main function. They are such as to continue to promote the licensing objectives of prevention of public nuisance and public safety, following addition of the amendment to hours and permitted sale of alcohol for consumption on the premises without restriction to tasting samples only.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 3 September 2018, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The conditions restricting operation of the premises, licensable activities to those ancillary to the winery function, type of alcohol that may be sold and supervision of those drinking or smoking outside the premises are considered appropriate and proportionate to promote the licensing objective of prevention of public nuisance. By ensuring limitations on unrestricted licensable activities at the premises creating a venue attracting significantly more visitors for general activities where there would be a reasonable likelihood of public nuisance arising from noise and disturbance with

attendant nuisance to nearby residents from music, clientele in spaces outside the premises and arriving/leaving.

The condition restricting advertising externally the sale of alcohol for consumption on the premises was also considered appropriate and proportionate for the same reasons, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than tasting samples provided as ancillary to services intended by the winery operation.

Finally the requirement to organise an annual meeting with those residents residing within 800 metres of the Hush Heath Estate was considered appropriate and proportionate to promote the licensing objective of prevention of public nuisance by providing a forum for residents to provide feedback on the impact of licensable activities and the Licence holder to provide information on forthcoming activities and give assurance in relation to any concerns. It was felt that with the informative in respect of any general issues and contact with the licence holder this would be sufficient without additional formal meetings.

Members gave consideration to requests from objectors for a condition restricting types of vehicle attending the winery on the basis of public safety but did not believe this to be proportionate in relation to the intention of that objective or appropriate as it would not be within the licence holder's power to control.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and many of those in support of his application and read all the representations made, (see lists above), Members of the Sub Committee took account of the lengthy and detailed evidence where relevant to promotion of the licensing objectives and impacts relating to this variation application .

They also took into account that there were no representations from Responsible Authorities.

Members have carefully balanced the stated requirements of the applicant in operating his winery business and ancillary licensable activities against the concerns of neighbours likely to be affected by uncontrolled licensable activities which have a reasonable likelihood of not promoting the licensing objectives.

Prevention of Crime and Disorder

There were some concerns expressed that making alcohol consumption available on the premises, other than tasting samples, would increase drink driving in an area without viable public transport. However, there was no evidence that any issues have arisen with current operations or that sale restricted to visitors attending the premises for winery tours, tasting and education would give rise to this. There was evidence that taxi details are made available and dedicated drivers are encouraged. It was not

considered to be appropriate or proportionate to refuse or condition the licence in respect of this objective.

Protection of Children from Harm

In respect of protection of Children from harm it was noted that concerns related to road safety and were not in respect of direct issues covered by Guidance, such as: underage drinking and adult entertainment. Members, therefore, noted the concerns related to children and considered them as part of their consideration of the public safety objective.

Public Safety

In respect of public safety the points made by the objectors related to the safety of the road network surrounding the winery and used for access to it. Members read, saw and heard much on the nature of the roads from all directions including photographs and of the experience of the residents and general road users including children on school journeys etc. However, Guidance refers to safety considerations being on and near the premises and specifically related to its activities. Members however, went on to consider that should the wider road network be considered in respect of this application and licensable activities; were the concerns raised such that they should refuse the application or condition the licence in respect of the hours for on licensed sales? In Members view there was no clear evidence that allowing sale of restricted products, linked to tours, tastings and education to 19:00 hours would increase traffic significantly beyond current levels.

The number of visitors per year is currently under 10, 000 and the applicant confirmed that the figures indicated in press articles were not quoted by him. There was no quantification of increased level of vehicles that could be said to be reasonably likely or that the perceived increase in HGVs or coaches could be linked to the Winery. Evidence was heard that working vehicles for the winery are whenever weather conditions are suitable carried out on estate, not public, roads, the level of HGVs would not increase significantly and that levels of coaches currently received do not match the advertisements by coach companies for tours. It was understood that advertisements produced in evidence were not placed or controlled by the applicant and in any event it was not believed that the variation would affect the likely uptake of any such tours. The applicant confirmed that coaches received are 1 per week in summer and 1 per fortnight in winter, which come from abroad. Evidence was not clear that HGVs in the area are winery related and indeed evidence was given by a Councillor that she is currently involved in seeking a Google maps change in directions to Lorries generally to use roads around the winery area, which may result in additional HGV traffic.. Members also considered that in winter in darkness the level of visitors to the winery would be likely to be at its lowest after dark. It was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective.

Prevention of Public Nuisance

Members are aware that public nuisance can be caused by traffic but for the above reasons related to public safety did not consider that separate conditions on traffic matters were appropriate or proportionate in this case.

However, they went on to consider public nuisance in relation to noise and disturbance in and around the premises arising from visitors, licensable activities and any reasonably likely increases arising from hours of on sales and consumption other than tasting samples. The current hours for on sales were until 00:00 but operationally had been maintained at 17:00 Nov –Mar and 18:00 Apr – Oct other than online sales. The intention of 19:00 for on sales at the premises was stated to be to allow flexibility for any visitors staying a little over time and to provide assurance for neighbours that it would not extend in to the evening, particularly outside the premises. Sales from the shop were agreed to remain at the current operational hours and although not matching the on sales elsewhere it was felt that this could be accommodated by sufficient notice to visitors on the premises. There was no evidence that if the on sales were restricted as to type of product, visitors linked to tours, tastings and education and advertisement was controlled that there would significant increases in visitors and thereby likelihood of nuisance to neighbours. There was also evidence that sound insulation inside the premises and types of music played would not be excessive, despite the tranquil nature of the surrounding area. Members were of the view that conditioned restrictions already in place and some additional ones are sufficient in this instance to promote prevention of public nuisance.

Noting the nature of the area and concerns of residents likely to be affected by any impacts and the agreement of the applicant to restrict his operations to his intended business activities Members conditioned the type of licensable activity allowed, that it be ancillary to the winery use, that there be no external advertising of non shop on sales and supervision of outside areas. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS HINDER

Signed [Chairman]: A copy of the original document is held on file

Date: 28/03/2019

Document E

Licensing Sub-Committee meeting minutes

28 March 2019

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

MINUTES OF THE MEETING HELD ON THURSDAY 28 MARCH
2019

Present: Councillor Mrs Hinder (Chairman), and
Councillors Mrs Joy and Mrs Springett

9. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

10. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

11. EXEMPT ITEMS

RESOLVED: That the items be taken in public as proposed.

12. APPLICATION TO VARY A PREMISE LICENCE UNDER THE LICENSING ACT 2003 FOR HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE, STAPLEHURST, KENT , TN12 0HX

The Chairman requested that all those participating in the hearing identified themselves as follows:-

Councillor Mrs Wendy Hinder – Chairman
Councillor Mrs Denise Joy – Sub-Committee Member
Councillor Mrs Val Springett – Sub-Committee Member

Mrs Jayne Bolas – Legal Officer
Mrs Caroline Matthews – Democratic Services Officer

For the Applicant:

Mr Richard Balfour-Lynn – Owner of Hush Heath Winery
Mrs Leslie Balfour-Lynn – Owner of Hush Heath Winery
Mrs Sarah Easton – Manager of Hush Heath Winery

Witnesses to be called by the Applicant:

Mr David Curtis-Brignall – Deputy Chief Executive, Visit Kent
Councillor John Perry – Staplehurst Ward Councillor
Councillor Louise Brice – Staplehurst Ward Councillor
Councillor Malcolm Greer

For the Objectors:

Mr Philip Kolvin QC – Acting on behalf of Amanda and Bernard Tipples, Kim and Sally Humphrey, Angus Codd and Andrea Hodgkiss, Polly Hardwick, Frank and Anne Tipples, Paul and Doreen Stanley, Alison Clark, Richard and Natasha Davidson-Houston, David Taylor, Nicola Feakin and Marcus Rennick

Witness to be called – Mrs Natasha Davidson-Houston

Mr Robin Harris – Legal Advisor (observing)

Mr Mike Nash – Democratic Services Officer (observing for training purposes)

The Chairman asked all parties to confirm that they were aware of the hearing procedure and that each had a copy of the procedure document.

The Sub-Committee Members confirmed that they had pre-read all the agenda papers and any other documents regarding the hearing. Save that Councillor Mrs Springett, due to other commitments had skim read items such as the noise report and noted duplicated items but felt she had a good overall understanding of the issues involved.

The Chairman enquired whether draft conditions had been agreed between the applicant and any of the other parties for the Sub-Committee to consider.

Mr Philip Kolvin QC addressed the Sub-Committee. He advised that he had put forward some proposed conditions to the Applicant on behalf of the objectors and the Applicant had agreed to some of the conditions.

In response, the Applicant, Mr Balfour-Lynn, advised that he had agreed to some of the conditions which related to the licence, however some of the conditions related to planning conditions which were not pertinent to the licence.

The Chairman enquired whether any parties would be requesting any witnesses to give evidence at the hearing.

Mr Kolvin advised that he would be calling Natasha Davidson-Houston as a witness and would be the spokesperson for the objectors.

Mr Balfour-Lynn stated that he would be calling Mr David Curtis-Brignall, Deputy Chief Executive of Visit Kent, Councillor Malcolm Greer, Councillors John Perry and Louise Brice who were Staplehurst Ward Members, Sarah Easton, the General Manager of the Winery and his wife, Leslie Balfour-Lynn.

Mr Balfour-Lynn confirmed that he would be the spokesperson for the applicant.

The Legal Advisor was asked to outline the application for a variation of the premises licence on behalf of Hush Heath Winery which was as follows:-

- Removal of the condition "the supply of alcohol on the premises will be limited to tasting samples only" from Annex 3 of the licence to enable supply by the glass at the premises.
- The application also sought for a condition at Annex 4 to be amended to read "supply of alcohol (by way of on-sales) will be permitted on all other occasions Monday to Sunday inclusive between the hours of 10.00 and 19.00 (this does not affect the 12 events allowed or off-sales under the current licence). (Consequently the premises will continue to be licensed until 12 midnight for off-sales which is required for online orders that are processed) and for a maximum of 12 events per year). The remainder of Annex 4 would continue.

Mrs Bolas confirmed that there had been no Responsible Authority representations, four representations in support of the application and 21 representations objecting to the licence application.

She summarised main issues raised by supporters and objectors.

She also advised that additional submissions had been circulated to the Sub-Committee. However, some of the detail in all representations related to Planning matters which was not ordinarily for the Licensing Sub-Committee to deal with. It was recognised, however, that some considerations may overlap but guidance stated that the two regimes are separate and not bound by each other's decisions. Mrs Bolas added that a licensing condition did not override a planning condition. In the event of any breaches of planning conditions occurring this would be dealt with by planning enforcement.

The focus of the hearing was to consider licensable activities as impacted by the variation to the premises licence applied for and the effect on licensing objectives being promoted. The planning system addresses land use and licensing considers practical operation and regulation of the premises.

Reference was then made to the conditions proposed and responses in relation to Condition 1, Mr Balfour-Lynn had requested that the time for on sales at the premises would be 10 a.m. to 7 p.m. Monday to Sunday, with 7 p.m. being the exception rather than the rule that was also accepted for off sales but not online.

The hours would not apply to the 12 special events.

The objector's proposed restriction on hot food being served was not accepted it was stated there would be limited times that hot food would be required. The majority of times there would only be cold platters

served, this would only be if an event especially requested hot food.

It was accepted that sale by the glass would be ancillary to the winery use, linked to tours and tastings and Hush Heath products.

Conditions 4-8 are mainly on the current licence.

Condition 9 – The applicant would be prepared to meet all the residents living within 1 mile of the Winery once per annum in the spirit of co-operation and neighbourly relations.

Condition 10a – This was agreed subject to it being changed to “shall be restricted to products produced by Hush Heath Winery and shall not include spirits”. This was due to the fact that Hush Heath do not bottle their cider and saffron beer on site but the products are created by their winemakers and sold under the Hush Heath brand.

Condition 10b – Agreed but subject to the 12 events already allowed under the existing Premises Licence.

Condition 10c – This was stated to be a planning matter, not a licensing issue.

Condition 11 – This was agreed but would be subject to the core hours reflecting 10 a.m. to 7 p.m. which would allow increased flexibility in the operation of the Winery.

Condition 12 and 13 – linked to 1.

Condition 14 – on the current license save for i) and j).

The Applicant, Mr Balfour-Lynn in providing his opening remarks advised that:-

The Winery closes at 5 p.m. in the winter and 6 p.m. in the summer. The activities during the day consisted of tours, tastings, educational lectures, selling wine for off sales and in the evening web sales. The reasoning for extending the opening to 7 p.m. for on sales including glasses of wine was to give flexibility for the operation and to give clarity to residents that the Winery was not open in the evenings past 7 p.m.

Mr Balfour-Lynn further commented that:-

- The Winery opened in 2002 and he and his family lived on the estate and were the nearest neighbours to the Winery.
- Their home was nearest to the winery so they are sensitive to noise and he and his wife respected the concerns of the local residents and tried very hard to put in measures to limit the amount of noise.
- He was concerned that local residents believed that the variation to the licence would mean that the Winery would become a public

house. He emphasised that he owned many public houses in the locality and had no desire to turn the Winery into a public house.

- He simply wanted to be able to sell a glass of wine to visitors already there as part of the experience. He stressed that other wineries he knew in Kent sold their visitors a glass of wine after a visit. It was, as far as he was concerned, ancillary to the winery business.
- The Winery did not sell beer or spirits generally, just Hush Heath made products.
- The Winery was not a general event space, only private and corporate events linked to wine. He had held his daughter's wedding on site but that was a one off and he had written to local residents before the event to notify them. He had no desire to hold other weddings on the estate as a commercial business.
- The Winery was open every day except Christmas Day and employed 25 people, all of whom live locally.
- There had been an increased interest in English wine, visitors came from the UK and overseas to taste the wine. The wine is sold all over the world and Hush Heath had formed partnerships with a lot of the main supermarkets. Visitors could come and enjoy the estate, with its wild flowers, wild animals and conservation ideals. People could walk through the estate and the woodlands without paying. Enthusiasts Wine Club had also recently been formed. The Winery had recently been awarded a gold award for visitor attractions from Visit Kent.
- The Winery took public safety very seriously and their customer base was of mature sensible people who enjoyed wine and they try to balance their business with the concerns of the local residents. Most local residents were supportive, despite the 21 objections.
- A letter was written to Mrs Tipples ahead of the variation application to enable her to share it with local residents. He was therefore disappointed to see, in his opinion, that his intentions were being mis-represented and a letter had been written to the planning department stating that the Winery was breaching its conditions.
- Complaints had been made to the Council's Environmental Health department about water pollution which he stated were unfounded.
- No Responsible Authorities had objected to this application .
- In the week leading up to the Hearing 12 phone calls had been made to the Winery asking if they could come in for a glass of wine, this has not happened previously.

- He wrote to residents to clarify their concerns as inaccurate.
- There had been no change to opening, not a pub, restaurant or hotel and serve cold platters occasionally but rarely hot soup, no intent to have a full menu. The 3 applications have not been due to untrustworthiness.

Mr Balfour-Lynn called Councillor Perry, a Ward Member for Staplehurst as a witness.

Councillor Perry stated that:-

- The Winery was not a Wetherspoons, it was first and foremost a Winery where visitors could go along for tastings and a tour. He had, himself, gone along to the Winery and brought a bottle of wine and noted that there was a large party of people there having wine tasting and he was surprised that there was no noise coming from the group. In his opinion visitors should be able to purchase a glass of wine if they so wish. In his experience internationally this is normal.
- He pointed out that the statutory consultees had not raised any objections in terms of noise, traffic issues or public disorder. The amount of traffic travelling to the Winery may increase but would not be a problem, there are many routes there and other businesses may use tractors etc.
- That the Winery was a serious business and not a public house. A lot of residents see this as a prestigious operation they are proud of.
- The Winery is very important for the rural economy and employed local people

Mrs Sarah Easton was then called as a witness for Mr. Balfour-Lynn and commented as follows:-

- That she had worked for the Winery for 8 years and had seen it flourish and that it was important that it should be allowed to continue to do that. She indicated that she lived just up the road from the Winery and regularly cycled on the lanes with her two young children. She felt the most danger came from agricultural vehicles that go up and down the lanes.
- She stressed that the Winery did not want to become a public house, it was purely for visitors to come along for a tour and a platter of food and tastings. At present if people wanted to buy a glass of wine, they would have to say no.
- Staff were trained well and would not serve anyone who appeared drunk. The Challenge 25 system was in place where staff ask for ID.

Underage drinking is not allowed.

- The Winery was not a child orientated place, it did have CCTV for public safety and groups were actively encouraged to book taxis for their journey home after any tasting sessions.
- The business had made sure that they had good noise reduction measures and that no noise could be heard outside of the building.

Mr Balfour-Lynn then called Councillor Louise Brice, another Staplehurst Ward Member as a witness.

Councillor Brice stated she had just a couple of points to add as follows:-

- That when a brand and business is created in surroundings that are high end luxury, you would not want to create a pub environment and buyers are invited.
- She drove past the business often to nearby schools and did not have any issues with the lanes. There were more than one way of getting to the Winery. Google maps directs traffic past the Winery and Councillors are seeking to suggest an alternative route to them.

Mr Balfour-Lynn then called David Curtis-Brignall from Visit Kent as a witness:-

Mr Curtis-Brignall commented as follows:-

- English wine was a growing industry and a great asset to the wine economy. The Hush Heath Winery was not about bringing a huge increase in visitors to a tourist attraction, it wanted to be a high quality professional winery for those that appreciate good wine to enjoy not attract pure drinkers.
- Visit Kent had awarded Hush Heath their gold award for visitor attractions from Visit Kent.

Mr Balfour-Lynn called Councillor Greer as a witness:-

Councillor Greer commented as follows:-

- He had organised a fund raising event when he was Mayor of Maidstone to the Hush Heath Winery with other Mayors. He felt that the tour of the winery and the educational side was very well done and he had received favourable feedback from the Mayors that attended.
- He stated that when the facility was first opened they had applied to KCC and Visit Kent to have a brown tourist sign. However, they were told that they did not meet the criteria which was that you would need to have a visitor base of over 20,000 per year or 4,000

if it was seasonal.

- The construction of the winery was fantastic, solid and would absorb noise. In addition he added that it was always quiet when he had visited it and he had not encountered much traffic when getting there.

The Chairman asked Mr Kolvin if he had any questions for the applicant or the witnesses, to which he replied that he did not.

The Chairman then asked the Members of the Sub-Committee if they had any questions for the applicant.

In response to the questions asked by Members of the Sub-Committee, Mr Balfour-Lynn advised that:-

- The only complaint received was from Mrs Tipples after he had submitted his last application.
- Last year the Winery had 9,800 visitors.
- The statement about wanting to increase this to 50,000 was a press statement and he was not responsible for that quote.
- The Open Weekends for residents were quite successful and no complaints had been made directly to the Winery.
- An inspection was made recently of the building in terms of noise emissions. The expert had stated that the building was well within the planning requirements.

Mr Kolvin, on behalf of the objectors, gave his opening remarks as follows:-

- That Mr Balfour-Lynn had made it clear that he had a desire to grow wine tourism at Hush Heath. To achieve that desire he wanted to vary the current licence to include the sale of a glass of wine to visitors. The Sub-Committee should be satisfied that the operation of the business would do no harm to the public in terms of public nuisance and safety. This is not a case about promotion of employment, tourism or who buys or sells quality wine or bio-diversity or awards but is about protecting the neighbours.
- He would not want to see the business grow at the expense of safety or disturbances. It was a tranquil area and should stay like that. There should not be an increase of traffic on the narrow lanes which would create a risk to public safety.
- He took Members through references to uses at the premises compared to acceptance or rejection of proposed conditions. For example, Mr Balfour-Lynn had stated in his letter to Mrs Tipples that he did not want weddings at the Winery but was not willing to

take these off the website or put this in the conditions.

- Mr Balfour-Lynn stated in writing and at the hearing that he would be willing to agree to some of the conditions proposed but resistant to putting some of these into the licence.
- Residents were concerned that the Winery was surrounded by country lanes, some of which were single track roads. The country lanes did not have lighting, had ditches either side and no pavements. Therefore, there was a risk to road users from increased traffic, particularly children walking in the lanes from school when it is getting dark in the winter.
- Mr Stanley expressed concerns about children and horse riders using the lane and coming into contact with coaches.
- Mrs Clarke complained that during harvest time the lanes are muddy and slippery.
- Ms Hodgkiss stated that the lanes were not wide enough for increased traffic
- Mr Buller stated that a single track lane was totally inadequate.
- Mr & Mrs Vesma stated that the lanes had no white lines and they felt that walking their son down the lane was a dangerous practice.
- Also the acoustics report indicated a low noise level, it was likely that as the Winery was in a bowl effect sound would travel and residents were concerned about that.

Mr Kolvin called Mrs Davidson-Houston as a witness.

Mrs Davidson-Houston made the following observations:-

- That she lives on a lane within one mile of the Winery. She enjoyed the lane, walking, jogging and cycling. However it was the main road from the A229 Staplehurst to the Winery and there were no pavements or lights. Each side of the road had large ditches. She viewed it as dangerous for children to walk along.
- In her opinion to allow glasses of wine to be sold would substantially increase the amount of traffic to the Winery as it would have wider appeal. The lanes are not suitable for that especially if there were coach tours.
- School buses return at around 5 p.m. when it is dark in the winter months which may coincide with traffic coming away from the Winery.
- There is now a roof top terrace which if the opening hours increased, would make potential for noise between 6-7 p.m.

Mr Kolvin continued with his remarks:-

- The original application had the constraint to prevent public nuisance that the licence would be restricted to tasting samples. Mr Balfour-Lynn now wants to extend it to visitors being able to purchase a glass of wine.
- He covered all applications and changes and that these have caused his clients to be worried about the applicant's intentions.
- The marketing material gave cause for concern about Mr Balfour-Lynn's intentions which stated that the Winery had a 200 capacity tasting room, large commercial kitchen and roof top terraced bar.
- An article in a publication stated that the Winery had seen its numbers grown from 20,000 and with a new building should grow to 50,000 visitors.
- A position for an Events Manager was advertised.
- Four companies had been advertising tasting tours in 53 seater coaches.
- That Mr Balfour-Lynn is offering informal assurances but these needed to be put in the conditions of the licence.

The meeting was adjourned at 1 p.m. until 2.15 p.m.

The meeting reconvened at 2.15 p.m.

The Chairman asked Mr Balfour-Lynn if he had any questions which despite her explanation then took the form of clarifications and summary.

Mr Balfour-Lynn advised that it was not until the new premises were built in 2018 that tastings were consumed by visitors, not in 2010 as stated by the objectors.

He stressed that much reference had been made to the Winery's website, he advised that it was currently being rebuilt and would be completed in the next 6-8 weeks. He felt the old website was naively misleading. No weddings had taken place other than his daughter's and weddings would not be mentioned on the new website and he would be happy for that to be included as a condition.

He emphasised that:-

- the Winery was not a public house or a restaurant and would be happy for that to be also included in the conditions.
- the new website would reflect everything discussed at the hearing.

- the two terraces for visitors to sit at were intentionally facing away from residents.
- he understood the concerns of residents and invited them to go and see him at any time. An example he cited was that Mr Stanley had complained about the noise from the chiller. Mr Balfour-Lynn advised that he had spent £5,000 to reduce the noise.
- the saffron beer was not made on site. It was made 5 miles away by his son. The cider is taken away and bottled elsewhere and brought back.
- coaches allowed are one per week in the summer and one every two weeks in the winter. Coach parking is only to prevent parking on areas where it was too soft.
- as a resident we are also concerned about the road but we cannot control the road. There have been no accidents since 2010.
- the family owned seven public houses which will increase to about 15-20 pubs in the next year. The Events Manager was for whole business, not just the Winery.
- they don't promote themselves as a family venue. No child under 10 can enter the winery and not on premises unless with an adult.
- he was concerned about conditions not because he is resistant to giving confidence to local residents but he needs flexibility without being caught out. It is unsettling for him and the staff.

The Chairman asked Mr Kolvin if he had any questions. Mr Kolvin stated that he did not.

The Chairman asked the Members of the Sub-Committee if they had any questions.

In response to a question from a Member, Mr Kolvin stated that Mr Stanley had made a complaint to the Environmental Health Department in regard to water pollution and the noise of the chiller.

Mr Balfour-Lynn stated that the Winery's own traffic, unless very wet, uses estate roads but it is an agricultural area and lots of traffic use the road.

Mrs Bolas then said that there was no indication what decision Members would make but if they were minded to impose conditions on a grant of the application were there conditions that the applicant and other persons would agree?

Mr Kolvin and Mr Balfour-Lynn referred to the submitted conditions proposed by Mr Kolvin's clients and Mr Balfour-Lynn's responses stating

that:-

Many of the schedule conditions have been agreed. Schedule No. 2 should have the word 'similar' removed and indicate events not related to Winery activities, other than the 12 per year permitted.

Mr Kolvin referred to previous mentions of plant fair and car club attendance and said these should be ancillary to the Winery and that is fine but there can otherwise be elasticity on corporate events, residents are sensitive after the wedding.

The applicant said that it was important that 21 people did not determine restrictions on a large business and that he was nervous that he would risk inadvertent breaches. Mrs Bolas confirmed any restrictions would be determined by Members after hearing all parties. The Applicant said he was content with 2 up to wedding venue but felt the remainder was covered by planning but to assist was happy to accept the condition as suggested, 3-8 are fine. 9 has a difference on number of meetings. The Applicant stated that he believed there could be free contact at any time and could be more constructive, happy to leave it to the Sub-Committee.

On 10 a) Saffron beer is branded Hush Heath but needed to change produced 'at' to 'by' as it is bottled off site as is the cider. As a concession that was accepted by Mr Kolvin, 10b) was agreed and c) was covered by 2, not operated as a restaurant so could be left.

11, 12 and 13 all refer to core hours and the application remains for 19.00 for on sales.

On 14 a) - c) - fine, d) replace 'at' with 'by', e) - h) are on the current licence so fine. i) refers to a noise limiter which was said by Mr Kolvin to be inexpensive and normal. The applicant said music was played through a sonos sound system and not at a level to disturb, he felt this would be an over reaction. The applicant said in relation to j) that staff are always present when people are on the premises.

Mr Balfour-Lynn said he felt that good progress had been made but the key issue for him was flexibility for closing. He is very sensitive to issues and in relation to the complaint referred to it related to the private wake of a dear friend. There was an invited guest list and no one paid. There was no breach and it is unsettling to deal with such issues regularly for him and the staff. He would agree to closing for tours, tastings and sales at 19.00, save for the 12 events and online sales.

He also stated that he agreed not to publicise on sales other than tastings except within the Winery.

The Chairman asked Mr Kolvin for his closing speech.

Mr Kolvin stated that he had found the Sub-Committee hearing very helpful and thanked everyone present for their patience. He also stressed that the hearing demonstrated that both parties needed to get together to

reach common ground on what Mr Balfour-Lynn needed to operate his business and assurance for residents.

Conditions have mainly been agreed leaving only core hours, which is the most important and goes to safety not public nuisance so requires a precautionary approach. Signs say closing at 17.00 or 18.00 and flexibility could be obtained by TENS. Coach frequency restrictions are asked for, particularly on 53 seaters.

Mr Balfour-Lynn was asked if he had any further comments in closing and he stated that he recognised that he needed flexibility to enable his business to run properly. In relation to safety people would not come in the dark or be outside to make noise. The problem with TEN is the need for advance notice so they are not flexible enough to cover where someone stays on a little. He was unclear who is advertising coaches but not encouraged to Hush Heath and he is not sure how to influence that. He simply seeks clarity and to avoid misinformation and the new website will be clear.

The Chairman advised that the Sub-Committee would retire for deliberation.

The meeting closed at 3.30 p.m.

13. NOTICE OF DETERMINATION

Document F

Applicant's letter to residents

4 March 2019



HUSH HEATH

ESTATE

SHARE OUR PASSION

4th March 2019

Dear Neighbour,

There has been much speculation and misinformation surrounding the Hush Heath Winery. In order to clarify exactly what our plans are, Leslie and I have decided to write to all our neighbours.

Firstly, we are not changing our opening hours. We are open to the public from 10am - 5pm from October to April, and from 10am - 6pm from May to September. We are not going to change these times either now or in the future. Just for your information our existing premises licence allows us to open for tours and tastings up to midnight daily. We choose not to and to reinforce this message we changed midnight to 7pm in our current application to reassure everyone that we will not be opening in the evenings.

Again, for clarity a number of people believe there is a restriction on our opening days in our planning permission. Our 2013 permission allowed us to open every day for tours and tastings, but the shop had to be closed on Sundays and bank holidays. However, our planning permission granted in 2017 superseded the 2013 permission as the shop and tasting room were in the new building extension and had no restriction on opening hours or days of operation. In other words, we have permission to be open 7 days per week for tours, tastings and the shop.

Secondly the Winery is not a pub nor a restaurant and has no intention of becoming one. Indeed, we have decided to hold no weddings at the Winery as they are too noisy and disruptive. We own a number of local pubs such as the Goudhurst Inn and Tickled Trout and we encourage our visitors to have lunch or dinner in them and indeed to stay in our boutique hotel rooms above the pubs.

What we will do, is serve cold sharing platters at the Winery comprising local cheeses, charcuterie and vegetables (no cooking or chefs involved) between 12pm - 3 pm in winter months and 12pm - 5pm in summer months.

TEL: +44 (0)1622 832794 SALES: +44 (0)1622 832794 [REDACTED] VAT REGISTRATION NO GB795 884058

HUSH HEATH WINERY | FIVE OAKS LANE STAPLEHURST | KENT | TN12 0HT
WWW.HUSHHEATH.COM

We will also offer private and corporate group winery tour bookings for events linked to wine tasting and tours of the estate and winery. Indeed, we have been running these since we first opened in 2010. We will however, not become a general events venue as usually found in large hotels or tourist destinations. All events open to the public will be linked to and about our wines and winemaking and viticultural education.

The amendment to our licence that we have applied for will allow our existing visitors who come to the estate for tours and tastings to enjoy a glass of our wine or cider in our tasting room and terrace. As we are only serving drinks produced by Hush Heath there are no spirits available. The ability for our guests to enjoy a glass of our wine will not increase our footfall, road traffic or visitor numbers. Again, to be clear we will not become a pub or bar and visitors are not going to drive all the way to the Winery simply to buy a glass of our wine which is available in our local pubs where they can also drink other non - Hush Heath drinks.

Again, for information purposes a large percentage of visitors coming to the Winery are coming from London and abroad, arriving by train to Marden station where they are picked up by local taxi or our own 12-seater mini bus. This reduces road traffic. Furthermore, we have a policy whereby our agricultural vehicles do not use the public roads but travel across the estate tracks and fields. To date since 2010 we have had no incidences of drunk drivers leaving the Winery, road accidents, driving into ditches, accidents or police or KCC highway complaints.

In terms of large 30-seater coaches we have on average one coach per week in the months of May to September visiting the winery from France, Germany or Belgium, and very few coaches during the winter months of October to April. We have no intention of increasing this now or in the future.

We have on average 3 - 4 HGVs per week coming to the Winery to either deliver winemaking materials or to pick up our wines for delivery to customers.

We live in a farming location and there are many agricultural vehicles and HGVs using the roads and it is easy to assume they are all connected with the winery. However, this is incorrect.

Leslie and I live 250 yards from the Winery and are highly conscious of noise and activities surrounding the Winery. We love the area and the whole estate is beautiful, teeming with wild flowers (we have just planted over 15 acres of wild meadow flowers in the fields adjacent to the Winery), bird and insect life as well as many other animals. Conservation and biodiversity lies at the heart of our land. We really hope you will visit us along with your family and friends and enjoy walking through our immaculate vineyards, apple orchards and ancient oak woodlands. We are also immensely proud to have just been awarded a Gold Standard by Visit England for Visitor Attractions. A first for an English Winery.

Kind regards,

Richard and Leslie Balfour-Lynn

TEL: +44 (0)1622 832794 SALES: +44 (0)1622 832794 VAT REGISTRATION NO GB795 884058

Document G

Notice of determination

10 September 2020



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Application Ref No: 20/01678/LAPRE

Applicant: Mr Richard Balfour-Lynn

Regarding **PREMISE LICENCE (VARIATION)**
Hush Heath Winery, Hush Heath Estate, Five Oak Lane,
Staplehurst, Kent TN12 0HX

Date(s) of hearing: 10th September 2020

Date of determination: 10th September 2020

Committee Members: Councillor Mrs Joy (Chairman), Councillor Mrs Sams and
Councillor Mrs Springett

Legal Advisor in attendance at hearing: Mr Robin Harris

Democratic Services Officer in attendance at hearing: Miss Oliviya Parfitt

Online Meeting Facilitator: Mr Ryan O'Connell

This was an application for:

Variation

for a

Premises Licence

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

Name: Mr R Balfour-Lynn

Witnesses: Cllr Perry, Cllr Riordan Staplehurst Parish Council

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.)

Witnesses: Mrs N Davidson-Houston

Representations considered in the absence of a party to the hearing:

In support – Staplehurst Parish Council

Objections – Ian and Liz Tipples, Guy and Janice Barkaway, Brenda Webb and Darryl Evans, Marcus Rennick

Together with all written representations received, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in the agenda papers at appendix 3

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to the licensing objectives;
Sections 34 - 36 which relate to the variation of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives

Chapters 8 & 9 which relate to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17.9 which relates to prevention of crime and disorder

Chapter 17.16 which relates to the promotion of public safety

Chapter 17.19 which relates to the prevention of nuisance

Chapter 17.23 which relates to the protection of children from harm.

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

N/A

C: Determination:

The Committee has decided to: Grant the Application and

- Vary conditions appropriate for the promotion of the licensing objectives

Mandatory conditions remain; embedded conditions not applicable, current conditions at annexes 3 and 4 to be deleted and replaced with those below.

Hours:

| | |
|---------------------------------------|--|
| Off sales (online) | 00:00 – 00:00 (24 hours) |
| Off sales (shop) | 10:00 – 17:00 November – March and; 10:00 – 18:00 April – October |
| Off sales (shop) (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| Off sales (shop) (special event) | 10:00 – 24:00 |
| On sales (non special event*) | 10:00 – 19:00 Sunday to Thursday and; |
| On sales (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| On sales (special event*) | 10:00 – 00:00 |
| Late night refreshment | 23:00 – 00:00 |
| Live and recorded music | 10:00 – 24:00 |
| Opening hours (non special event*) | 10:00 – 19:00 Sunday to Thursday and; |

| | |
|---|--|
| Opening hours (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| Opening hours (special events*) | 10:00 – 00:00 |
| Opening hours (online sales only no public attendance) | 00:00 – 00:00 |

* as defined below

A special event (previously referred to as “event occasion”) is an event at which: recorded or live music is provided after 17:00 or late night refreshment is provided and are subject to the additional conditions imposed by condition 12 a-i.

A non special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00 subject to the conditions imposed by condition 13 a-f. All other non special events refer to occasions where there is not a special event or a non special event with extended hours.

The following conditions apply at all times:

1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).
2. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.
3. There shall be good CCTV coverage of all licensed areas. The CCTV system will be kept in good working order and any images captured will be kept for a minimum of 30 days and supplied to a Police officer or local authority officer upon request.
4. No customers will be left unsupervised on the premises.
5. Children will be kept under adult supervision at all times.
6. All hazardous materials will be kept under child proof lock.
7. A Challenge 25 proof of age scheme shall be operated at the premises, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with PASS hologram.
8. The premises licence holder shall organise a meeting with residents living within 800 metres of the Hush Heath Estate once per calendar year to discuss any impact of the premises on the promotion of the licensing objectives. (See also informatives).

9. The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'
10. The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and vinicultural and vinicultural education.
11. There shall be no external advertising generally or at the premises, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him, including on any signs or any third party website. The website for the premises may advertise the services and hours that are available at the premises.

The following condition applies during special events as defined above.

12. Special Events may be held at the premises subject to:
 - a) Special Events shall be limited to 12 per calendar year.
 - b) Special Events shall not occur on consecutive weekends.
 - c) Special Events shall be notified by letter or email to neighbours within 800 metres of the premises a minimum of 7 days before the event.
 - d) The supply of alcohol shall be restricted to products produced by Hush Heath Winery and shall not include spirits.
 - e) After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.
 - f) Live and recorded music will end by 23:45.
 - g) All visitors to the premises will leave the premises and parking area by midnight.
 - h) Signage will be placed at the exits of the premises asking visitors to leave quietly and respect neighbours.
 - i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

The following condition applies during non special events with extended hours as defined above

13. Non Special Events (Extended hours on Fridays and Saturdays)
 - a) The extended hours to 23:00hrs apply only on Fridays and Saturdays, but are available all year round.
 - b) The premises may only be opened for extended hours on a Friday or Saturday where there are pre-booked activities.
 - c) The maximum number of customers during extended hours is limited to 60 persons.

- d) Licensable activities during extended hours will occur indoors only.
- e) The supply of alcohol during extended hours shall be ancillary to a full table meal only.
- f) Off sales during extended hours are only available to persons taking part in the pre-booked activities.

Informatives:

If issues should arise during the operation of a licence which are related to licensable activities at the premises and promotion of the licensing objectives, application may be made for a review of a premises licence in accordance with the Licensing Act 2003.

Any term or condition of the premises licence does not confer planning permission for the activity licensed and should any conflict arise implementation of the licence may put the licensee at risk of planning enforcement unless appropriate planning permission is obtained.

Any issues arising or complaints may be raised with the premises licence holder as they arise and not await an organised meeting, to facilitate constructive discussion at the time.

The premises licence holder is strongly recommended to engage fully with local residents prior to making any further applications.

Reasons for conditions:

Members of the Licensing Sub Committee considered that all the conditions attached to this licence are appropriate and proportionate to the scale of this premises and nature of its operation as a winery with tours, tastings and wine related education and activities, including a limited number of special events ancillary to its main function and the new addition following this hearing of extended hours for on and off sales that are permitted on Fridays and Saturdays. They are such as to continue to promote the licensing objectives, following the addition of extended hours on Fridays and Saturdays.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 28th March 2019, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The condition limiting extended hours to Fridays and Saturdays only was appropriate and proportionate to promote the licensing objective of preventing public nuisance. The Sub-Committee were of the view that three nights a week including a night during the ordinary working week could lead to public nuisance due to the increase in customers attending the premises later in the evening.

The condition limiting the number of customers allowed during extended hours was appropriate and proportionate for the same reason and also for the promotion of the

public safety objective, in respect of an increased volume of traffic, in so far as that is relevant. The Sub-Committee noted that the applicant requested 10 tables and in the current climate that sets a maximum of 60 people and that number going forwards was appropriate for the promotion of the licensing objectives.

The other on sales extended hours conditions are consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours as they continue to promote the licensing objectives going forwards.

The condition relating to off sales during extended hours is appropriate and proportionate to promoting the licensing objective of preventing public nuisance and consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours. The Sub-Committee confirmed that it was not mistaken when it set the hours for the shop previously and these hours remain unchanged.

The existing condition restricting advertising externally the sale of alcohol for consumption on the premises remains appropriate and proportionate to prevent public nuisance, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than for wine tasting experiences provided as ancillary to services intended by the winery operation. However, the Sub-Committee considered the amendment to allow advertising of services and hours on the premises website to strengthen this condition as it would limit speculative visits to the premises and support the pre-booking condition.

The Sub-Committee felt that a further informative in respect of the premises licence holder engaging with residents prior to any application would be helpful.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and those in support of his application and read all the representations made, (see lists above), Members of the Sub Committee took account of the lengthy and detailed evidence where relevant to promotion of the licensing objectives and impacts relating to this variation application.

They also took into account that there were no representations from Responsible Authorities.

The Sub-Committee noted that there was no objection to online sales being 24 hours a day.

Members have carefully balanced the stated requirements of the applicant in operating his winery business and ancillary licensable activities against the concerns of

neighbours likely to be affected by uncontrolled licensable activities which have a reasonable likelihood of not promoting the licensing objectives.

Prevention of Crime and Disorder

The Sub-Committee noted that there were no representations under this licensing objective.

Protection of Children from Harm

The Sub-Committee noted that there were no representations under this licensing objective that would meet the definition in the guidance. However, reference to child safety generally, particularly on the roads was raised and was therefore considered under the public safety objective.

Public Safety

In respect of public safety, the Sub-Committee noted that the objectors' main concerns centred around the potential of this variation to create a substantial increase in visitor numbers, leading in turn to an increase in traffic on the small local roads, during evening hours which they state is the time of highest risk. A witness was able to point to a specific example of a vehicle departing the winery causing a hazard, which had been reported to the Parish Council.

Further, objectors were concerned regarding the safety of the public when moving around the site after dark, due to the potential planning limitations on the use of the external lighting at the premises.

In response, the applicant stated that they had a well run premises, there was no history of public safety issues at the site and where residents had raised concerns these had been responded to, for example by purchasing a minivan and routing this vehicle from Marden rather than Staplehurst. The applicant suggested conditions in relation to public nuisance which were also relevant to this licensing objective, namely a limitation on the number of customers and operating a pre-booking system.

The Sub-Committee noted that there was no representation from any responsible authorities on this issue and given the representation from the Parish Council, there was a range of opinion, even among local residents in respect of public safety on the roads.

No party produced expert evidence in respect of the proposed variation on visitor numbers or traffic flows.

The Sub-Committee was satisfied that there is adequate lighting available at the premises. The Sub-Committee draws attention to the informative regarding the relationship between planning and licensing that was made at the previous hearing and remains extant.

Taking into account all of the above, the Sub-Committee were of the view that the proposed variation was likely to increase visitor numbers in the evening. However, due to issues of road safety not being evidenced as occurring on the premises or the immediate vicinity of the premises, or linked to the proposed variation, it was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective, but, the Sub-Committee felt that conditions that were appropriate to the promotion of the prevention of public nuisance also assisted in respect of this licensing objective, in as far as it is relevant.

Prevention of Public Nuisance

The Sub-Committee noted that the objectors main concerns around this issue were related to a potential increase in visitors, which had the risk of increased noise and disturbance in an area which is both rural and tranquil and further, that the proposed variation was indicative of a move away from services ancillary to a winery towards an operation akin to a hospitality venue, with a more social experience, which would by its nature be a noisier enterprise.

The representations made both at the hearing and in advance of the hearing pointed to previous assurances by the applicant that there was no intention to change the existing licence.

Representations noted that the applicant had not used his quota of 12 special events but now wanted to increase late night openings 14 fold.

The applicant responded that the changes were not planned and that he had been genuine when he had given assurances previously. However, the impact of the Covid-19 pandemic required a response and there was also a change in the demand from customers, which as a business the premises had to respond to or the business could fail. The applicant noted that neighbouring properties would not be impacted by noise from inside the winery, due to the construction of the winery.

The applicant advised that he felt it unlikely that the hours would be exercised three nights a week, but that the business wanted there to be flexibility. He noted that he is the closest resident to the winery and that he also has an interest in limiting noise from the premises.

The applicant also proposed a condition on the maximum number of guests that could attend later in the evening, along with pre-booking and the suggestion of dimming the lights during the hours of darkness.

The Sub-Committee noted that there was no representation from any responsible authority in respect of this licensing objective.

The Sub-Committee noted the support of the Parish Council to the application.

Taking into account all of the above, the Sub-Committee considered that the application as originally made failed to adequately promote this licensing objective. However, with some of the modifications proposed by the applicant and appropriate conditions applied by the Sub-Committee the application could be approved in part and continue to promote this licensing objective.

The Sub-Committee felt that three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery.

The Sub-Committee permitted off sales to run concurrently with the extended hours, but did not change the hours for other days of the week. The intention of 19:00 for on sales at the premises was stated in the previous application to be to allow flexibility for any visitors staying a little over time. This was not a mistake and has promoted the licensing objectives.

Members amended the no external advertising condition to allow advertising of services and hours on the premises website. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS JOY

Signed [Chairman]:

A copy of the original document is held on file

Date: 15 September 2020

Document H

Licensing Sub-Committee meeting minutes

10 September 2020

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD ON THURSDAY 10 SEPTEMBER
2020**

Present: Councillors Joy (Chairman), J Sams and Springett

21. APOLOGIES FOR ABSENCE

There were no apologies.

22. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

23. ELECTION OF CHAIRMAN

RESOLVED: That Councillor Joy be elected as Chairman for the duration of the meeting.

24. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

25. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

26. EXEMPT ITEMS

RESOLVED: That all items on the agenda be taken in public as proposed.

27. APPLICATION TO VARY A PREMISE LICENCE UNDER THE LICENSING ACT 2003 FOR HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE, STAPLEHURST, KENT, TN12 0HX.

The persons participating in the hearing were identified as follows:

Chairman – Councillor Joy
Committee Member – Councillor Springett
Committee Member – Councillor J Sams

Legal Advisor – Mr Robin Harris

Online Facilitator – Mr Ryan O’Connell

Democratic Services Officer – Miss Oliviya Parfitt

Applicant – Mr Richard Balfour-Lynn and Mrs Lesley Balfour-Lynn,

For the Applicant:

Mr Richard Balfour-Lynn – Owner of Hush Heath Winery
Mrs Leslie Balfour-Lynn – Owner of Hush Heath Winery
Sarah Easton - Winery Manager at Hush Heath Winery

Witnesses to be called by the Applicant:

Councillor John Perry – Staplehurst Ward Councillor and Vice-Chairman of Staplehurst Parish Council
Councillor Patrick Riordan – Chairman of Staplehurst Parish Council.

For the Objectors:

Mr Philip Kolvin QC – Acting on behalf of Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.

Witness to be called by the Objectors – Mrs Natasha Davidson-Houston

All parties confirmed that they were aware of the Sub-Committee hearing procedure and had each received a copy of the hearing procedure document.

The Chairman explained that:

- The Sub-Committee would allow all parties to put their case fully and make full submissions within a reasonable time frame.
- The procedure would take the form of a discussion led by the Sub-Committee and they would usually permit cross-examination conducted within a reasonable timeframe.
- Any persons attending the hearing who behaved in a disruptive manner may be directed to leave the hearing by the Sub-Committee (including temporarily) after which, such person may submit to the Sub-Committee over the Instant Messaging facility any information which that person would have been entitled to give orally had the person not been required to leave the meeting. If this is not possible, they may be permitted to speak at the Chairman's Invitation.

The Sub-Committee confirmed that they had read all the papers.

The Chairman enquired whether any draft conditions had been agreed between the applicant and other parties; no draft conditions had been agreed.

The Legal Advisor outlined the variation application that had been received from Hush Heath Winery, which included an extension of hours and an amendment to the conditions of the licence held by the applicant. It was noted that 13 objections were received.

The applicant was invited to make their opening remarks and referenced the impact of the Coronavirus pandemic on his business which would lose approximately £925k this year. The reduction in sales to the tourist industry was of particular significance due to the businesses' agricultural nature as a winery. The variation application had been submitted to allow for increased flexibility to enable the business to continue its operation. It was noted that prior to Covid-19, Mr Balfour-Lynn had previously informed local residents that there was no intention to amend the premises licence under which the business operated.

Mr Balfour-Lynn referenced the importance of the Winery for the local economy, which included employing local residents and the lack of both redundancies and salary reductions experienced by his employees during the pandemic. Specific reference was made to the adult clientele that visited the winery, who were often visiting the local area and Kent county and that the business had experienced demand for further wine-and-dine experiences.

Mr Balfour-Lynn informed the Committee that in January 2020 he had purchased a vehicle to collect visitors from Marden train station, due to local resident dissatisfaction with visitors being collected from Staplehurst train station by coach and driven along the narrow, local roads. It was confirmed that no complaints had been received by the Council or the Police in relation to the winery since the license was last amended in March 2019. The changes to the winery's shop opening times and online advertising request on the business' website were referenced.

The applicant's witnesses were invited to address the Sub-Committee.

Councillor Riordan spoke in favour of the application and referred to the minutes of the Staplehurst Parish Council meeting held on 10 August 2020, which endorsed the application and the importance of the Winery in the local community.

Councillor Perry spoke in favour of the application. The importance of the rural economy, local employment opportunities, the business' clientele and its agricultural nature were mentioned. The impact of the Covid-19 pandemic and the applicant's attendance to Staplehurst Parish Council's Road Safety Group meetings were referenced.

In response to a query from the panel, the applicant reiterated that customers had expressed demand for wine-and-dine experiences which is why the variation application had been submitted.

Mr Philip Kolvin QC was invited to make the opening remarks on behalf of the objectors represented and noted that this was the fourth licence application within two years. The rural surroundings in which the Winery

and its neighbours were situated, to the locations flat surface and the impact of sound travelling from the venue, the lack of street lighting in the local area and narrow roads were highlighted. Mr Kolvin QC stated that the variation application focused on the use of the premises for evening activities similar to those conducted in a hospitality, rather than agricultural, venue.

It was noted that the Applicant's current licence allowed for 12 special events per year, which would increase to allow 168 evening events per year if the variation application was granted in totality. The request to allow product sales until 11p.m. and to advertise the sale of alcohol on the business' website were also mentioned, in light of the Sub-Committee's previous decisions on the licence conditions.

Particular attention was drawn to the documentation supplied to the sub-committee on behalf of the objectors Mr Kolvin QC represented. This documentation related to the 2013, 2018 and 2019 sub-committee meetings that had taken place, in what was perceived as attempts to relax the licence conditions previously set by the sub-committee. In all three instances, the supply of alcohol that had been restricted to tasting samples only, the extremely remote location and restricted visitor access had been referenced by the applicant.

Through a hearing held in September 2018, the visitor tasting room was included within the area for which licensable activities took place. The decision and minutes of that hearing were referenced, whereby the applicant confirmed that there was no intention of having more than 12 events per annum.

An application for a minor application variation was submitted and rejected by the Council's officers in 2018 as a variation application was required instead.

Mr Kolvin QC reiterated that in 2019 the applicant had applied to remove the licensing condition whereby the supply of alcohol was limited to tasting samples and to amend Annex 4 of the premises licence. In relation to this hearing, three letters; two from Ms Easton and one from Mr Balfour-Lynn to the Council's Senior Licensing Officer and to local residents which stated, in part, that there was no intention of the Winery operating longer opening hours or becoming a restaurant or bar. It was noted that following the letter to residents, the applicant's solicitor would not engage with Mr Kolvin QC or his clients in respect of having draft conditions agreed before the March 2019 sub-committee meeting.

Mr Kolvin QC then referenced the determination and reasons provided as a result of the March 2019 sub-committee meeting, with the sub-committee informed that the applicant had only conducted one special event since the variation application was granted despite Mr Balfour-Lynn's request for greater flexibility. It was argued that the greater flexibility requested due to the Covid-19 pandemic was not a licensable objective need and that the £925k income loss had not been confirmed

through a statement of accounts. Mr Kolvin QC requested that the sub-committee Members reject the variation application.

Mrs Natasha Davidson-Houston spoke against the application. The witness lived close to the Winery and stated that as an agricultural and residential area, it was inappropriate for a night-time hospitality venue. The previous number of sub-committee meetings held in relation to the winery were referenced.

Mrs Davidson-Houston stated that the applicant had only used the special events provision once within the last 18 months, whilst the variation application would allow for a much higher volume of events if granted. Relaxations on the advertising restrictions in force would encourage more visitors, which would then increase the traffic flow along the local roads which were difficult to navigate and increase the noise generated. This would be greater in the winter months, with a lack of street lighting and pavements available.

It was noted that whilst the winery's minibuses travelled from Marden train station, individual cars and cabs often drive to the winery from Staplehurst station. Private tour companies would also arrange for coach trips to the winery using that route and there was no public transport available to and from the winery. Mrs Davidson-Houston reported two recent incidents to Staplehurst Parish Council, whereby vehicles coming out of the Winery had caused her to brake sharply.

The sub-committee were reminded that planning restrictions existed in the local area to restrict external lighting, with the winery permitted to use external lighting in certain areas at certain times. The safety of visitors without such lighting was highlighted. The large windows of the winery buildings enabled the light to be seen from homes within the local area.

Mrs Davidson-Houston reiterated that the applicant had given multiple assurances to residents that the Winery would have restricted opening hours and would not routinely open in the evenings. It was felt that the variation application submitted was in direct contradiction of these assurances and the sub-committee were asked to reject the application. It was repeated that the local area was not conducive to a tourist, hospitality venue which they believed the Winery would become.

In response to a question from the panel, Mr Kolvin QC clarified that darkness was also a licensing consideration in terms of the potential impact to nuisance and disturbance of amenity. This was relevant whereby the lighting from the winery would be seen from the windows and referenced the previously given permission to use carpark lighting for the twelve special events. The bends and narrow widths of the local roads from the winery were mentioned as a public safety concern.

The panel members confirmed that the closing hours of the shop, as part of the decision granted in 2019, had intended to be before the closing hours of the premises.

In response to question from the panel in relation to the incidents mentioned, Mrs Davidson-Houston confirmed that Staplehurst Parish Council had a dedicated email for traffic problems in the local area generally.

Mr Harris enquired whether the applicant or other parties had any conditions that could be proposed, to facilitate further discussion during the hearing.

Mr Kolvin QC stated that he could not comment on this request as the objectors which he represented were not present to indicate their wishes.

Mr Harris queried whether the hearing could be adjourned to allow for further discussion between the applicant and other parties, to which the applicant responded that he did not believe this would be possible. The applicant offered to limit the number of evening guests to 75 through bookings only, to sit indoors with dimmed lighting to mitigate the objector's concerns.

Mr Kolvin QC was invited to respond and stated that Mr Balfour-Lynn did not engage with residents prior to the submission of the variation application nor once objections had been received.

Mr Kolvin QC was invited to make their closing remarks and stated that the applicant's desire for flexibility was already reflected in the 12 annual special events and temporary events permitted within the current licence. Mr Kolvin QC encouraged the applicant to engage with local residents and re-referenced the increased number of evening events requested.

The limited hours in relation to off-licensing as previously decided by the sub-committee were referenced and the applicant's wishes to advertise online and through signage were noted.

Mr Balfour-Lynn was then invited to make his closing statement, during which he stated that he and his wife were responsible business owners and that their businesses has had to adapt over the last ten years. The impact of Covid-19 was reasserted.

It was stated that whilst the premises licence allowed special events, these were not common for the winery to undertake with educational wine dinners now preferred. It was noted that the Council had not received any complaints arising from any guests and staff, which if received and justified could lead to the premises licence being amended or withdrawn.

With reference to the advertisement of sales, the applicant stated that this would take place on the businesses website and that the shop would only remain open whilst the winery itself was open. The support from Staplehurst Parish Council was reiterated.

The panel asked the applicant why the conditions offered during the meeting were not originally suggested and whether this could have been

included in the variation application form. Mr Balfour-Lynn stated that the form was limited in scope and that he did not wish to put constraints on the business should it need to adapt at a later date.

The Legal Officer confirmed that there were no further matters to be raised or resolved.

The Chairman then adjourned the meeting for deliberation and requested that the Legal Officer remained to assist them. The panel would return to announce the decision at 2 p.m.

At 2p.m. the Sub-Committee returned and invited the legal officer to read out the decision with brief reasons. The sub-committee briefly adjourned and then returned to the meeting, in relation to the clarity requested that the alcohol be supplied within the extended hours with food ancillary to a full table meal.

It was confirmed that a written decision with full reasons would be provided within 5 working days. Parties were reminded of the right to review a premises license and the right of appeal to the Magistrates Court.

The meeting closed at 2.10 p.m.

RESOLVED: That the Sub-Committee's decision and reasons be detailed in the Notice of Determination attached as an Appendix to the Minutes.



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

NOTICE OF DETERMINATION

Application Ref No: 20/01678/LAPRE

Applicant: Mr Richard Balfour-Lynn

Regarding **PREMISE LICENCE (VARIATION)**
Hush Heath Winery, Hush Heath Estate, Five Oak Lane,
Staplehurst, Kent TN12 0HX

Date(s) of hearing: 10th September 2020

Date of determination: 10th September 2020

Committee Members: Councillor Mrs Joy (Chairman), Councillor Mrs Sams and
Councillor Mrs Springett

Legal Advisor in attendance at hearing: Mr Robin Harris

Democratic Services Officer in attendance at hearing: Miss Oliviya Parfitt

Online Meeting Facilitator: Mr Ryan O'Connell

This was an application for:

Variation

for a

Premises Licence

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

Name: Mr R Balfour-Lynn

Witnesses: Cllr Perry, Cllr Riordan Staplehurst Parish Council

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.)

Witnesses: Mrs N Davidson-Houston

Representations considered in the absence of a party to the hearing:

In support – Staplehurst Parish Council

Objections – Ian and Liz Tipples, Guy and Janice Barkaway, Brenda Webb and Darryl Evans, Marcus Rennick

Together with all written representations received, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in the agenda papers at appendix 3

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Section 4 which relates to the licensing objectives;
Sections 34 - 36 which relate to the variation of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives

Chapters 8 & 9 which relate to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

Chapter 17.9 which relates to prevention of crime and disorder

Chapter 17.16 which relates to the promotion of public safety

Chapter 17.19 which relates to the prevention of nuisance

Chapter 17.23 which relates to the protection of children from harm.

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

N/A

C: Determination:

The Committee has decided to: Grant the Application and

- Vary conditions appropriate for the promotion of the licensing objectives

Mandatory conditions remain; embedded conditions not applicable, current conditions at annexes 3 and 4 to be deleted and replaced with those below.

Hours:

| | |
|---------------------------------------|--|
| Off sales (online) | 00:00 – 00:00 (24 hours) |
| Off sales (shop) | 10:00 – 17:00 November – March and; 10:00 – 18:00 April – October |
| Off sales (shop) (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| Off sales (shop) (special event) | 10:00 – 24:00 |
| On sales (non special event*) | 10:00 – 19:00 Sunday to Thursday and; |
| On sales (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| On sales (special event*) | 10:00 – 00:00 |
| Late night refreshment | 23:00 – 00:00 |
| Live and recorded music | 10:00 – 24:00 |
| Opening hours (non special event*) | 10:00 – 19:00 Sunday to Thursday and; |

| | |
|---|--|
| Opening hours (non special event*) | 10:00 – 23:00 Fridays and Saturdays only |
| Opening hours (special events*) | 10:00 – 00:00 |
| Opening hours (online sales only no public attendance) | 00:00 – 00:00 |

* as defined below

A special event (previously referred to as “event occasion”) is an event at which: recorded or live music is provided after 17:00 or late night refreshment is provided and are subject to the additional conditions imposed by condition 12 a-i.

A non special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00 subject to the conditions imposed by condition 13 a-f. All other non special events refer to occasions where there is not a special event or a non special event with extended hours.

The following conditions apply at all times:

1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).
2. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.
3. There shall be good CCTV coverage of all licensed areas. The CCTV system will be kept in good working order and any images captured will be kept for a minimum of 30 days and supplied to a Police officer or local authority officer upon request.
4. No customers will be left unsupervised on the premises.
5. Children will be kept under adult supervision at all times.
6. All hazardous materials will be kept under child proof lock.
7. A Challenge 25 proof of age scheme shall be operated at the premises, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with PASS hologram.
8. The premises licence holder shall organise a meeting with residents living within 800 metres of the Hush Heath Estate once per calendar year to discuss any impact of the premises on the promotion of the licensing objectives. (See also informatives).

9. The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'
10. The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and vinicultural and vinicultural education.
11. There shall be no external advertising generally or at the premises, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him, including on any signs or any third party website. The website for the premises may advertise the services and hours that are available at the premises.

The following condition applies during special events as defined above.

12. Special Events may be held at the premises subject to:
 - a) Special Events shall be limited to 12 per calendar year.
 - b) Special Events shall not occur on consecutive weekends.
 - c) Special Events shall be notified by letter or email to neighbours within 800 metres of the premises a minimum of 7 days before the event.
 - d) The supply of alcohol shall be restricted to products produced by Hush Heath Winery and shall not include spirits.
 - e) After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.
 - f) Live and recorded music will end by 23:45.
 - g) All visitors to the premises will leave the premises and parking area by midnight.
 - h) Signage will be placed at the exits of the premises asking visitors to leave quietly and respect neighbours.
 - i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

The following condition applies during non special events with extended hours as defined above

13. Non Special Events (Extended hours on Fridays and Saturdays)
 - a) The extended hours to 23:00hrs apply only on Fridays and Saturdays, but are available all year round.
 - b) The premises may only be opened for extended hours on a Friday or Saturday where there are pre-booked activities.
 - c) The maximum number of customers during extended hours is limited to 60 persons.

- d) Licensable activities during extended hours will occur indoors only.
- e) The supply of alcohol during extended hours shall be ancillary to a full table meal only.
- f) Off sales during extended hours are only available to persons taking part in the pre-booked activities.

Informatives:

If issues should arise during the operation of a licence which are related to licensable activities at the premises and promotion of the licensing objectives, application may be made for a review of a premises licence in accordance with the Licensing Act 2003.

Any term or condition of the premises licence does not confer planning permission for the activity licensed and should any conflict arise implementation of the licence may put the licensee at risk of planning enforcement unless appropriate planning permission is obtained.

Any issues arising or complaints may be raised with the premises licence holder as they arise and not await an organised meeting, to facilitate constructive discussion at the time.

The premises licence holder is strongly recommended to engage fully with local residents prior to making any further applications.

Reasons for conditions:

Members of the Licensing Sub Committee considered that all the conditions attached to this licence are appropriate and proportionate to the scale of this premises and nature of its operation as a winery with tours, tastings and wine related education and activities, including a limited number of special events ancillary to its main function and the new addition following this hearing of extended hours for on and off sales that are permitted on Fridays and Saturdays. They are such as to continue to promote the licensing objectives, following the addition of extended hours on Fridays and Saturdays.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 28th March 2019, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The condition limiting extended hours to Fridays and Saturdays only was appropriate and proportionate to promote the licensing objective of preventing public nuisance. The Sub-Committee were of the view that three nights a week including a night during the ordinary working week could lead to public nuisance due to the increase in customers attending the premises later in the evening.

The condition limiting the number of customers allowed during extended hours was appropriate and proportionate for the same reason and also for the promotion of the

public safety objective, in respect of an increased volume of traffic, in so far as that is relevant. The Sub-Committee noted that the applicant requested 10 tables and in the current climate that sets a maximum of 60 people and that number going forwards was appropriate for the promotion of the licensing objectives.

The other on sales extended hours conditions are consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours as they continue to promote the licensing objectives going forwards.

The condition relating to off sales during extended hours is appropriate and proportionate to promoting the licensing objective of preventing public nuisance and consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours. The Sub-Committee confirmed that it was not mistaken when it set the hours for the shop previously and these hours remain unchanged.

The existing condition restricting advertising externally the sale of alcohol for consumption on the premises remains appropriate and proportionate to prevent public nuisance, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than for wine tasting experiences provided as ancillary to services intended by the winery operation. However, the Sub-Committee considered the amendment to allow advertising of services and hours on the premises website to strengthen this condition as it would limit speculative visits to the premises and support the pre-booking condition.

The Sub-Committee felt that a further informative in respect of the premises licence holder engaging with residents prior to any application would be helpful.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and those in support of his application and read all the representations made, (see lists above), Members of the Sub Committee took account of the lengthy and detailed evidence where relevant to promotion of the licensing objectives and impacts relating to this variation application.

They also took into account that there were no representations from Responsible Authorities.

The Sub-Committee noted that there was no objection to online sales being 24 hours a day.

Members have carefully balanced the stated requirements of the applicant in operating his winery business and ancillary licensable activities against the concerns of

neighbours likely to be affected by uncontrolled licensable activities which have a reasonable likelihood of not promoting the licensing objectives.

Prevention of Crime and Disorder

The Sub-Committee noted that there were no representations under this licensing objective.

Protection of Children from Harm

The Sub-Committee noted that there were no representations under this licensing objective that would meet the definition in the guidance. However, reference to child safety generally, particularly on the roads was raised and was therefore considered under the public safety objective.

Public Safety

In respect of public safety, the Sub-Committee noted that the objectors' main concerns centred around the potential of this variation to create a substantial increase in visitor numbers, leading in turn to an increase in traffic on the small local roads, during evening hours which they state is the time of highest risk. A witness was able to point to a specific example of a vehicle departing the winery causing a hazard, which had been reported to the Parish Council.

Further, objectors were concerned regarding the safety of the public when moving around the site after dark, due to the potential planning limitations on the use of the external lighting at the premises.

In response, the applicant stated that they had a well run premises, there was no history of public safety issues at the site and where residents had raised concerns these had been responded to, for example by purchasing a minivan and routing this vehicle from Marden rather than Staplehurst. The applicant suggested conditions in relation to public nuisance which were also relevant to this licensing objective, namely a limitation on the number of customers and operating a pre-booking system.

The Sub-Committee noted that there was no representation from any responsible authorities on this issue and given the representation from the Parish Council, there was a range of opinion, even among local residents in respect of public safety on the roads.

No party produced expert evidence in respect of the proposed variation on visitor numbers or traffic flows.

The Sub-Committee was satisfied that there is adequate lighting available at the premises. The Sub-Committee draws attention to the informative regarding the relationship between planning and licensing that was made at the previous hearing and remains extant.

Taking into account all of the above, the Sub-Committee were of the view that the proposed variation was likely to increase visitor numbers in the evening. However, due to issues of road safety not being evidenced as occurring on the premises or the immediate vicinity of the premises, or linked to the proposed variation, it was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective, but, the Sub-Committee felt that conditions that were appropriate to the promotion of the prevention of public nuisance also assisted in respect of this licensing objective, in as far as it is relevant.

Prevention of Public Nuisance

The Sub-Committee noted that the objectors main concerns around this issue were related to a potential increase in visitors, which had the risk of increased noise and disturbance in an area which is both rural and tranquil and further, that the proposed variation was indicative of a move away from services ancillary to a winery towards an operation akin to a hospitality venue, with a more social experience, which would by its nature be a noisier enterprise.

The representations made both at the hearing and in advance of the hearing pointed to previous assurances by the applicant that there was no intention to change the existing licence.

Representations noted that the applicant had not used his quota of 12 special events but now wanted to increase late night openings 14 fold.

The applicant responded that the changes were not planned and that he had been genuine when he had given assurances previously. However, the impact of the Covid-19 pandemic required a response and there was also a change in the demand from customers, which as a business the premises had to respond to or the business could fail. The applicant noted that neighbouring properties would not be impacted by noise from inside the winery, due to the construction of the winery.

The applicant advised that he felt it unlikely that the hours would be exercised three nights a week, but that the business wanted there to be flexibility. He noted that he is the closest resident to the winery and that he also has an interest in limiting noise from the premises.

The applicant also proposed a condition on the maximum number of guests that could attend later in the evening, along with pre-booking and the suggestion of dimming the lights during the hours of darkness.

The Sub-Committee noted that there was no representation from any responsible authority in respect of this licensing objective.

The Sub-Committee noted the support of the Parish Council to the application.

Taking into account all of the above, the Sub-Committee considered that the application as originally made failed to adequately promote this licensing objective. However, with some of the modifications proposed by the applicant and appropriate conditions applied by the Sub-Committee the application could be approved in part and continue to promote this licensing objective.

The Sub-Committee felt that three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery.

The Sub-Committee permitted off sales to run concurrently with the extended hours, but did not change the hours for other days of the week. The intention of 19:00 for on sales at the premises was stated in the previous application to be to allow flexibility for any visitors staying a little over time. This was not a mistake and has promoted the licensing objectives.

Members amended the no external advertising condition to allow advertising of services and hours on the premises website. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS JOY

Signed [Chairman]:

A copy of the original document is held on file

Date: 15 September 2020

Document I

Extract of Inspector's decision letter
(APP/U2235/W/22/3303617)

20 March 2023



Appeal Decision

Site visit made on 22 February 2023

by **C Hall BSc MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20th March 2023

Appeal Ref: APP/U2235/W/22/3303617

Balfour Winery, Five Oak Lane, Staplehurst TN12 0HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Leslie Balfour-Lynn against the decision of Maidstone Borough Council.
 - The application ref. 22/501047/FULL, dated 25 February 2022, was refused by notice dated 11 May 2022.
 - The development proposed is the retention of a marquee to be sited for a period of 3 years for continued use for ancillary purposes to the existing winery site.
-

Decision

1. The appeal is allowed and planning permission is granted for the retention of a marquee to be sited for a period of 3 years for continued use for ancillary purposes to the existing winery site at Balfour Winery, Five Oak Lane, Staplehurst TN12 0HT in accordance with the terms of the application ref. 22/501047/FULL, dated 25 February 2022, subject to the following list of conditions:
 - 1) The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of that period the use shall be discontinued and the land restored in accordance with a scheme of work, including a timetable for implementation, that shall first have been submitted to and approved in writing by the Local Planning Authority.
 - 2) **The marquee shall be used for ancillary purposes to the winery only and for no other purpose.**
 - 3) No external lighting shall be installed on the site without the prior written consent of the Local Planning Authority.

Objectors' list of suggested to be added to Annex 4 of the premises licence if the application is granted:

- (A) No licensable activities shall take place outdoors.
- (B) Customers shall not be permitted to take or consume alcohol in any outdoor areas of the premises (for the avoidance of doubt, this condition applies to both Special Events and Non-Special Events).
- (C) Customers shall not be served food, or permitted to consume food, in any outdoor areas of the premises (for the avoidance of doubt, this condition applies to both Special Events and Non-Special Events).

Amend the "Special Events" conditions as follows:

- (e) ~~After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.~~
- (i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

Amend the "Non-Special Events" conditions as follows:

- (d) ~~Licensable activities during extended hours will occur indoors only.~~

Document K

Extract of grant of planning permission

(17/502611/FULL)

5 Sept 2017

Jazz Evening with Anthony Strong

SATURDAY 3RD JUNE | £95PP

Saturday 3rd June – 7pm–10.30pm

Join us for an intimate evening concert with internationally acclaimed singer and pianist Anthony Strong.

Known for his charismatic stage presence, Anthony's repertoire spans jazz standards and classics through to Stevie Wonder and Motown. His fresh and positive live performances capture a feel-good energy that has wowed audiences across the world.

Anthony's last album "Stepping Out" reached #1 on the US iTunes Jazz Charts.

–

The evening will be accompanied perfectly by a glass of sparkling Balfour Wine, followed by a delicious three-course set meal.

–

View Menu [here](#)

Booking required.

16:57



🔒 balfourwinery.com

BALFOUR
HUSH HEATH ESTATE



Cocktail Evening

**FRIDAY 26TH MAY | CELEBRATE MAY BANK
HOLIDAY | £25PP | 25% DISCOUNT ON PLATTERS**

Friday 26th May – 7pm-10pm.

Celebrate the start of the May Bank Holiday weekend with an elegant Spring Cocktail Evening on the evening of Friday 26th May.

We welcome you to enjoy this year's uniquely crafted cocktails whilst soaking up the beautiful sunset. Delight in the glorious golden hour views from our magnificent balcony overlooking the vineyard.

Enjoy outstanding cocktails, award-winning wines and locally sourced cheese and charcuterie platters.

We advise you to purchase your tickets in advance for this highly popular event.

£25 ticket price includes two house cocktails and access to a discount on all platters that evening.

Reservation required.

If you require a taxi it is essential that you book well in advance for both journeys. [See phone numbers here](#)

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Accept

Easter Sunday Roast



Select the tickets you wish to purchase

Easter Sunday Roast - Three-course − 0 +
£39
 Three-course Sunday Roast

Easter Sunday Roast - Two-course − 0 +
£35
 Two-course Sunday Roast

Back

Next

Easter Sunday Roast

We invite you to join us to celebrate Easter Sunday together in true Balfour style for an exquisite and classic Sunday Roast. Admire the glorious views from our dining area showcasing the Garden of England at its best. Make the most of your visit with a self-guided stroll or book a tour experience to explore our beautiful 400-acre estate. It will be a perfect day to cherish the English countryside with your friends and family.

Two-course £35 per person

Three-course £39 per person

Children's Menu £15 per person

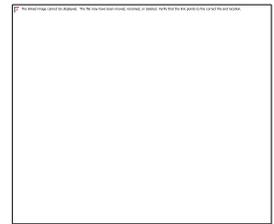
Availability

Sunday 9th April

Bookings from midday until 3pm

PREMISES LICENCE

The Licensing Act 2003
Schedule 12, Part A



| | |
|-------------------------|----------------|
| Premises Licence Number | 20/01678/LAPRE |
|-------------------------|----------------|

Part 1 – Premises Details

Postal address of premises , or if none, ordnance survey map reference or description, including Post Town & Post Code

Hush Heath Winery
Hush Heath Estate
Five Oak Lane
Staplehurst
Tonbridge
Kent. TN12 OHX

Telephone number 01622 832794

Where the licence is time limited the dates

Not Applicable

Licensable activities authorised by the licence

Live music
Recorded music
Sale or Supply of Alcohol
Late Night Refreshment

Times the licence authorises the carrying out of licensable activities

Live music

| | |
|-----------|---------------|
| Every Day | 10:00 - 00:00 |
|-----------|---------------|

Recorded music

| | |
|-----------|---------------|
| Every Day | 10:00 - 00:00 |
|-----------|---------------|

Sale or Supply of Alcohol

| | | |
|---------------------|---------------|--------------------------------------|
| Every Day | 00:00 - 00:00 | Off sales (Online) - 24 hrs |
| Every Day | 10:00 - 00:00 | On-Sales (Special Events*) |
| Sunday to Thursday | 10:00 - 19:00 | On-sales (Non-special Event*) |
| Friday and Saturday | 10:00 - 23:00 | On-Sales (Non-special Event*) |
| Every Day | 10:00 - 18:00 | Off-Sales (Shop) (April - October) |
| Every Day | 10:00 - 17:00 | Off-Sales (Shop) (November - March) |
| Every Day | 10:00 - 00:00 | Off-Sales (Shop) (Special Events*) |
| Friday and Saturday | 10:00 - 23:00 | Off-Sales (Shop)(Non-special Event*) |

Licence Number: 20/01678/LAPRE
Issue Date: 16/10/2020

Page 1 of 8

* A special event (previously referred to as “event occasion”) is an event at which recorded or live music is provided after 17:00 or late night refreshment is provided subject to the additional conditions imposed by condition 12 a-i.

* A non-special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00, subject to the conditions imposed by condition 13 a-f.

Late Night Refreshment

Every Day

23:00 - 00:00

The opening hours of the premises

| | |
|---------------------|--|
| Every day | 00:00 - 00:00 (Online sales only - no public attendance) |
| Every day | 10:00 - 00:00 (Special Events-*) |
| Sunday to Thursday | 10:00 - 19:00 (Non special event*) |
| Friday and Saturday | 10:00 - 23:00 (Non special event*) |

The non-standard opening hours of the premises

Not applicable

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Alcohol is supplied for consumption both on and off the premises.

Part 2

Name, (registered) address, telephone number and email address (where relevant) of holder of premises licence

Mr Richard Balfour-Lynn

Email address

Registered number of holder, for example company number, charity number (where applicable)

Registered Business Number Not Applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Ms Sarah Easton

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Licence Number: 19/01953/LAPER
Licence Authority: Maidstone Borough Council



John Littlemore
Head of Housing and Community Services
Maidstone Borough Council

Licence Number: 20/01678/LAPRE
Issue Date: 16/10/2020

Annex 1 – Mandatory conditions**The supply of alcohol**

- Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:-

No supply of alcohol may be made under the premises licence -

(a) at a time where there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

- Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory conditions in force from 28 May 2014

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1-

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979

(b) "permitted price" is the price found by applying the formula— $P = D + (D \times V)$

where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. - (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Mandatory Conditions in force from 01 October 2014

1.— (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

3.— (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

(a) a holographic mark, or

(b) an ultraviolet feature.

4. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

Annex 2 – Embedded conditions

Not applicable

Annex 3 – Conditions consistent with the Operating Schedule

Not applicable

Annex 4 – Conditions attached after a hearing by the licensing authority

Definitions

A special event (previously referred to as "event occasion") is an event at which: recorded or live music is provided after 17:00 or late night refreshment is provided and are subject to the additional conditions imposed by condition 12 a-i.

A non-special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00 subject to the conditions imposed by condition 13 a-f. All other non-special events refer to occasions where there is not a special event or a non-special event with extended hours.

The following conditions apply at all times:

1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).
2. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a winery.
3. There shall be good CCTV coverage of all licensed areas. The CCTV system will be kept in good working order and any images captured will be kept for a minimum of 30 days and supplied to a Police officer or local authority officer upon request.
4. No customers will be left unsupervised on the premises.
5. Children will be kept under adult supervision at all times.
6. All hazardous materials will be kept under child proof lock.
7. A Challenge 25 proof of age scheme shall be operated at the premises, where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with PASS hologram.

8. The premises licence holder shall organise a meeting with residents living within 800 metres of the Hush Heath Estate once per calendar year to discuss any impact of the premises on the promotion of the licensing objectives. (See also informatives).
9. The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'
10. The sale of alcohol for consumption on the premises shall be only to those attending the winery for the purposes of winery tours, tastings and vinicultural and vinicultural education.
11. There shall be no external advertising generally or at the premises, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him, including on any signs or any third party website. The website for the premises may advertise the services and hours that are available at the premises.

The following condition applies during special events as defined above.

12. Special Events may be held at the premises subject to:
- a) Special Events shall be limited to 12 per calendar year.
 - b) Special Events shall not occur on consecutive weekends.
 - c) Special Events shall be notified by letter or email to neighbours within 800 metres of the premises a minimum of 7 days before the event.
 - d) The supply of alcohol shall be restricted to products produced by Hush Heath Winery and shall not include spirits.
 - e) After 23:00 live and recorded music and late night refreshment will be indoors only and windows and doors will be closed save for entry and exit.
 - f) Live and recorded music will end by 23:45.
 - g) All visitors to the premises will leave the premises and parking area by midnight.
 - h) Signage will be placed at the exits of the premises asking visitors to leave quietly and respect neighbours.
 - i) The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises, including on the exterior terrace, do so in an orderly manner and are supervised by staff so as to ensure that there is no nuisance to local residents.

The following condition applies during non-special events with extended hours as defined above

13. Non Special Events (Extended hours on Fridays and Saturdays)
- a) The extended hours to 23:00hrs apply only on Fridays and Saturdays, but are available all year round.
 - b) The premises may only be opened for extended hours on a Friday or Saturday where there are pre-booked activities.
 - c) The maximum number of customers during extended hours is limited to 60 persons.
 - d) Licensable activities during extended hours will occur indoors only.
 - e) The supply of alcohol during extended hours shall be ancillary to a full table meal only.
 - f) Off sales during extended hours are only available to persons taking part in the pre-booked activities.

Informatives:

If issues should arise during the operation of a licence which are related to licensable activities at the premises and promotion of the licensing objectives, application may be made for a review of a premises licence in accordance with the Licensing Act 2003.

Any term or condition of the premises licence does not confer planning permission for the activity licensed and should any conflict arise implementation of the licence may put the licensee at risk of planning enforcement unless appropriate planning permission is obtained.

Any issues arising or complaints may be raised with the premises licence holder as they arise and not await an organised meeting, to facilitate constructive discussion at the time.

The premises licence holder is strongly recommended to engage fully with local residents prior to making any further applications.

Annex 5 – Plans

Please see attached



Hush Heath Winery
Scale: 1:3500
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Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 6(1)

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

Licensing Act 2003 Sub-Committee Hearing Procedure of Applications for New Premises Licences/Club Premises Certificates and Variations to existing licences and certificates

Introduction and Procedure

i) Introductions

The Chairman will request all those persons participating in the hearing to identify themselves, starting with the:

- Members of the sub-committee (who will, if applicable, declare any personal or prejudicial interests)
- Legal advisor
- Committee clerk
- Maidstone Borough Council licensing officers/managers
- Applicant (and any representative)
- Each responsible authority (and any representative)
- Each interested party (and any spokesperson or representative)

ii) Procedural Matters

- **Procedure**

The Chairman will:

- Confirm that all parties are aware of the sub-committee hearing procedure and that each party has a copy of the hearing procedure document.

- **Submissions**

The Chairman will:

- Explain that the sub-committee will allow all parties to put their case fully and make full submissions, within a reasonable time frame.

- **Discussion and cross-examination**

The Chairman will:

- Explain that the sub-committee procedure shall take the form of a discussion led by the sub-committee.
- Explain that the sub-committee will usually permit cross examination (conducted within a reasonable time frame).

- **Disruptive Behaviour**

The Chairman will:

- Explain that where any person attending the hearing behaves in a disruptive manner, the sub-committee may direct that person to leave the hearing (including temporarily) and thereafter the person may submit to the sub-committee in writing any information which the person would have been entitled to give orally had the person not been required to leave the hearing.

- **Reading of Papers**

The Chairman will:

- Confirm that all sub-committee members have pre-read all the papers and any other documents contained in the report regarding the hearing.

- **Draft Conditions**

The Chairman will:

- Enquire whether draft conditions have been agreed between the applicant and any of the other parties for the sub-committee to consider.

- **Witnesses**

The Chairman will:

- Enquire whether any parties request to have any witnesses give evidence at the hearing; and if so grant the request unless the request is unreasonable.

- Invite the parties, where appropriate, to appoint a spokesperson.

The Hearing

Outline of the Application and Representations

- The Chairman will ask the legal advisor or community services manager to briefly outline the application and all representations regarding the application.

i) The Applicant

- Opening remarks by the applicant (or their representative).
- Evidence of the applicant and any witnesses.
- After each person has given evidence the person may be questioned by each responsible authority, interested party and sub-committee member.
- If necessary, the applicant (or their representative) may clarify any matter that arose during questioning.

ii) Responsible Authorities (where applicable)

| RESPONSIBLE AUTHORITY | Tick if applicable |
|--|-------------------------------|
| Police | |
| Trading standards | |
| Environmental Health | |
| Child Protection (Social Services) | |
| Planning | |
| Fire and Rescue | |

- Opening remarks by the officer representing the responsible authority (or their representative).
- Evidence of the responsible authority officer and any witnesses.
- After each person has given evidence the person may be questioned by the applicant, each other responsible authority, interested party and sub-committee member.
- If necessary, the officer (or representative) may clarify any matter that arose during questioning.

iii) Interested Parties

- Opening remarks by the interested party (or spokesperson/representative).
- Evidence of the interested party and any witnesses.

- After each person has given evidence the person may be questioned by the applicant, responsible authorities, each other interested party and sub-committee member.
- If necessary, the interested party (or spokesperson/representative) may clarify any matter that arose during questioning.

Closing Speeches

In the following order:

- Each Responsible Authority**
- Each Interested Party**
- The Applicant**

End of Hearing

- The Chairman will ask the members of the sub-committee if they have any final questions for any party to the hearing.
- The Chairman will ask the legal advisor whether there are any further matters to be raised or resolved before the hearing is closed.
- The Chairman will bring the hearing to a close and shall declare that the sub-committee will retire, to private session, to consider the application, all relevant representations, evidence, the relevant extracts of Licensing Authority's Statement of Licensing Policy, the relevant extracts of the National Guidance issued under section 182 of The Licensing Act 2003 and the licensing objectives under the Licensing Act 2003.
- The Chairman shall invite the legal advisor to remain with the sub-committee during its deliberations and ask all other persons to withdraw from the room.

The Decision

The Chairman shall declare in public session:

- The sub-committee's determination.
- All parties to the hearing will receive a copy of the written Determination Notice regarding the sub-committee's determination.
- All parties may appeal against the sub-committee's decision within 21 days beginning with the day on which the appellant is notified of the Licensing Authority's written determination. Appeals must be lodged with the Magistrates' Court. Parties should be aware that the Magistrates Court may make an order with

respect to costs on any appeal.

The hearing is formally closed.