

Agenda Item No: 1 - Summary of Report**Licence Reference** 20/01678/LAPRE**Report To:** LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)**Date:** 25th August 2020
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 & Special Events x 12	10:00-24:00	Off sales Mon – Sun Online Special Events x 12	24 hour No Change
		Off sales Shop - Mon – Sun Nov-Mar	10:00-17:00	Off sales Shop Sunday-Wed	10:00-19:00
		Apr-Oct	10:00-18:00	Thurs-Sat	10:00-23:00
		On sales Mon – Sun		On sales Mon – Sun	
		Special Events x12	10:00-24:00	Special Events x12	No change
		Non special	10:00-19:00	Non special Sun -Wed Thurs – Sat	No Change 10:00-23:00
O)	Opening Hours (online and special Events x12 Non special events	Mon – Sun	10:00-24:00	Online Special Events x 12	24 hour No Change
		Mon - Sun	10:00-19:00	Non special Sun -Wed Thurs – Sat	No Change 10:00-23:00

The variation also seeks to remove the condition "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" and replace it with the condition "There shall be no external advertising generally, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him."

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**” (objectors). 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

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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 13 responses have been received from other persons (Appendices 3 & 4).

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. 13 responses were received from other persons.
5. The table below illustrates the relevant responses which have been received

	Responsible Authority /Interested Party	Licensing Objective	Associated Documents	Appendix
	Objections			
1	Kim and Sally Humphrey	Public Nuisance Public Safety	E-mail	3
2	Angus Codd and Andrea Hodgkiss	Public Nuisance Public Safety	E-mail	3
3	Frank and Anne Tipples	Public Nuisance Public Safety	E-mail	3
4	Ian and Liz Tipples	Public Nuisance		3
5	Guy and Janice Barkaway	Public Nuisance Public Safety	E-mail	3
6	Brenda Webb and Darryl Evans	Public Nuisance	E-mail	3

		Public Safety		
7	Bernard and Amanda Tipples	Public Nuisance Public Safety	E-mail	3
8	Dawn Lye	Public Nuisance Public Safety	E-mail	3
9	Alison Clark	Public Nuisance Public Safety	E-mail	3
10	Richard and Natasha Davidson-Houston	Public Nuisance Public Safety	E-mail	3
11	David Taylor and Nicola Feakin	Public Nuisance Public Safety	E-mail	3
12	Marcus Rennick	Public Nuisance Public Safety	E-mail	3
	Support			
13	Councillor Patrick Riordan – Staplehurst Parish Council		E-mail	4

The objectors are concerned that this application represents a substantial change to activities at the premises by offering routine late-night hospitality, together with the shop selling alcohol, ultimately increasing visitor numbers. This increase in visitors and the hours of operation for certain licensable activities at the Winery could have significant adverse disturbance effect on nearby residents. There are also public safety concerns around the increase to late night traffic on what are narrow unlit lanes and the danger it poses to motorists and pedestrians on dark nights.

The premises has a current licence, Appendix 5 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 G and set out at 3 of the summary above. The application. also seeks to remove the condition "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" and replace it with the condition "There shall be no external advertising generally, of the sale of alcohol for consumption at the premises, by the licence holder or any person instructed by or associated with him."
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:

17.16 Public Safety

17.19. Prevention of Public Nuisance

3.1 CONDITIONS TO PROMOTE PUBLIC SAFETY.

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.

3.2 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.

3.3 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.

17.19 CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

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.

17.20 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

17.21 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.

17.22 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.

9. 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	Staplehurst Parish Council comments
Appendix 5	Current Premises Licence
Appendix 6	Plan of area
Appendix 7	Human Rights Articles
Appendix 8	Order of Proceedings

16. **Appeals**

The applicant or any other person(objector) 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.

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