



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