

**Agenda Item No: 1 - Summary of Report**

**Licence Reference 23/00753/LAPRE**

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

**Date: 2<sup>nd</sup> 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)	<b><u>Off sales</u></b> Mon – Sun (Online)	24 hours	<b><u>Off sales</u></b> No Change	No Change
		<b><u>Offsales -Shop</u></b> Special Events x 12 Non Special Events Fri & Sat only	10:00-24:00 10:00-23:00	<b><u>Offsales - Shop</u></b> No Changes	No Change No Change
		Mon – Sun Nov-Mar	10:00-17:00		No Change
		Apr-Oct	10:00-18:00		No Change
		<b><u>On sales</u></b> Mon – Sun Special Events x12	10:00-24:00	<b><u>On sales</u></b> 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](mailto: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
	<b>Objections</b>			
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:	<b>Senior Licensing Officer</b> <a href="mailto:lorryneale@maidstone.gov.uk">lorryneale@maidstone.gov.uk</a>
--------------------	---