

**MAIDSTONE BOROUGH COUNCIL**

**LICENSING ACT 2003 SUB COMMITTEE**

**MINUTES OF THE MEETING HELD ON TUESDAY 2 MAY 2023**

**Attendees:**

|                           |   |
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| <b>Committee Members:</b> | <b>Councillors English (Chairman), Hinder and Joy</b> |
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42. APOLOGIES FOR ABSENCE

There were no apologies.

43. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

44. ELECTION OF CHAIRMAN

**RESOLVED:** That Councillor English be elected as Chairman for the duration of the Sub-Committee Meeting.

45. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

46. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

47. EXEMPT ITEMS

**RESOLVED:** That Item 7 be taken in public as proposed, with the Sub-Committee to enter into closed session for its deliberations.

48. 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

The persons participating at the hearing were identified as follows:

Chairman – Councillor Clive English  
Sub-Committee Member – Councillor Denise Joy  
Sub-Committee Member – Councillor Bob Hinder  
Senior Licensing Officer – Lorraine Neale  
Legal Advisor – Helen Ward  
Democratic Services Officer – Oliviya Parfitt

Applicant – Richard Balfour-Lynn  
Applicant’s witnesses – Adam Williams, Sarah Easton, Councillor John Perry.

Interested Parties – Matt Lewin, on behalf of Andrea Hodgkiss, Angus Codd, Mr & Mrs Humphrey and Amanda Tipples, Sally Humphrey, Andrea Hodgkiss, Natasha Davidson-Houston.

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 that would usually permit cross-examination within a reasonable timeframe.
- Any person 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 any information which that person would have been entitled to give orally had the person not been required to leave the meeting. If this was not possible, they may be permitted to speak at the Chairman's invitation.

The Senior Licensing Officer introduced the report, referencing the application received in appendix 1 to the report, and the representations received in appendix 3 to the report.

The applicant, Mr Richard Balfour-Lynn, was invited to make their opening remarks and stated that the application had been submitted to avoid a potential situation whereby the premises was accused of invalidating its licence through serving food, given that the licence included that the premises would not operate as a restaurant. As there was no legal definition of a restaurant, the applicant wished for the word to be removed from the licence.

The applicant summarised the services provided by the venue, including wine tastings that were accompanied by lunch, the production and sale of wine, a shuttle service for visitors, and its role as a local business and employer.

The Legal representative clarified that the Sub-Committee was asked to consider the request and its affect on the licensable activities, as opposed to defining what constituted a restaurant.

In response to a question from the panel, the applicant confirmed that they would like to provide a greater number of food options for guests as part of the 'wine and dine' experience offered at the premises. The applicant's witness, Sarah Easton, reiterated that feedback had been received from regular customers that they would prefer a wider range of food options. It was not intended for the premises to become a restaurant.

The applicant's witness, Councillor John Perry, gave their opening remarks and stated that the business was important to the local economy and that the services provided were similar to other wineries. The impact of Covid-19 to the business and the need for business diversification was highlighted. The premises provided high-quality products and services, with the traffic on the local road network stated to be low. The applicant's witness asked for the application to be supported by the Sub-Committee.

In response to questions from Mr Lewin, as the representative of four of the interested parties, the applicant reiterated that they had submitted the application as a pre-emptive action, to prevent a complaint on the premises food provision given the absence of a legal definition of a restaurant. It was stated that the venue did not operate as a restaurant. There had been no complaints since 2010.

The applicant's witness, Sarah Easton, responded to further questions to reiterate that the business had had to change since Covid-19, and that repeat customers had given feedback that they would like more food offerings as part of the experiences already offered by the venue. It was stated that other wineries in Kent offered food with their wine tasting experiences, and that removing the word 'restaurant' would not cause confusion as the business did not advertise itself with food being its primary service, but as part of the wine experiences.

In response to questions from the panel, Sarah Easton confirmed that they would like to provide hot food choices to the experience mentioned, rather than a full food menu. It was not anticipated that the visitor number or average visit length would increase. The applicant's witness, Adam Williams, reiterated the venue's primary function as a winery.

The interested parties were invited to make their opening remarks, beginning with Mr Lewin on behalf of some of the interested parties.

Mr Lewin stated that granting the application would lead to further confusion than it would resolve and referenced the Sub-Committee's previous decision in September 2020 which sought to ensure the venue's primary use remained as a winery. It was stated that if granted, the application would impact several of the licence's existing conditions, with some residents worried that it would permit an expansion of the venue's services. It was stated that the existing premises licence would allow for further food offerings as outlined by the applicant, with the premises being wine led, rather than food led. The Sub-Committee's previous decisions relating to the premises were felt have been balanced between the commercial and residential interests of the area, with a request made for this balance to be struck again.

The interested party, Andrea Hodgkiss, echoed the comments made by Mr Lewin and stated that whilst they fully supported the winery and its value to the local economy, granting the application could increase local traffic. In response to questions from Mr Lewin, Mrs Hodgkiss outlined instances of noise pollution from the premises and outlined the issues experienced in living near the site.

The interest party, Natasha Davidson-Houston, reiterated the concerns expressed relating to increased road traffic and other road users and the sub-committee's previous decisions having been balanced. It was stated that amending the licence could allow the premises to operate similarly to a restaurant as opposed to a winery which was its primary use and increase noise levels to the local rural area, through increased visitor numbers. The interested party expressed that it was difficult to engage with the premises owners.

The Legal Advisor reiterated points 3.1 and 3.2 of the Council's Licensing Policy, to ascertain if the interested parties had any questions arising from the policy. Mr Lewin reiterated the balanced decisions previously made.

In response to questions, the applicant stated that premises online advertisements would continue advertising wine experiences, with the food offerings available changing. The food currently provided was served on the terrace, which was felt to shield any noise from customers; the draft conditions proposed by the interested parties would not be acceptable to the applicant.

In making their closing remarks, Mr Lewins reiterated that there was no need for the applicant's licence to be varied as this would cause confusion, and that the current arrangements balanced the business and residential needs of the area.

In making their closing remarks, the applicant reiterated their reasons in applying for the licence variation, which were supported by their witness, Councillor Perry.

The Chairman advised that the Sub-Committee would retire for deliberation with the legal advisor present. The meeting was adjourned between 11.30 a.m. to 12.15 p.m.

The Sub-Committee returned and the Chairman stated that having considered the evidence provided, representations made and the relevant legislation and guidance, the decision was made to grant the application as applied for. The reasons contributing to the decision were outlined in further detail.

It was confirmed that a written decision notice would be provided. Parties were reminded of the right of appeal to the Magistrates Court.

The hearing closed at 12.17 p.m.

**RESOLVED:** That the Sub-Committee's decision and reasons be provided within 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: 23/00753/LAPRE

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Applicant: Mr Richard Balfour-Lynn

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

Date(s) of hearing: 2 May 2023

Date of determination: 2 May 2023

Committee Members: Councillor English (Chairman)  
Councillor Joy  
Councillor Hinder

Legal Advisor in attendance at hearing(s): Helen Ward, Lawyer (Contentious), MKLS

Democratic Services Officer in attendance at hearing: Oliviya Parfitt

Senior Licensing Officer for application: Lorraine Neale

This was an application for:

- Variation     Grant
- Provisional Statement     Review     Other .....

for a

- Premises Licence     Club Premises Certificate     Personal Licence
- Temporary Event Notice

**A: Representations, evidence and submissions:**

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

**Applicant**

- Richard Balfour-Lynn (Premises Licence Holder and Owner)
- Adam Williams (Chief Operating Officer)
- Sarah Easton (Commercial Director)
- Cllr John Perry (Witness, Staplehurst Ward Member and Parish Councillor)

**Responsible Authorities**

N/A

**Other Persons**

- Matt Lewin, Barrister in attendance on behalf of Andrea Hodgkiss and Angus Codd, Mr & Mrs Humphrey and Amanda Tipples
- Sally Humphrey
- Andrea Hodgkiss
- Natasha Davidson-Houston

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

- Representation made by Amanda Tipples

**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 Licensing Sub Committee has taken into account the Licensing Act 2003 and the Regulations thereto.

The Licensing Sub Committee has taken into account the Guidance under section 182 of the Licensing Act 2003.

The Licensing Sub Committee has taken into account its Statement of Licensing Policy.

### **C: Determination:**

**The Committee has decided to GRANT the application as sought with no further modification of the premises licence.**

#### **Reasons for determination:**

The applicant explained that the purpose of the application was to ensure there was no confusion in respect of what was permitted by the premises licence and to allow some diversification in the food offered to customers of the winery.

The Licensing Sub Committee, in making their determination, gave particular consideration to the following matters:

- The removal of the word “restaurant” from condition 1 of the premises licence would not impact on the other conditions, particular conditions 2 and 10 which requires licensable activities to be ancillary to main function of the premises as a winery and that sale of alcohol for consumption on the premises shall be only to those who are attending the premises for the purposes of winery tours, tastings and vinicultural and vinicultural education. These conditions ensured that the primary use of the premises for the purposes of licensable activities would remain a winery. The Licensing Sub Committee noted that there was no change sought to the opening hours or any other licensable activities and no significant change anticipated in respect of how customers attend the premises in terms of travel, purpose or the time they would spend at the premises.
- Previous Licensing Sub Committee decisions sought to strike a balance which preventing “uncontrolled licensable activities” rather than specifically the use of the premises for the service of food. The Licensing Sub Committee accepted that businesses could and should be able to diversify and noted that there was no evidence provided from the interested parties that removal of the word “restaurant” from the condition would allow licensable activities to become uncontrolled.
- The Licensing Sub Committee noted that no responsible authorities had made any representation.
- The Licensing Sub Committee noted the concerns regarding increased visitor numbers however they noted that no evidence was provided to support this and that the premises licence would still be subject to a condition restricting customer numbers during extended hours.
- The Licensing Sub Committee noted its policy in particular at paragraphs 3.1 and 3.2 which state:

*3.1 The Licensing Authority encourages the development of premises which are not alcohol-led and which are aimed at different sectors of the population, including all ages and genders. Premises that promote the arts, a food offer, or other cultural activities are particularly encouraged.*

*3.2 Where premises such as pubs are alcohol-based, they are encouraged to consider diversifying their provisions so as to encourage a mixed customer-base and wider attractions, including community uses, soft refreshments, snacks and live entertainment. Diversification is important in the promotion of the licensing objectives as well as ensuring a sustainable economic future for premises.*

Accordingly, the Licensing Sub Committee recognised that in the absence of any evidence demonstrating that the public nuisance licensing objective was engaged, the Council's policy was to support development and diversification particularly in respect of increased food offering.

- The Licensing Sub Committee heard evidence that removing the word "restaurant" from the condition would create confusion. However, they considered that confusion had already been created and wanted to ensure that moving forward all conditions are clear and capable of enforcement, in accordance with the Guidance issued under s.182 Licensing Act 2003, in particular in the requirements for conditions set out at paragraph 1.16.
- The Licensing Sub Committee recognised that the premises licence holder was hosting meetings in accordance with condition 8 of the premises licence and wished to encourage parties to continue with dialogue between themselves.

#### ■ **Prevention of Crime and Disorder**

Reasons (state in full):

In addition to the reasons above, the Licensing Sub Committee were satisfied that the existing operating schedule was appropriate and proportionate to promote this licensing objective. No further evidence was provided in respect of this licensing objective.

#### ■ **Public Safety**

Reasons (state in full):

In addition to the reasons above, the Licensing Sub Committee were satisfied that the existing operating schedule was appropriate and proportionate to promote this licensing objective. No further evidence was provided in respect of this licensing objective.

#### ■ **Prevention of nuisance**

Reasons (state in full):



In addition to the reasons above, the Licensing Sub Committee were satisfied that the existing operating schedule was appropriate and proportionate to promote this licensing objective. The Licensing Sub Committee heard evidence that there had been no complaints from any persons or responsible authorities. The interested parties confirmed that as things stand the premises was not causing a disturbance and their concerns related to the potential for disturbance following the variation. The Licensing Sub Committee accepted their role in ensuring the prevention of public nuisance however no evidence was provided to support the concerns, given the changes sought as described by the applicant and the robust conditions which would remain on the premises licence. The Licensing Sub Committee also noted that there were a number of mechanisms in place in the event that concerns are made out, including the Review process under the Licensing Act 2003 and actions under environmental protection legislation.

The Licensing Sub Committee considered the proposed conditions put forward by the interested parties however they did not feel that these were appropriate and proportionate. No evidence had been provided concerning noise from external areas being an existing problem and it was felt that the conditions would be onerous given the variation sought.

■ **Protection of children from harm**

Reasons (state in full):

In addition to the reasons above, the Licensing Sub Committee were satisfied that the existing operating schedule was appropriate and proportionate to promote this licensing objective. No further evidence was provided in respect of this licensing objective.

The parties are notified that they may appeal the decision to the Magistrates Court within 21 days beginning with the date of notification of the written decision. Parties should be aware that the Magistrates Court may make an order with respect of the costs of any appeal. Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the Licensing Act 2003.

PRINT NAME (CHAIRMAN): CLLR CLIVE ENGLISH

Signed [Chairman]:

A copy of the original document is held on file

Date of Notification of Decision: