

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.