

Members of the Licensing Act 2003 Sub-Committee
Maidstone Borough Council

By email to: licensing@sevenoaks.gov.uk

Cornerstone Barristers
2-3 Gray's Inn Square
London
WC1R 5JH

20 April 2023

**Hush Heath (Balfour) Winery: application to vary premises licence (20/01678/LAPRE)
Hearing: 2 May 2023**

Dear members of the Sub-Committee,

This letter is submitted on behalf of three objectors to this application, all of whom live close to the premises: Andrea Hodgkiss and Angus Codd [REDACTED] Kim and Sally Humphrey [REDACTED] and Amanda Tipples [REDACTED]

This application seeks to vary condition (2) of Annex 4 to the premises licence by deleting the word "restaurant" from the condition:

"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)."

I ask that you **refuse to grant this variation**, which flies in the face of at least five previous, carefully-considered decisions of this Sub-Committee going back 10 years – all of which concluded that **the prevention of public nuisance licensing objective requires that these premises be used only as a winery.**

Background

The premises is located in tranquil countryside near Marden and Staplehurst, with several dwellings within an 800m radius. The winery has been open to visitors since approximately 2013, when this Sub-Committee first granted a premises licence. The licence at that time limited the supply of alcohol to "*tasting samples*" to members of the public visiting the winery's tasting room.

Since then, the applicant has gradually sought to expand the scope of licensable activities at the premises by applications for both variations to the premises licence and planning permission. In granting various permissions over the years, the Council has always sought to ensure that use of the premises for licensable activities by members of the public remains **strictly ancillary to the premises' primary function as a winery.**

It is also notable that, at each stage, the applicant has given express assurances to the Council that he had no intention of running anything other than a winery business.

Licensing and planning history

- In **September 2017**, the applicant was granted planning permission for (among other things) a new visitor centre. Condition 16 attached to that planning permission provided:

"The retail element approved by this application shall remain strictly ancillary to the primary of the use of the site as a Winery.

Reason: To ensure an appropriate scale of retail use having regard to its countryside location”¹

- In **September 2018**, this Sub-Committee granted a variation of the premises licence, permitting up to 12 events per year with extended hours (but retaining the “tasting samples” condition). In granting that variation, the Sub-Committee noted:

“They have carefully balanced the requirements of the applicant in operating his business as a winery with some events in an extended space and the need for the promotion of the licensing objectives of prevention of public nuisance and protection of public safety to protect the concerns of neighbours likely to be caused nuisance by uncontrolled licensable activities.

Having considered the topography of the area, the close proximity of residents and the likely travel of sound and the concerns of residents regarding quiet use of their premises Members have provided conditions to ensure a reasonable balance.”²

The minutes of that meeting record the applicant’s assurance that *“the nature of their business was not a nightclub, it was a winery where activities were centred around visitors sampling wine in a relaxed atmosphere.”³*

- In **March 2019**, the licence was again varied by this Sub-Committee, this time to remove the “tasting samples” condition (but retaining the limit on 12 events per year).⁴ The minutes of that meeting record that the applicant’s intention in seeking the variation was:

“... simply ... 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.”⁵

Indeed, in a letter sent to residents shortly before the hearing, the applicant had stated: *“... the Winery is not a pub nor a restaurant and has no intention of becoming one.”⁶*

The variation was granted subject to conditions (in Annex 4), including:

- (2) *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).*
- (3) *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.*
- (6) *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 viticultural and viticultural education.*

- In **September 2020**, this Sub-Committee considered yet another application to vary the licence, this time to extend the premises’ opening hours every Thursday, Friday and Saturday night until 23:00 (for on- and off-sales) to offer visitors a “*wine-and-dine experience*” in response to the financial impact of the pandemic.

¹ Document A: Extract of grant of planning permission (17/502611/FULL) (5 Sept 2017)

² Document B: Notice of determination (3 Sept 2018) [p.10]

³ Document C: Meeting minutes (3 Sept 2018) [p.7]

⁴ Document D: Notice of determination (28 March 2019)

⁵ Document E: Meeting minutes (28 March 2019) [p.4]

⁶ Document F: Applicant’s letter to residents (4 March 2019)

The application was granted, subject to a number of significant modifications: conditions (2), (3) and (6) were retained; extended hours were limited to Fridays and Saturdays only; and no more than 60 customers were permitted, by advance bookings only.

The minutes of that meeting record this Sub-Committee's view that:

*"... three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery."*⁷

- In March 2023, a Planning Inspector granted temporary planning permission on appeal for the retention of a marquee at the premises for three years *"for continued use for ancillary purposes to the existing winery"*.⁸

The objection

The applicant explains the need for this application as being that *"there is no clear definition of what a restaurant is and therefore we are concerned that this restriction is confusing and potentially may lead to challenge from external parties."*

That is clearly not the case. There are surely few people who would not be familiar with what a "restaurant" is. If a definition was needed, it can easily be provided: an establishment, open to the public, for the preparation and serving of meals.

Importantly, in licensing terms, a restaurant is something very different from a winery permitted to provide food and drink on an ancillary basis. As the applicant himself put it in 2019, the licence allows him to sell *"a glass of wine to visitors **already there as part of the experience**"*. That is not true of a restaurant, where customers come for the food, not for the winery.

It is very surprising that the applicant would be in any doubt as to what his licence does and does not allow, given (1) the licensing and planning history outlined above and (2) his own express promises to the Council and residents that the premises would be operated as nothing but a winery with no intention of becoming a restaurant.

The effect of granting the variation would clearly undermine the licensing objective of preventing public nuisance:

- **It would enable the premises to be operated as a freestanding restaurant, in addition to the winery business.** When it expressly prohibited the use of the premises as a restaurant in March 2019, this Sub-Committee recognised that uses in addition to the winery use would

*"... [attract] 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."*⁹

- **The premises is in a very sensitive location for noise and disturbance and is not suited to use as a freestanding restaurant.** It is reached along narrow country lanes and is located a considerable distance from the nearest settlements at Marden and Staplehurst. It is in a

⁷ Document H: Meeting minutes (10 Sept 2020) [p.10]

⁸ Document I: Extract of Inspector's decision letter (APP/U2235/W/22/3303617) (20 March 2023)

⁹ See Document D [pp.8-9]

tranquil, rural area. Increased vehicle traffic from visitors coming to and from the restaurant, and from more customers on the premises for the express purpose of socialising, will cause unacceptable levels of noise and disturbance to neighbouring residents.

- **Granting the variation would cause confusion and uncertainty.** It is unclear how removing the word “restaurant” from condition (2) would relate to condition (3) which requires all licensable activities carried out under the premises licence to be “*ancillary to the main function of the premises as a winery*” or condition (6) which limits on-sales to customers “*attending the winery for the purposes of winery tours, tastings and vinicultural and viticultural education*”. This application does not seek any variation to conditions (3) or (6). Leaving the conditions as they are is the clearest and most straightforward way of regulating licensable activities at the premises.

The objectors submit that this Sub-Committee has, in its previous decisions, taken great care to strike a fair balance between the applicant’s commercial aspirations (which is **not** a licensing objective) and the right of residents to live without unreasonable noise and disturbance (which **is** a licensing objective).

Granting this variation would upset that careful balance and – given how the scope of licensable activities has been progressively expanded over recent years – could well lay the groundwork for more applications in future, further intensifying the “retail” use over the “winery” use.

For these reasons, I respectfully ask you to draw a clear line in the sand by refusing this application.

Nonetheless, if do decide to grant the application, it will be essential to ensure there are robust controls to protect residents as far as possible from experiencing public nuisance. To that end, a list of suggested additional conditions is provided at Document J. However, I emphasise that the appropriate decision in this case is to refuse the application altogether.

Potential breaches of the licence

Finally the objectors wish to put on record their concerns that the applicant may be operating in breach of the premises licence. Screenshots of three events advertised for April, May and June this year appear to show that the premises are already being run as a “restaurant” – in breach of the licence.¹⁰ There is no record of any TENs authorising these events visible on the Licensing Register. These events are not ancillary to the winery use and customers are not being invited to visit the premises for the purpose of tours, tastings or education.

Yours faithfully,

Matt Lewin
Cornerstone Barristers

Counsel for:

- (1) Andrea Hodgkiss and Angus Codd [REDACTED]
- (2) Kim and Sally Humphrey [REDACTED]
- (3) Amanda Tipples [REDACTED]

¹⁰ Document K: Screenshots of events advertised at the premises (April, May and June 2023)

List of Documents referred to:

Document	Description	Date
A	Extract of grant of planning permission (17/502611/FULL)	5 Sept 2017
B	Notice of determination	3 Sept 2018
C	Licensing Sub-Committee meeting minutes	3 Sept 2018
D	Notice of determination	28 March 2019
E	Licensing Sub-Committee meeting minutes	28 March 2019
F	Applicant's letter to residents	4 March 2019
G	Notice of determination	10 Sept 2020
H	Licensing Sub-Committee meeting minutes	10 Sept 2020
I	Extract of Inspector's decision letter (APP/U2235/W/22/3303617)	20 March 2023
J	Suggested conditions	
K	Screenshots of events advertised at the premises	April-June 2023

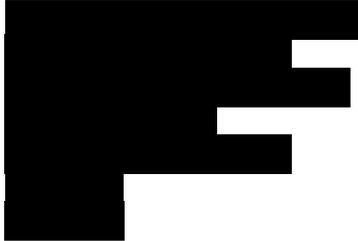
Document A

Extract of grant of planning permission

(17/502611/FULL)

5 Sept 2017

Hush Heath Winery



5 September 2017

PLANNING DECISION NOTICE

APPLICANT:	Hush Heath Winery
DEVELOPMENT TYPE:	Large Maj Office/R&D/Light Industry
APPLICATION REFERENCE:	17/502611/FULL
PROPOSAL:	Proposed new processing hall, including visitor tasting room and administration offices. Extension to existing barn for the storage of bottles.
ADDRESS:	Hush Heath Winery Five Oak Lane Staplehurst TN12 0HT

The Council hereby **GRANTS** planning permission subject to the following Condition(s):

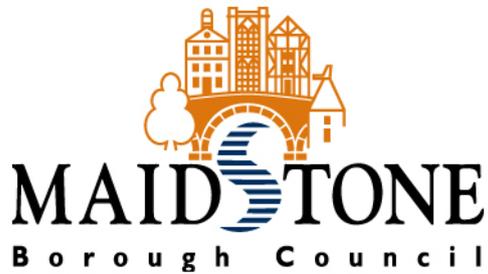
- (16) The retail element approved by this application shall remain strictly ancillary to the primary of the use of the site as a Winery

Reason: To ensure an appropriate scale of retail use having regard to its countryside location

Document B

Notice of determination

3 Sept 2018



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

(see minute for decision on applicant)

Regarding **Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst**

Date of hearing: 3 September 2018

Date of determination: 3 September 2018

Committee Members: [Chairman]: Councillor Mrs Joy
Councillor Mrs Springett
Councillor Garten

Legal Advisor in attendance at hearing: Mrs Jayne Bolas

Democratic Services Officer in attendance at hearing: Mrs Caroline Matthews

This was an application for:

Variation

(see minute for decision on nature of application)

for a

Premises Licence

A: Representations, evidence and submissions:

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

Applicant

Name: Mr Richard Balfour-Lynn

Witnesses in support of Applicant: Ms S. Easton, Ms V Ash

Responsible Authorities

None

Other Persons

Name: Mr A Codd (on behalf of Ms A Hodgkiss and for Mrs A. Tipples, Mr B Tipples,
Mrs A and Mr F Tipples and Spokesman for Mr & Mrs Humphrey
Mr K Humphrey (and on behalf of Mrs Humphrey)

Witnesses in support of Other Persons N/A

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

All representations referred to at Pages 3 and 4 of the agenda, additional letter from Ms Wyeth and two from Mr Stanley. Letter from Mrs Tipples and response (dated 23/8/18). All documents from Mrs Amanda Tipples submitted by Mr Codd at the hearing numbered 0-5.

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 the licensing objectives

Sections 34 and 35 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

Chapters 8 and 9 which relate to premises licences and 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 which relates to the 4 licensing objectives;
17.16 –18 which relates to Public Safety
17.19 – 17.22 which relates to the Prevention of Public Nuisance

C: Determination:

The Committee has decided to:

Grant the variation to the premises licence for the area and activities applied for and additional hours subject to conditions.

Conditions:

All relevant mandatory conditions;
All conditions in the current licence and operating schedule at p20 of the agenda;
Additional conditions, see separate sheet

Reasons for determination:

Having heard Mr Balfour-Lynn and Ms Easton and Ms Ash (witnesses) and two other persons and representations and having read all papers on the agenda., Members of the Sub-Committee have taken account of the evidence relevant to promotion of the licensing objectives of public safety and to prevent public nuisance.

They have taken account that there have been no representations of concern from responsible authorities.

They have carefully balanced the requirements of the applicant in operating his business as a winery with some events in an extended space and the need for the promotion of the licensing objectives of prevention of public nuisance and protection of public safety to protect the concerns of neighbours likely to be caused nuisance by uncontrolled licensable activities.

Having considered the topography of the area, the close proximity of residents and the likely travel of sound and the concerns of residents regarding quiet use of their premises Members have provided conditions to ensure a reasonable balance.

The applicant indicated that he was content to notify residents of events, limit those to 12 a year and wished to be a responsible neighbour. Objectors present confirmed that their concern was the potential for issues with an unrestricted licence.

Members also considered the comments with regard to traffic and felt that traffic beyond the premises was a matter for the behaviour of visitors and beyond the control of the licence holder. It was not felt that further conditions would be appropriate in this regard.

Informative:

If issues should arise during the operation of a licence, which are related to licensable activity at the premises and promotion of the licensing objectives, application may be made for review of a premises licence in accordance with the Licensing Act 2003.

PRINT NAME (CHAIRMAN): Councillor Mrs Joy

Signed [Chairman]: A copy of the original document is held on file

Date: 3 September 2018

Document C

Licensing Sub-Committee meeting minutes

3 Sept 2018

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD ON MONDAY 3 SEPTEMBER
2018**

Present: Councillors Garten, Mrs Joy (Chairman) and Mrs Springett

1. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

2. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

3. EXEMPT ITEMS

RESOLVED: That the item on the agenda be taken in public as proposed.

4. APPLICATION TO VARY A PREMISES UNDER THE LICENSING ACT 2003 FOR HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE, STAPLEHURST, TONBRIDGE, KENT , TN12 0HX

The Meeting commenced at 10.15 a.m.

Mrs Jayne Bolas, the Legal Advisor highlighted an amendment to the report as follows:-

Page 1 – the current opening hours should read – 11.00 to 1700 Mon to Sat and 12.00 to 17.00 Sun not 15:00 as shown.

She also clarified that the Supply of Alcohol limited to tasting samples condition at Annex 3, Page 63 would not be removed by this application.

Mrs Bolas advised that Mrs Tipples, an objector who had indicated her intention to be present, had sent through an email stating that she was no longer able to attend and Mr Codd, also an objector, would be speaking on her behalf.

Mrs Bolas also advised that Mrs Tipples had sent in an attachment to her email and Mr Balfour-Lynn, the applicant advised that he had received the email, along with an attachment, but had not read them in full.

The Legal Advisor reminded the Sub-Committee that ordinarily any documentation to be submitted by any party should be received prior to

the Hearing taking place but if the Applicant was happy to consent to the document being presented then it could be taken into consideration.

Mr Codd advised that the document put forward by Mrs Tipples set out some legal points raised by her since her original letter and he would only be referring to it in his presentation.

Mr Balfour-Lynn was asked if he would consent to the documentation being provided to the participants of the meeting. Mr Balfour-Lynn advised that he was happy to give his consent. He wished to deal with the matter for his business and employees.

Mrs Bolas asked the Members if they wished to go ahead with the meeting or adjourn until they had read the document produced by Mrs Tipples.

The Members agreed to adjourn for 15 minutes to enable them to read the document.

After the adjournment the Chairman referred to the procedure notes attached to the Committee papers and asked everyone present to introduce themselves.

Councillor Mrs Denise Joy – Chairman
Councillor Patrik Garten – Committee Member
Councillor Mrs Val Springett – Committee Member

Mrs Springett indicated that she was substituting for Cllr McLoughlin.

Mrs Jayne Bolas – Legal Advisor
Mrs Caroline Matthews – Democratic Services Officer

Mr Balfour-Lynn – Applicant
Ms S. Easton – for the Applicant
Ms V. Ash – for the Applicant

Mr A. Codd – on behalf of Objector Mrs Andrea Hodgkiss and on behalf of Mrs A and Mr F Tipples and Spokesman for Mr & Mrs Humphrey
Mr K Humphrey – Objector (and on behalf of Mrs Humphrey)

Mrs Bolas referred to the observations made by Mrs Tipples in the document where she questioned whether the application should have been made in Mr Balfour-Lynn's name as the Hush Heath Estate was the trading name published on Companies House (and was the trading name of a limited partnership known as Hush Heath Estate LLP), the registered members of which are Hush Heath Hospitality Limited and Hush Heath Hospitality (Kent) Limited which were appointed as members of Hush Heath Estate LLP in May 2018 in place of Mr & Mrs Balfour-Lynn.

Mr Balfour-Lynn explained that as Hush Heath was owned by his family it seemed appropriate for his name to appear on the licence as all roads lead back to the family.

Mr Codd, in response, disagreed with Mr Balfour-Lynn's statement and said that Mrs Balfour-Lynn was in fact the ultimate person responsible as Mr Balfour-Lynn was not a Director.

Mr Balfour-Lynn referred to a recent change in legislation where every company had to register persons of significant influence, which he felt he was, along with his wife.

Mrs Bolas clarified the position by stating that Section 16 of the Licensing Act 2003 set out who could apply and the Directorship of a company would not mean that another could not be carrying on a business and liability for offences would be for persons carrying on a licensable activity as a matter of fact rather than necessarily the licence holder in any event.

The Members adjourned the meeting to discuss this issue and reach a decision.

Determination

The Applicant

Members accepted that Mr Balfour-Lynn under Section 16 of the Licensing Act 2003 was a person who carried on, or proposed to carry on, a business which involved the use of the premises for the licensable activities to which this application relates.

It was clear that he was the wine producer at the winery and involved in the primary business and also a person of influence in relation to the Company related to the premises, which was also a family business. There was clearly accountability as a matter of fact for licensable activities at the premises.

This was similar to many situations where breweries or store managers are responsible for premises where licences are held by publicans/staff etc and vice versa.

After this decision was made the Chairman outlined the procedures.

Mrs Bolas outlined the application made by Mr Balfour-Lynn, the current licence holder. Members noted that the application covered three issues, an extension of the area to be used for licensable activities, the addition of playing of live and recorded music and the provision of refreshments indoors and outside and extended hours for new activities and opening.

Mr Codd, on behalf of the objectors, advised that residents had received a letter from Ms Easton where she advised that the variation to the licence would include the provision of up to 12 events per year, with the potential to operate an event until 23.45 hours.

Mr Balfour-Lynn, the Applicant, informed the Sub-Committee that as he was not experienced in submitting licensing applications he had asked Ms Easton to speak to Mrs Neale, the Council's Senior Licensing Manager and she had advised them to complete a variation application.

A further point was made that it was not believed that the application should be dealt with by way of a variation such as this, but by a new premises application.

Mr Codd felt that the 'extension to the sample tasting area' should be classed as a new building as it bore no relation to the original drawings and should therefore be treated as a new application. Mrs Tipples had indicated that had there been an application for a new premises there might have been responses from Responsible Authorities and objectors as the matter would appear more substantial.

Mr Balfour-Lynn, in response, stated that he had applied for planning permission, and all the various consultees such as the Council's Planning Department, Fire Authority, District Surveyor etc dealt with it as one building.

Mrs Bolas, advising Members, stated that an assessment had to be made on applications by a Licensing Authority on a case by case basis. She added that there was no evidence to suggest that if the application had come forward as a new application whether there would have been more objectors coming forward. Objections had come forward to the variation and Members had those before them in detail to consider.

Mr Codd, in response, felt that as the application had been made in the Summer, not a lot of people would have had chance to view the application as this was holiday season.

Mr Balfour-Lynn stated that their business had always encouraged tourism into the area, and was busy in the summer months and quieter in winter. The nature of the business had not changed. It grew the grapes, made the wine and sold it in the United Kingdom and overseas and tastings had always happened.

The meeting was adjourned at 11.25 a.m. to make a decision on whether the application should have been a variation or new premises one and reconvened at 12.05 pm

Mrs Bolas read out the decision on behalf of the Sub-Committee.

The Application

The guidance was clear that new premises or major/or significant differences to current ones are dealt with by new licence applications but this is Guidance to have regard to and was dealt with on a case by case basis on the facts.

In this case there was an extension to the existing licenced premises, which was large but remained part of the existing premises building.

Activities according to the application and applicant primarily remained the same as current simply in a larger, better facility and with ability to hold up to 12 events per annum with music, LNR and additional hours. The business remained primarily a winery with tastings to 17:00 hours.

Conditions remained for alcohol supply to be by tasting samples only.

It is also the case that a new licence application received advertisement and consultation in the same way as variation. Members understood the argument that Responsible Authorities or others may have come forward differently but in view of the advertising and consultation provisions and detailed objections received from 6 households, it was not believed that there had been any prejudice to objectors by the use of a variation application.

Members could fully hear objectors' issues and consider all the facts on the application before them.

Mr Balfour-Lynn was asked to give his opening remarks.

He advised the Sub-Committee that he lived 200 yards away from the winery and was probably more vulnerable to the noise than neighbouring properties. He felt he acted in a responsible manner and brought employment to the local community. He believed that he had not received any complaints about noise from neighbours since 2010.

Mr Balfour-Lynn also stated that the estate did not allow picnics to take place within its grounds and was not considered a place for children, merely a place to enable visitors to explore English wine. He advised that the tasting room had been extended and new buildings had also been built. He was conscious that neighbours should not be able to hear any noise as the new buildings were further away than before.

He confirmed that the business was not planning on having more than 12 events a year. Although provision had been made for in the licensing application, he felt it extremely unlikely that weddings would take place there. Although he did indicate that his daughter's wedding had been held there, the guests came in a coach to minimise traffic disruption.

Mr Balfour-Lynn also advised that the business worked closely with Visit Kent and tried to work with the local community, an example given of Goudhurst School being able to walk through the woods in the grounds.

He stressed that corporate events did happen during the week but had not run into the evenings. They provided training for Tesco, M&S and Banks at elegant corporate functions but there would not be wild parties.

Mr Codd was asked if he had any questions. He stated that he did not have any questions.

In response to a question from a Member, Mr Balfour-Lynn advised that they were allowed up to 200 people in the building for tastings at any one time. However, he did not envisage that there would ever be an occasion where there were that many people having tastings. The premises were not on a public highway, it was a destination location.

He envisaged that the odd cocktail party would go on until 8 or 9 o'clock at night with classical music being played in the background. They had evenings for a local wine club. A larger tasting area was needed as the space had been too small to accommodate the separation required by Tesco (they produce their own label sparkling wines), as they have strict regulations for the production area.

In response to a question from a Member, Mr Balfour-Lynn confirmed that he would be content to notify residents of events.

Mr Codd was asked to give his opening remarks.

He felt that the application failed to promote all the licensing objectives or detail the activities that would take place. The application failed to identify how the extension would be addressed to prevent nuisance. He asked for formal written conditions not verbal assurances.

In response Mr Balfour-Lynn stated that he did not want to fall foul of any licensing laws so had sought to cover many possibilities. However, neighbours would have the opportunity to complain if they did not like anything that the business was doing.

Mr Codd stated that at weekends he wished to enjoy his property and had not had any problems with noise from the Hush Heath Winery to date. However, the area was extremely flat to the north and noise could travel which could emanate from traffic or music being played either inside or outside.

Mr Humphrey indicated that his wife had complained once direct to the winery and the matter had been dealt with swiftly. The concern was the 365 days per year nature of the application, he could cope with infrequent events that were not late but his concern was frequency and noise levels.

Both the applicant and the objectors were asked to give their closing speeches.

Mr Codd, the objector, stated that he wished to emphasise that his actions were not undertaken with any malice and he did not wish to obstruct the business of Hush Heath. While he had lived at his present address since 2012 he had not been disturbed but in his view the application did not show due consideration for the 4 licensing objectives. One off events were reasonable but changes to ambient noise might occur and that was a cause for concern. Noise leakage from customers on an outdoor terrace

to midnight could fundamentally change ambient noise. Live and recorded music on an elevated terrace has the potential to change ambient noise and this had no noise assessment. The new building has no detail of noise mitigation, however he had heard at this meeting that it was double glazed but there are large numbers of doors and 78 households within a 1 mile radius. Weddings were advertised as corporate events and noise of those leaving and their vehicles was cause for concern. Transport was also a public nuisance with access by 5 routes and much single track with no pavement or lighting and ditches. There was little public transport so most would be private vehicles. They wanted to resolve a solid framework to live in peace.

Mr Balfour-Lynn, in response, stated that he was glad the neighbours wanted his company to keep the business open and understood their concerns but emphasised that the nature of their business was not a nightclub, it was a winery where activities were centred around visitors sampling wine in a relaxed atmosphere.

He added that the company had just recently planted a native hedge to further reduce the noise impact. The new part of the building was further away from neighbours so should not have a noise impact.

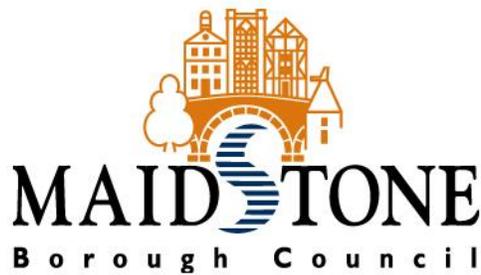
In response to a question from a Member on whether he would have any objections to the number of events going past 6 p.m. being limited to 12 a year, he stated that they were not a 365 day business so would not object.

The Sub-Committee advised that they would adjourn the meeting and reconvene at 2 p.m.

Document D

Notice of determination

28 March 2019



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

Document E

Licensing Sub-Committee meeting minutes

28 March 2019

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.

The meeting closed at 3.30 p.m.

13. NOTICE OF DETERMINATION

Document F

Applicant's letter to residents

4 March 2019



HUSH HEATH

ESTATE

SHARE OUR PASSION

4th March 2019

Dear Neighbour,

There has been much speculation and misinformation surrounding the Hush Heath Winery. In order to clarify exactly what our plans are, Leslie and I have decided to write to all our neighbours.

Firstly, we are not changing our opening hours. We are open to the public from 10am - 5pm from October to April, and from 10am - 6pm from May to September. We are not going to change these times either now or in the future. Just for your information our existing premises licence allows us to open for tours and tastings up to midnight daily. We choose not to and to reinforce this message we changed midnight to 7pm in our current application to reassure everyone that we will not be opening in the evenings.

Again, for clarity a number of people believe there is a restriction on our opening days in our planning permission. Our 2013 permission allowed us to open every day for tours and tastings, but the shop had to be closed on Sundays and bank holidays. However, our planning permission granted in 2017 superseded the 2013 permission as the shop and tasting room were in the new building extension and had no restriction on opening hours or days of operation. In other words, we have permission to be open 7 days per week for tours, tastings and the shop.

Secondly the Winery is not a pub nor a restaurant and has no intention of becoming one. Indeed, we have decided to hold no weddings at the Winery as they are too noisy and disruptive. We own a number of local pubs such as the Goudhurst Inn and Tickled Trout and we encourage our visitors to have lunch or dinner in them and indeed to stay in our boutique hotel rooms above the pubs.

What we will do, is serve cold sharing platters at the Winery comprising local cheeses, charcuterie and vegetables (no cooking or chefs involved) between 12pm - 3 pm in winter months and 12pm - 5pm in summer months.

TEL: +44 (0)1622 832794 SALES: +44 (0)1622 832794 [REDACTED] VAT REGISTRATION NO GB795 884058

HUSH HEATH WINERY | FIVE OAK LANE STAPLEHURST | KENT | TN12 0HT

WWW.HUSHHEATH.COM

We will also offer private and corporate group winery tour bookings for events linked to wine tasting and tours of the estate and winery. Indeed, we have been running these since we first opened in 2010. We will however, not become a general events venue as usually found in large hotels or tourist destinations. All events open to the public will be linked to and about our wines and winemaking and viticultural education.

The amendment to our licence that we have applied for will allow our existing visitors who come to the estate for tours and tastings to enjoy a glass of our wine or cider in our tasting room and terrace. As we are only serving drinks produced by Hush Heath there are no spirits available. The ability for our guests to enjoy a glass of our wine will not increase our footfall, road traffic or visitor numbers. Again, to be clear we will not become a pub or bar and visitors are not going to drive all the way to the Winery simply to buy a glass of our wine which is available in our local pubs where they can also drink other non - Hush Heath drinks.

Again, for information purposes a large percentage of visitors coming to the Winery are coming from London and abroad, arriving by train to Marden station where they are picked up by local taxi or our own 12-seater mini bus. This reduces road traffic. Furthermore, we have a policy whereby our agricultural vehicles do not use the public roads but travel across the estate tracks and fields. To date since 2010 we have had no incidences of drunk drivers leaving the Winery, road accidents, driving into ditches, accidents or police or KCC highway complaints.

In terms of large 30-seater coaches we have on average one coach per week in the months of May to September visiting the winery from France, Germany or Belgium, and very few coaches during the winter months of October to April. We have no intention of increasing this now or in the future.

We have on average 3 - 4 HGVs per week coming to the Winery to either deliver winemaking materials or to pick up our wines for delivery to customers.

We live in a farming location and there are many agricultural vehicles and HGVs using the roads and it is easy to assume they are all connected with the winery. However, this is incorrect.

Leslie and I live 250 yards from the Winery and are highly conscious of noise and activities surrounding the Winery. We love the area and the whole estate is beautiful, teeming with wild flowers (we have just planted over 15 acres of wild meadow flowers in the fields adjacent to the Winery), bird and insect life as well as many other animals. Conservation and biodiversity lies at the heart of our land. We really hope you will visit us along with your family and friends and enjoy walking through our immaculate vineyards, apple orchards and ancient oak woodlands. We are also immensely proud to have just been awarded a Gold Standard by Visit England for Visitor Attractions. A first for an English Winery.

Kind regards,

Richard and Leslie Balfour-Lynn

TEL: +44 (0)1622 832794 SALES: +44 (0)1622 832794 VAT REGISTRATION NO GB795 884058

Document G

Notice of determination

10 September 2020



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Application Ref No: 20/01678/LAPRE

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: 10th September 2020

Date of determination: 10th September 2020

Committee Members: Councillor Mrs Joy (Chairman), Councillor Mrs Sams and
Councillor Mrs Springett

Legal Advisor in attendance at hearing: Mr Robin Harris

Democratic Services Officer in attendance at hearing: Miss Oliviya Parfitt

Online Meeting Facilitator: Mr Ryan O'Connell

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, Cllr Riordan Staplehurst Parish Council

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.)

Witnesses: Mrs N Davidson-Houston

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

In support – Staplehurst Parish Council

Objections – Ian and Liz Tipples, Guy and Janice Barkaway, Brenda Webb and Darryl Evans, Marcus Rennick

Together with all written representations received, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in the agenda papers at appendix 3

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 the 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

Chapters 8 & 9 which relate 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)	00:00 – 00:00 (24 hours)
Off sales (shop)	10:00 – 17:00 November – March and; 10:00 – 18:00 April – October
Off sales (shop) (non special event*)	10:00 – 23:00 Fridays and Saturdays only
Off sales (shop) (special event)	10:00 – 24:00
On sales (non special event*)	10:00 – 19:00 Sunday to Thursday and;
On sales (non special event*)	10:00 – 23:00 Fridays and Saturdays only
On sales (special event*)	10:00 – 00:00
Late night refreshment	23:00 – 00:00
Live and recorded music	10:00 – 24:00
Opening hours (non special event*)	10:00 – 19:00 Sunday to Thursday and;

Opening hours (non special event*)	10:00 – 23:00 Fridays and Saturdays only
Opening hours (special events*)	10:00 – 00:00
Opening hours (online sales only no public attendance)	00:00 – 00:00

* as defined below

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 and are subject to the additional conditions imposed by condition 12 a-i.

A non special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00 subject to the conditions imposed by condition 13 a-f. All other non special events refer to occasions where there is not a special event or a non special event with extended hours.

The following conditions apply at all times:

1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).
2. 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.
3. 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.
4. No customers will be left unsupervised on the premises.
5. Children will be kept under adult supervision at all times.
6. All hazardous materials will be kept under child proof lock.
7. 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.
8. 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).

9. The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'
10. 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 vinicultural education.
11. 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 third party website. The website for the premises may advertise the services and hours that are available at the premises.

The following condition applies during special events as defined above.

12. 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.

The following condition applies during non special events with extended hours as defined above

13. Non Special Events (Extended hours on Fridays and Saturdays)
 - a) The extended hours to 23:00hrs apply only on Fridays and Saturdays, but are available all year round.
 - b) The premises may only be opened for extended hours on a Friday or Saturday where there are pre-booked activities.
 - c) The maximum number of customers during extended hours is limited to 60 persons.

- d) Licensable activities during extended hours will occur indoors only.
- e) The supply of alcohol during extended hours shall be ancillary to a full table meal only.
- f) Off sales during extended hours are only available to persons taking part in the pre-booked activities.

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.

The premises licence holder is strongly recommended to engage fully with local residents prior to making any further applications.

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 and the new addition following this hearing of extended hours for on and off sales that are permitted on Fridays and Saturdays. They are such as to continue to promote the licensing objectives, following the addition of extended hours on Fridays and Saturdays.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 28th March 2019, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The condition limiting extended hours to Fridays and Saturdays only was appropriate and proportionate to promote the licensing objective of preventing public nuisance. The Sub-Committee were of the view that three nights a week including a night during the ordinary working week could lead to public nuisance due to the increase in customers attending the premises later in the evening.

The condition limiting the number of customers allowed during extended hours was appropriate and proportionate for the same reason and also for the promotion of the

public safety objective, in respect of an increased volume of traffic, in so far as that is relevant. The Sub-Committee noted that the applicant requested 10 tables and in the current climate that sets a maximum of 60 people and that number going forwards was appropriate for the promotion of the licensing objectives.

The other on sales extended hours conditions are consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours as they continue to promote the licensing objectives going forwards.

The condition relating to off sales during extended hours is appropriate and proportionate to promoting the licensing objective of preventing public nuisance and consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours. The Sub-Committee confirmed that it was not mistaken when it set the hours for the shop previously and these hours remain unchanged.

The existing condition restricting advertising externally the sale of alcohol for consumption on the premises remains appropriate and proportionate to prevent public nuisance, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than for wine tasting experiences provided as ancillary to services intended by the winery operation. However, the Sub-Committee considered the amendment to allow advertising of services and hours on the premises website to strengthen this condition as it would limit speculative visits to the premises and support the pre-booking condition.

The Sub-Committee felt that a further informative in respect of the premises licence holder engaging with residents prior to any application would be helpful.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and 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.

The Sub-Committee noted that there was no objection to online sales being 24 hours a day.

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

The Sub-Committee noted that there were no representations under this licensing objective.

Protection of Children from Harm

The Sub-Committee noted that there were no representations under this licensing objective that would meet the definition in the guidance. However, reference to child safety generally, particularly on the roads was raised and was therefore considered under the public safety objective.

Public Safety

In respect of public safety, the Sub-Committee noted that the objectors' main concerns centred around the potential of this variation to create a substantial increase in visitor numbers, leading in turn to an increase in traffic on the small local roads, during evening hours which they state is the time of highest risk. A witness was able to point to a specific example of a vehicle departing the winery causing a hazard, which had been reported to the Parish Council.

Further, objectors were concerned regarding the safety of the public when moving around the site after dark, due to the potential planning limitations on the use of the external lighting at the premises.

In response, the applicant stated that they had a well run premises, there was no history of public safety issues at the site and where residents had raised concerns these had been responded to, for example by purchasing a minivan and routing this vehicle from Marden rather than Staplehurst. The applicant suggested conditions in relation to public nuisance which were also relevant to this licensing objective, namely a limitation on the number of customers and operating a pre-booking system.

The Sub-Committee noted that there was no representation from any responsible authorities on this issue and given the representation from the Parish Council, there was a range of opinion, even among local residents in respect of public safety on the roads.

No party produced expert evidence in respect of the proposed variation on visitor numbers or traffic flows.

The Sub-Committee was satisfied that there is adequate lighting available at the premises. The Sub-Committee draws attention to the informative regarding the relationship between planning and licensing that was made at the previous hearing and remains extant.

Taking into account all of the above, the Sub-Committee were of the view that the proposed variation was likely to increase visitor numbers in the evening. However, due to issues of road safety not being evidenced as occurring on the premises or the immediate vicinity of the premises, or linked to the proposed variation, it was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective, but, the Sub-Committee felt that conditions that were appropriate to the promotion of the prevention of public nuisance also assisted in respect of this licensing objective, in as far as it is relevant.

Prevention of Public Nuisance

The Sub-Committee noted that the objectors main concerns around this issue were related to a potential increase in visitors, which had the risk of increased noise and disturbance in an area which is both rural and tranquil and further, that the proposed variation was indicative of a move away from services ancillary to a winery towards an operation akin to a hospitality venue, with a more social experience, which would by its nature be a noisier enterprise.

The representations made both at the hearing and in advance of the hearing pointed to previous assurances by the applicant that there was no intention to change the existing licence.

Representations noted that the applicant had not used his quota of 12 special events but now wanted to increase late night openings 14 fold.

The applicant responded that the changes were not planned and that he had been genuine when he had given assurances previously. However, the impact of the Covid-19 pandemic required a response and there was also a change in the demand from customers, which as a business the premises had to respond to or the business could fail. The applicant noted that neighbouring properties would not be impacted by noise from inside the winery, due to the construction of the winery.

The applicant advised that he felt it unlikely that the hours would be exercised three nights a week, but that the business wanted there to be flexibility. He noted that he is the closest resident to the winery and that he also has an interest in limiting noise from the premises.

The applicant also proposed a condition on the maximum number of guests that could attend later in the evening, along with pre-booking and the suggestion of dimming the lights during the hours of darkness.

The Sub-Committee noted that there was no representation from any responsible authority in respect of this licensing objective.

The Sub-Committee noted the support of the Parish Council to the application.

Taking into account all of the above, the Sub-Committee considered that the application as originally made failed to adequately promote this licensing objective. However, with some of the modifications proposed by the applicant and appropriate conditions applied by the Sub-Committee the application could be approved in part and continue to promote this licensing objective.

The Sub-Committee felt that three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery.

The Sub-Committee permitted off sales to run concurrently with the extended hours, but did not change the hours for other days of the week. The intention of 19:00 for on sales at the premises was stated in the previous application to be to allow flexibility for any visitors staying a little over time. This was not a mistake and has promoted the licensing objectives.

Members amended the no external advertising condition to allow advertising of services and hours on the premises website. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS JOY

Signed [Chairman]:

A copy of the original document is held on file

Date: 15 September 2020

Document H

Licensing Sub-Committee meeting minutes

10 September 2020

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD ON THURSDAY 10 SEPTEMBER
2020**

Present: Councillors Joy (Chairman), J Sams and Springett

21. APOLOGIES FOR ABSENCE

There were no apologies.

22. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

23. ELECTION OF CHAIRMAN

RESOLVED: That Councillor Joy be elected as Chairman for the duration of the meeting.

24. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

25. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

26. EXEMPT ITEMS

RESOLVED: That all items on the agenda be taken in public as proposed.

27. 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 persons participating in the hearing were identified as follows:

Chairman – Councillor Joy
Committee Member – Councillor Springett
Committee Member – Councillor J Sams

Legal Advisor – Mr Robin Harris

Online Facilitator – Mr Ryan O’Connell

Democratic Services Officer – Miss Oliviya Parfitt

Applicant – Mr Richard Balfour-Lynn and Mrs Lesley Balfour-Lynn,

For the Applicant:

Mr Richard Balfour-Lynn – Owner of Hush Heath Winery
Mrs Leslie Balfour-Lynn – Owner of Hush Heath Winery
Sarah Easton - Winery Manager at Hush Heath Winery

Witnesses to be called by the Applicant:

Councillor John Perry – Staplehurst Ward Councillor and Vice-Chairman of Staplehurst Parish Council
Councillor Patrick Riordan – Chairman of Staplehurst Parish Council.

For the Objectors:

Mr Philip Kolvin QC – Acting on behalf of Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.

Witness to be called by the Objectors – Mrs Natasha Davidson-Houston

All parties confirmed that they were aware of the Sub-Committee hearing procedure and had each received a copy of the hearing procedure document.

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

The Sub-Committee confirmed that they had read all the papers.

The Chairman enquired whether any draft conditions had been agreed between the applicant and other parties; no draft conditions had been agreed.

The Legal Advisor outlined the variation application that had been received from Hush Heath Winery, which included an extension of hours and an amendment to the conditions of the licence held by the applicant. It was noted that 13 objections were received.

The applicant was invited to make their opening remarks and referenced the impact of the Coronavirus pandemic on his business which would lose approximately £925k this year. The reduction in sales to the tourist industry was of particular significance due to the businesses' agricultural nature as a winery. The variation application had been submitted to allow for increased flexibility to enable the business to continue its operation. It was noted that prior to Covid-19, Mr Balfour-Lynn had previously informed local residents that there was no intention to amend the premises licence under which the business operated.

Mr Balfour-Lynn referenced the importance of the Winery for the local economy, which included employing local residents and the lack of both redundancies and salary reductions experienced by his employees during the pandemic. Specific reference was made to the adult clientele that visited the winery, who were often visiting the local area and Kent county and that the business had experienced demand for further wine-and-dine experiences.

Mr Balfour-Lynn informed the Committee that in January 2020 he had purchased a vehicle to collect visitors from Marden train station, due to local resident dissatisfaction with visitors being collected from Staplehurst train station by coach and driven along the narrow, local roads. It was confirmed that no complaints had been received by the Council or the Police in relation to the winery since the license was last amended in March 2019. The changes to the winery's shop opening times and online advertising request on the business' website were referenced.

The applicant's witnesses were invited to address the Sub-Committee.

Councillor Riordan spoke in favour of the application and referred to the minutes of the Staplehurst Parish Council meeting held on 10 August 2020, which endorsed the application and the importance of the Winery in the local community.

Councillor Perry spoke in favour of the application. The importance of the rural economy, local employment opportunities, the business' clientele and its agricultural nature were mentioned. The impact of the Covid-19 pandemic and the applicant's attendance to Staplehurst Parish Council's Road Safety Group meetings were referenced.

In response to a query from the panel, the applicant reiterated that customers had expressed demand for wine-and-dine experiences which is why the variation application had been submitted.

Mr Philip Kolvin QC was invited to make the opening remarks on behalf of the objectors represented and noted that this was the fourth licence application within two years. The rural surroundings in which the Winery

and its neighbours were situated, to the locations flat surface and the impact of sound travelling from the venue, the lack of street lighting in the local area and narrow roads were highlighted. Mr Kolvin QC stated that the variation application focused on the use of the premises for evening activities similar to those conducted in a hospitality, rather than agricultural, venue.

It was noted that the Applicant's current licence allowed for 12 special events per year, which would increase to allow 168 evening events per year if the variation application was granted in totality. The request to allow product sales until 11p.m. and to advertise the sale of alcohol on the business' website were also mentioned, in light of the Sub-Committee's previous decisions on the licence conditions.

Particular attention was drawn to the documentation supplied to the sub-committee on behalf of the objectors Mr Kolvin QC represented. This documentation related to the 2013, 2018 and 2019 sub-committee meetings that had taken place, in what was perceived as attempts to relax the licence conditions previously set by the sub-committee. In all three instances, the supply of alcohol that had been restricted to tasting samples only, the extremely remote location and restricted visitor access had been referenced by the applicant.

Through a hearing held in September 2018, the visitor tasting room was included within the area for which licensable activities took place. The decision and minutes of that hearing were referenced, whereby the applicant confirmed that there was no intention of having more than 12 events per annum.

An application for a minor application variation was submitted and rejected by the Council's officers in 2018 as a variation application was required instead.

Mr Kolvin QC reiterated that in 2019 the applicant had applied to remove the licensing condition whereby the supply of alcohol was limited to tasting samples and to amend Annex 4 of the premises licence. In relation to this hearing, three letters; two from Ms Easton and one from Mr Balfour-Lynn to the Council's Senior Licensing Officer and to local residents which stated, in part, that there was no intention of the Winery operating longer opening hours or becoming a restaurant or bar. It was noted that following the letter to residents, the applicant's solicitor would not engage with Mr Kolvin QC or his clients in respect of having draft conditions agreed before the March 2019 sub-committee meeting.

Mr Kolvin QC then referenced the determination and reasons provided as a result of the March 2019 sub-committee meeting, with the sub-committee informed that the applicant had only conducted one special event since the variation application was granted despite Mr Balfour-Lynn's request for greater flexibility. It was argued that the greater flexibility requested due to the Covid-19 pandemic was not a licensable objective need and that the £925k income loss had not been confirmed

through a statement of accounts. Mr Kolvin QC requested that the sub-committee Members reject the variation application.

Mrs Natasha Davidson-Houston spoke against the application. The witness lived close to the Winery and stated that as an agricultural and residential area, it was inappropriate for a night-time hospitality venue. The previous number of sub-committee meetings held in relation to the winery were referenced.

Mrs Davidson-Houston stated that the applicant had only used the special events provision once within the last 18 months, whilst the variation application would allow for a much higher volume of events if granted. Relaxations on the advertising restrictions in force would encourage more visitors, which would then increase the traffic flow along the local roads which were difficult to navigate and increase the noise generated. This would be greater in the winter months, with a lack of street lighting and pavements available.

It was noted that whilst the winery's minibuses travelled from Marden train station, individual cars and cabs often drive to the winery from Staplehurst station. Private tour companies would also arrange for coach trips to the winery using that route and there was no public transport available to and from the winery. Mrs Davidson-Houston reported two recent incidents to Staplehurst Parish Council, whereby vehicles coming out of the Winery had caused her to brake sharply.

The sub-committee were reminded that planning restrictions existed in the local area to restrict external lighting, with the winery permitted to use external lighting in certain areas at certain times. The safety of visitors without such lighting was highlighted. The large windows of the winery buildings enabled the light to be seen from homes within the local area.

Mrs Davidson-Houston reiterated that the applicant had given multiple assurances to residents that the Winery would have restricted opening hours and would not routinely open in the evenings. It was felt that the variation application submitted was in direct contradiction of these assurances and the sub-committee were asked to reject the application. It was repeated that the local area was not conducive to a tourist, hospitality venue which they believed the Winery would become.

In response to a question from the panel, Mr Kolvin QC clarified that darkness was also a licensing consideration in terms of the potential impact to nuisance and disturbance of amenity. This was relevant whereby the lighting from the winery would be seen from the windows and referenced the previously given permission to use carpark lighting for the twelve special events. The bends and narrow widths of the local roads from the winery were mentioned as a public safety concern.

The panel members confirmed that the closing hours of the shop, as part of the decision granted in 2019, had intended to be before the closing hours of the premises.

In response to question from the panel in relation to the incidents mentioned, Mrs Davidson-Houston confirmed that Staplehurst Parish Council had a dedicated email for traffic problems in the local area generally.

Mr Harris enquired whether the applicant or other parties had any conditions that could be proposed, to facilitate further discussion during the hearing.

Mr Kolvin QC stated that he could not comment on this request as the objectors which he represented were not present to indicate their wishes.

Mr Harris queried whether the hearing could be adjourned to allow for further discussion between the applicant and other parties, to which the applicant responded that he did not believe this would be possible. The applicant offered to limit the number of evening guests to 75 through bookings only, to sit indoors with dimmed lighting to mitigate the objector's concerns.

Mr Kolvin QC was invited to respond and stated that Mr Balfour-Lynn did not engage with residents prior to the submission of the variation application nor once objections had been received.

Mr Kolvin QC was invited to make their closing remarks and stated that the applicant's desire for flexibility was already reflected in the 12 annual special events and temporary events permitted within the current licence. Mr Kolvin QC encouraged the applicant to engage with local residents and re-referenced the increased number of evening events requested.

The limited hours in relation to off-licensing as previously decided by the sub-committee were referenced and the applicant's wishes to advertise online and through signage were noted.

Mr Balfour-Lynn was then invited to make his closing statement, during which he stated that he and his wife were responsible business owners and that their businesses has had to adapt over the last ten years. The impact of Covid-19 was reasserted.

It was stated that whilst the premises licence allowed special events, these were not common for the winery to undertake with educational wine dinners now preferred. It was noted that the Council had not received any complaints arising from any guests and staff, which if received and justified could lead to the premises licence being amended or withdrawn.

With reference to the advertisement of sales, the applicant stated that this would take place on the businesses website and that the shop would only remain open whilst the winery itself was open. The support from Staplehurst Parish Council was reiterated.

The panel asked the applicant why the conditions offered during the meeting were not originally suggested and whether this could have been

included in the variation application form. Mr Balfour-Lynn stated that the form was limited in scope and that he did not wish to put constraints on the business should it need to adapt at a later date.

The Legal Officer confirmed that there were no further matters to be raised or resolved.

The Chairman then adjourned the meeting for deliberation and requested that the Legal Officer remained to assist them. The panel would return to announce the decision at 2 p.m.

At 2p.m. the Sub-Committee returned and invited the legal officer to read out the decision with brief reasons. The sub-committee briefly adjourned and then returned to the meeting, in relation to the clarity requested that the alcohol be supplied within the extended hours with food ancillary to a full table meal.

It was confirmed that a written decision with full reasons would be provided within 5 working days. Parties were reminded of the right to review a premises license and the right of appeal to the Magistrates Court.

The meeting closed at 2.10 p.m.

RESOLVED: That the Sub-Committee's decision and reasons be detailed in 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: 20/01678/LAPRE

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: 10th September 2020

Date of determination: 10th September 2020

Committee Members: Councillor Mrs Joy (Chairman), Councillor Mrs Sams and
Councillor Mrs Springett

Legal Advisor in attendance at hearing: Mr Robin Harris

Democratic Services Officer in attendance at hearing: Miss Oliviya Parfitt

Online Meeting Facilitator: Mr Ryan O'Connell

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, Cllr Riordan Staplehurst Parish Council

Responsible Authorities

Not applicable

Other Persons

Name: Represented by Mr P Kolvin QC (Angus Codd and Andrea Hodgkiss, Kim and Sally Humphrey, Alison Clark, Richard and Natasha Davidson-Houston, Amanda and Bernard Tipples, Frank and Ann Tipples, Dawn Lye, David Taylor and Nicola Feakin.)

Witnesses: Mrs N Davidson-Houston

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

In support – Staplehurst Parish Council

Objections – Ian and Liz Tipples, Guy and Janice Barkaway, Brenda Webb and Darryl Evans, Marcus Rennick

Together with all written representations received, from all above-named other persons represented by Mr Kolvin QC and as witnesses for the applicant, appearing in the agenda papers at appendix 3

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 the 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

Chapters 8 & 9 which relate 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)	00:00 – 00:00 (24 hours)
Off sales (shop)	10:00 – 17:00 November – March and; 10:00 – 18:00 April – October
Off sales (shop) (non special event*)	10:00 – 23:00 Fridays and Saturdays only
Off sales (shop) (special event)	10:00 – 24:00
On sales (non special event*)	10:00 – 19:00 Sunday to Thursday and;
On sales (non special event*)	10:00 – 23:00 Fridays and Saturdays only
On sales (special event*)	10:00 – 00:00
Late night refreshment	23:00 – 00:00
Live and recorded music	10:00 – 24:00
Opening hours (non special event*)	10:00 – 19:00 Sunday to Thursday and;

Opening hours (non special event*)	10:00 – 23:00 Fridays and Saturdays only
Opening hours (special events*)	10:00 – 00:00
Opening hours (online sales only no public attendance)	00:00 – 00:00

* as defined below

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 and are subject to the additional conditions imposed by condition 12 a-i.

A non special event with extended hours refers to Fridays and Saturdays where on and off sales are permitted until 23:00 subject to the conditions imposed by condition 13 a-f. All other non special events refer to occasions where there is not a special event or a non special event with extended hours.

The following conditions apply at all times:

1. The premises shall not be operated as a public house, restaurant, drinking establishment, nightclub, wedding venue or events venue (other than events ancillary to the winery use).
2. 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.
3. 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.
4. No customers will be left unsupervised on the premises.
5. Children will be kept under adult supervision at all times.
6. All hazardous materials will be kept under child proof lock.
7. 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.
8. 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).

9. The sale of alcohol for consumption on the premises shall be restricted to products produced by Hush Heath Winery and shall not include spirits.'
10. 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 vinicultural education.
11. 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 third party website. The website for the premises may advertise the services and hours that are available at the premises.

The following condition applies during special events as defined above.

12. 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.

The following condition applies during non special events with extended hours as defined above

13. Non Special Events (Extended hours on Fridays and Saturdays)
 - a) The extended hours to 23:00hrs apply only on Fridays and Saturdays, but are available all year round.
 - b) The premises may only be opened for extended hours on a Friday or Saturday where there are pre-booked activities.
 - c) The maximum number of customers during extended hours is limited to 60 persons.

- d) Licensable activities during extended hours will occur indoors only.
- e) The supply of alcohol during extended hours shall be ancillary to a full table meal only.
- f) Off sales during extended hours are only available to persons taking part in the pre-booked activities.

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.

The premises licence holder is strongly recommended to engage fully with local residents prior to making any further applications.

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 and the new addition following this hearing of extended hours for on and off sales that are permitted on Fridays and Saturdays. They are such as to continue to promote the licensing objectives, following the addition of extended hours on Fridays and Saturdays.

In respect of conditions previously in Schedules 3 and 4 to the premises licence granted on 28th March 2019, these have been transferred with very minor amendments to the conditions to form schedule 4 of this licence, for clarity.

The condition limiting extended hours to Fridays and Saturdays only was appropriate and proportionate to promote the licensing objective of preventing public nuisance. The Sub-Committee were of the view that three nights a week including a night during the ordinary working week could lead to public nuisance due to the increase in customers attending the premises later in the evening.

The condition limiting the number of customers allowed during extended hours was appropriate and proportionate for the same reason and also for the promotion of the

public safety objective, in respect of an increased volume of traffic, in so far as that is relevant. The Sub-Committee noted that the applicant requested 10 tables and in the current climate that sets a maximum of 60 people and that number going forwards was appropriate for the promotion of the licensing objectives.

The other on sales extended hours conditions are consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours as they continue to promote the licensing objectives going forwards.

The condition relating to off sales during extended hours is appropriate and proportionate to promoting the licensing objective of preventing public nuisance and consistent with the conditions already on the licence in respect of the use of the facility being ancillary to the primary use as a winery and clarify that this remains the case during extended hours. The Sub-Committee confirmed that it was not mistaken when it set the hours for the shop previously and these hours remain unchanged.

The existing condition restricting advertising externally the sale of alcohol for consumption on the premises remains appropriate and proportionate to prevent public nuisance, as such advertising is reasonably likely to attract a number visitors seeking a premises selling alcohol rather than for wine tasting experiences provided as ancillary to services intended by the winery operation. However, the Sub-Committee considered the amendment to allow advertising of services and hours on the premises website to strengthen this condition as it would limit speculative visits to the premises and support the pre-booking condition.

The Sub-Committee felt that a further informative in respect of the premises licence holder engaging with residents prior to any application would be helpful.

Reasons for determination:

Having heard from Mr Kolvin, on behalf of many objectors, Mr Balfour – Lynn, the applicant and 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.

The Sub-Committee noted that there was no objection to online sales being 24 hours a day.

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

The Sub-Committee noted that there were no representations under this licensing objective.

Protection of Children from Harm

The Sub-Committee noted that there were no representations under this licensing objective that would meet the definition in the guidance. However, reference to child safety generally, particularly on the roads was raised and was therefore considered under the public safety objective.

Public Safety

In respect of public safety, the Sub-Committee noted that the objectors' main concerns centred around the potential of this variation to create a substantial increase in visitor numbers, leading in turn to an increase in traffic on the small local roads, during evening hours which they state is the time of highest risk. A witness was able to point to a specific example of a vehicle departing the winery causing a hazard, which had been reported to the Parish Council.

Further, objectors were concerned regarding the safety of the public when moving around the site after dark, due to the potential planning limitations on the use of the external lighting at the premises.

In response, the applicant stated that they had a well run premises, there was no history of public safety issues at the site and where residents had raised concerns these had been responded to, for example by purchasing a minivan and routing this vehicle from Marden rather than Staplehurst. The applicant suggested conditions in relation to public nuisance which were also relevant to this licensing objective, namely a limitation on the number of customers and operating a pre-booking system.

The Sub-Committee noted that there was no representation from any responsible authorities on this issue and given the representation from the Parish Council, there was a range of opinion, even among local residents in respect of public safety on the roads.

No party produced expert evidence in respect of the proposed variation on visitor numbers or traffic flows.

The Sub-Committee was satisfied that there is adequate lighting available at the premises. The Sub-Committee draws attention to the informative regarding the relationship between planning and licensing that was made at the previous hearing and remains extant.

Taking into account all of the above, the Sub-Committee were of the view that the proposed variation was likely to increase visitor numbers in the evening. However, due to issues of road safety not being evidenced as occurring on the premises or the immediate vicinity of the premises, or linked to the proposed variation, it was considered that the public safety objective was not sufficiently engaged by the proposed variation to justify specific conditions under this objective, but, the Sub-Committee felt that conditions that were appropriate to the promotion of the prevention of public nuisance also assisted in respect of this licensing objective, in as far as it is relevant.

Prevention of Public Nuisance

The Sub-Committee noted that the objectors main concerns around this issue were related to a potential increase in visitors, which had the risk of increased noise and disturbance in an area which is both rural and tranquil and further, that the proposed variation was indicative of a move away from services ancillary to a winery towards an operation akin to a hospitality venue, with a more social experience, which would by its nature be a noisier enterprise.

The representations made both at the hearing and in advance of the hearing pointed to previous assurances by the applicant that there was no intention to change the existing licence.

Representations noted that the applicant had not used his quota of 12 special events but now wanted to increase late night openings 14 fold.

The applicant responded that the changes were not planned and that he had been genuine when he had given assurances previously. However, the impact of the Covid-19 pandemic required a response and there was also a change in the demand from customers, which as a business the premises had to respond to or the business could fail. The applicant noted that neighbouring properties would not be impacted by noise from inside the winery, due to the construction of the winery.

The applicant advised that he felt it unlikely that the hours would be exercised three nights a week, but that the business wanted there to be flexibility. He noted that he is the closest resident to the winery and that he also has an interest in limiting noise from the premises.

The applicant also proposed a condition on the maximum number of guests that could attend later in the evening, along with pre-booking and the suggestion of dimming the lights during the hours of darkness.

The Sub-Committee noted that there was no representation from any responsible authority in respect of this licensing objective.

The Sub-Committee noted the support of the Parish Council to the application.

Taking into account all of the above, the Sub-Committee considered that the application as originally made failed to adequately promote this licensing objective. However, with some of the modifications proposed by the applicant and appropriate conditions applied by the Sub-Committee the application could be approved in part and continue to promote this licensing objective.

The Sub-Committee felt that three nights a week, including an ordinary working day was likely to cause a public nuisance. However, a reduction to two weekend evenings with a limitation on the total number of customers and the further additional controls noted above, would be sufficient to promote this licensing objective and ensure that the licensable activities on the premises remained as ancillary to the primary use as a winery.

The Sub-Committee permitted off sales to run concurrently with the extended hours, but did not change the hours for other days of the week. The intention of 19:00 for on sales at the premises was stated in the previous application to be to allow flexibility for any visitors staying a little over time. This was not a mistake and has promoted the licensing objectives.

Members amended the no external advertising condition to allow advertising of services and hours on the premises website. They considered this to be appropriate and proportionate to promote the prevention of public nuisance.

PRINT NAME (CHAIRMAN): COUNCILLOR MRS JOY

Signed [Chairman]:

A copy of the original document is held on file

Date: 15 September 2020

Document I

Extract of Inspector's decision letter
(APP/U2235/W/22/3303617)

20 March 2023



Appeal Decision

Site visit made on 22 February 2023

by **C Hall BSc MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20th March 2023

Appeal Ref: APP/U2235/W/22/3303617

Balfour Winery, Five Oak Lane, Staplehurst TN12 0HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Leslie Balfour-Lynn against the decision of Maidstone Borough Council.
 - The application ref. 22/501047/FULL, dated 25 February 2022, was refused by notice dated 11 May 2022.
 - The development proposed is the retention of a marquee to be sited for a period of 3 years for continued use for ancillary purposes to the existing winery site.
-

Decision

1. The appeal is allowed and planning permission is granted for the retention of a marquee to be sited for a period of 3 years for continued use for ancillary purposes to the existing winery site at Balfour Winery, Five Oak Lane, Staplehurst TN12 0HT in accordance with the terms of the application ref. 22/501047/FULL, dated 25 February 2022, subject to the following list of conditions:
 - 1) The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of that period the use shall be discontinued and the land restored in accordance with a scheme of work, including a timetable for implementation, that shall first have been submitted to and approved in writing by the Local Planning Authority.
 - 2) **The marquee shall be used for ancillary purposes to the winery only and for no other purpose.**
 - 3) No external lighting shall be installed on the site without the prior written consent of the Local Planning Authority.

Objectors' list of suggested to be added to Annex 4 of the premises licence if the application is granted:

- (A) No licensable activities shall take place outdoors.
- (B) Customers shall not be permitted to take or consume alcohol in any outdoor areas of the premises (for the avoidance of doubt, this condition applies to both Special Events and Non-Special Events).
- (C) Customers shall not be served food, or permitted to consume food, in any outdoor areas of the premises (for the avoidance of doubt, this condition applies to both Special Events and Non-Special Events).

Amend the "Special Events" conditions as follows:

- (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.~~
- (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.

Amend the "Non-Special Events" conditions as follows:

- (d) ~~Licensable activities during extended hours will occur indoors only.~~

Document K

Extract of grant of planning permission

(17/502611/FULL)

5 Sept 2017

Jazz Evening with Anthony Strong

SATURDAY 3RD JUNE | £95PP

Saturday 3rd June – 7pm–10.30pm

Join us for an intimate evening concert with internationally acclaimed singer and pianist Anthony Strong.

Known for his charismatic stage presence, Anthony's repertoire spans jazz standards and classics through to Stevie Wonder and Motown. His fresh and positive live performances capture a feel-good energy that has wowed audiences across the world.

Anthony's last album "Stepping Out" reached #1 on the US iTunes Jazz Charts.

–

The evening will be accompanied perfectly by a glass of sparkling Balfour Wine, followed by a delicious three-course set meal.

–

View Menu [here](#)

Booking required.

16:57



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BALFOUR
HUSH HEATH ESTATE



Cocktail Evening

**FRIDAY 26TH MAY | CELEBRATE MAY BANK
HOLIDAY | £25PP | 25% DISCOUNT ON PLATTERS**

Friday 26th May – 7pm-10pm.

Celebrate the start of the May Bank Holiday weekend with an elegant Spring Cocktail Evening on the evening of Friday 26th May.

We welcome you to enjoy this year's uniquely crafted cocktails whilst soaking up the beautiful sunset. Delight in the glorious golden hour views from our magnificent balcony overlooking the vineyard.

Enjoy outstanding cocktails, award-winning wines and locally sourced cheese and charcuterie platters.

We advise you to purchase your tickets in advance for this highly popular event.

£25 ticket price includes two house cocktails and access to a discount on all platters that evening.

Reservation required.

If you require a taxi it is essential that you book well in advance for both journeys. [See phone numbers here](#)

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Easter Sunday Roast



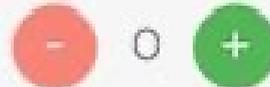
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- Three-course
£39



Three-course Sunday Roast

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- Two-course
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Two-course Sunday Roast

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Next

Easter Sunday Roast

We invite you to join us to celebrate Easter Sunday together in true Balfour style for an exquisite and classic Sunday Roast. Admire the glorious views from our dining area showcasing the Garden of England at its best. Make the most of your visit with a self-guided stroll or book a tour experience to explore our beautiful 400-acre estate. It will be a perfect day to cherish the English countryside with your friends and family.

Two-course £35 per person

Three-course £39 per person

Children's Menu £15 per person

Availability

Sunday 9th April

Bookings from midday until 3pm