



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

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

NOTICE OF DETERMINATION

Application Ref No: 23/00753/LAPRE

Applicant: Mr Richard Balfour-Lynn

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

Date(s) of hearing: 2 May 2023

Date of determination: 2 May 2023

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

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

Democratic Services Officer in attendance at hearing: Oliviya Parfitt

Senior Licensing Officer for application: Lorraine Neale

This was an application for:

- Variation Grant
 Provisional Statement Review Other

for a

- Premises Licence Club Premises Certificate Personal Licence
 Temporary Event Notice

A: Representations, evidence and submissions:

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

Applicant

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

Responsible Authorities

N/A

Other Persons

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

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

- Representation made by Amanda Tipples

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

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

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

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

C: Determination:

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

Reasons for determination:

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

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

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

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

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

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

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

■ **Prevention of Crime and Disorder**

Reasons (state in full):

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

■ **Public Safety**

Reasons (state in full):

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

■ **Prevention of nuisance**

Reasons (state in full):

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

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

■ **Protection of children from harm**

Reasons (state in full):

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

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

PRINT NAME (CHAIRMAN): CLLR CLIVE ENGLISH

Signed [Chairman]:

A copy of the original document is held on file

Date of Notification of Decision: