

Agenda Item No: 1 - Summary of Report

Licence Reference 13/00231LAPRE

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

Date: 4TH MARCH 2013

**Report Title: HUSH HEATH WINERY
HUSH HEATH ESTATE
FIVE OAK LANE
STAPLEHURST
KENT
TN12 0HX**

**Application for: A premises licence to be granted under the
Licensing Act 2003**

Report Author: Lorraine Neale

Summary:

1. The Applicants – Mr Richard Balfour-Lynn
2. Type of authorisation applied for: a premises licence under the Licensing Act 2003, S17.
3. Proposed Licensable Activities and hours:

M)	Supply of alcohol; On and off the premises	Monday to Saturday	10.00 to 21.00
		Sunday	10.00 to 18.00
O)	Opening Hours	Monday to Saturday	11.00 to 17.00
		Sunday	12.00 to 17.00

Affected Wards: Staplehurst

Recommendations: **The Committee is asked to determine the application and decide whether to grant a licence.**

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

Financial Implications: Costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application it is necessary to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**interested parties**” (objectors). The procedure for determining licences has a prescribed format to ensure fair representation of the relevant facts by all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers: Licensing Act 2003
DCMS Guidance Documents issued under section 182 of the Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

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FIVE OAK, LANE, STAPLEHURST, KENT, TN12 0HX**

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Licensing Act 2003**

Purpose of the Report

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Mr Richard Balfour-Lynn, in respect of the premises Hush Heath Winery, Hush Heath Estate, Five Oak, Lane, Staplehurst, Kent, TN12 0HX in respect of which 7 representations (Appendix C) have been received from an Interested Parties.

Issue to be Decided

1. Members are asked to determine whether to i) grant subject to conditions consistent with the operating schedule modified to such extent as considered appropriate for the promotion of the licensing objectives and any mandatory condition, ii) grant excluding any of the licensable activities applied for, iii) grant refusing to specify a premises supervisor, or iv) reject the application.

Background

2. The relevant sections are Part 3 ss 16-19, 23 & 24 of The Licensing Act 2003 and section 4 of The Licensing Act 2003 in particular the Licensing Objectives:
 - The prevention of crime and disorder;
 - Public Safety
 - The prevention of public nuisance; and
 - The protection of children from harm
3. The application has been correctly advertised, for sale of alcohol, in the local press and a notice displayed on the premises for the required period.
4. 7 representations have been received from Interested Parties
5. The table below illustrates the relevant representations which have been received

Responsible Authority /Interested Party	Licensing Objective	Associated Documents	Appendix
Mr A Dimmock	Crime and Disorder Public Nuisance Public Safety Children from Harm	2 Letters (1 st received on 7.2.13 and the 2 nd on 21.2.13 withdrawing the 1 st and replacing with 2nd)	C
Mr & Mrs Humphrey	Public Nuisance Public Safety	Letter	C

Mr & Mrs Lye	Public Nuisance Public Safety Children from Harm	Letter	C
D J Twyman	Public Nuisance Public Safety	Letter	C
Mr & Mrs Hill	Crime and Disorder Public Nuisance Public Safety Children from Harm	Letter	C
Mrs R Dimmock	Public Nuisance Public Safety	Letter	C
Mr & Mrs Codd	Public Nuisance Public Safety	Letter	C

Mr Balfour-Lynn's initial application included live music, recorded music, dancing and late night refreshment and made reference to being used as a wedding venue. Many of the objections received refer to that application and the issues that they state would arise as a result of that application. Since then the application has been amended to remove all the licensable activities except the sale of alcohol. The amended days and times for the sale of alcohol were confirmed by Mr Balfour Lynn in an e-mail received by licensing on 18.2.2013. Mr Balfour-Lynn's amendments were made after the advert had appeared in the Wealden Ad and after discussions with the objectors about their concerns around the wedding venue proposals, he explained to the objectors that the hours to the general public would be limited but the overall hours requested were necessary, especially in respect of telephone orders and internet sales in order to remain lawful. After these discussions Mr A Dimmock withdrew his first letter and replaced it with his 2nd letter.

6. **Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is appropriate to do so to promote the licensing objectives.;**

7. **The Operating Schedule submitted by the Applicant has addressed the licensing objectives in the following manner:**

a) General – all four licensing objectives

HUSH HEATH ESTATE IS A FAMILY OWNED FARM AND WINERY MAINTAINED TO THE HIGHEST OF STANDARDS WITH LIMITED ACCESS TO THE PUBLIC, GOOD SECURITY, GOOD PARKING AND IN AN EXTREMELY REMOTE AREA. THE PRINCIPALS OF SECURITY AND SAFETY WILL BE EXTENDED IN ALL DEALINGS WITH THE PUBLIC.

b) The prevention of crime and disorder

LIMITED OPENING HOURS. GOOD SECURITY, ALARMS AND CCTV CAMERAS. NO UNSUPERVISED ACCESS.

c) Public safety

WINERY AND VINEYARDS FROM PART OF HUSH HEATH ESTATE WHICH CARRIES OUT AN ANNUAL INDEPENDANTLY EVALUATED FARM AUDIT CALLED CMI FARM AUDIT. THIS AUDIT INCLUDES HEALTH AND SAFETY FOR THE PUBLIC VISITING THE ESTATE.

d) Prevention of public nuisance

THE SUPPLY OF ALCOHOL WILL BE RESTRICTED TO MEMBERS OF THE PUBLIC TASTING SAMPLES.

e) The protection of children from harm

ONLY ALLOWED ON THE ESTATE WITH PARENTAL OR ADULT SUPERVISION. AT ALL TIMES THEY WILL BE ACCOMPANIED. ALL HAZARDOUS MATERIALS WILL BE KEPT UNDER CHILD PROOF LOCK.

8. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**
Chapter 2 Licensing Objectives
Chapter 3 Licensable Activities -Internet/mail order sales paras 3.8 – 3.10
Chapters 8 & 9 Premises Licences & Determining Applications

Chapter 10 Conditions NB: There is Home Office Supporting Guidance on Pools of Conditions but this is not statutory guidance.

Relevant policy statements contained in **the Licensing Authority's Statement of Licensing Policy:**

Relevant policy statements contained in **the Licensing Authority's Statement of Licensing Policy:**

- 20. Prevention of Crime and Disorder**
- 21. The Promotion of Public Safety**
- 22. Prevention of Public Nuisance**
- 23. Protection of Children from Harm**

20. Prevention of Crime and Disorder

Concerns

The applicant should consider factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in addressing the above concerns in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Effective and responsible management of premises.
- Training and supervision of staff.
- Adoption of current best practice guidance (some examples are Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit, and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA).
- Acceptance of accredited 'proof of age' pass cards or 'new type' driving licences with photographs, passports or an official identity card issued by H M Forces.
- Provision of effective CCTV in and around premises.
- Employment of Security Industry Authority licensed door staff. (If two or more are employed there must be at least one male and one female).
- Provision of toughened or plastic glasses.
- Provision of secure deposit boxes for confiscated items ('sin bins').
- Provision of litterbins, security measures, e.g. lighting, outside premises.

- Membership of a Pub Watch scheme.
- The current 'Chill Out Hour' operating at the late night venues in the Borough of Maidstone which is the agreement whereby late night venues cease to sell alcohol yet continue to provide music and dancing for a further hour (at a reduced volume and with the heavy bass beat removed) has proved to be a success in reducing late night crime and disorder.
- Membership of Maidsafe (Nite Net).

21. The Promotion of Public Safety

The Licensing Authority wishes to ensure the safety of everyone on licensed premises.

Concerns

Capacity

Where existing legislation does not provide adequately for the safety of the public, club members or guests, the occupancy capacity for premises and events (to include performers and staff) may be an important factor in promoting public safety. Subject to the requirements of the following paragraph the Licensing Authority will expect the issue of occupancy capacity and adequate controls of the numbers of persons on premises or attending an event to be considered by an applicant when completing an Operating Schedule. Where a relevant representation is received in respect of capacity the Licensing Authority will consider setting capacity limits in consultation with the Kent and Medway Fire and Rescue Authority for the following premises:

- Nightclubs
 - Cinemas
 - Theatres
 - Other premises where regulated entertainment within the meaning of the Act is being provided.
- The Applicant might also consider the following concerns when assessing the appropriate capacity for premises or events in the Maidstone area. These could include:-
- The design and layout of the premises.
 - The nature of the premises or event.
 - The nature of the licensable activities being provided.
 - The provision or removal of temporary structures, such as a stage or furniture.
 - The number of staff available to supervise customers both ordinarily and in the event of an emergency.
 - The customer profile (e.g. age, disability).
 - The attendance by customers whose first language is not English.
 - Availability of suitable and sufficient sanitary accommodation.
 - The nature and provision of facilities for ventilation.
 - The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

Where capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the applicant will be expected to consider the arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

Additional Steps

The following examples of additional steps are given for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Suitable and sufficient risk assessments.
- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons.
- Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons.
- Adoption of best practice guidance.
- Provision of effective CCTV in and around premises.
- Provision of toughened or plastic non disposable glasses/bottles.
- Implementation of crowd management measures.

- Regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety.

22. Prevention of Public Nuisance

Licensed premises can cause adverse impacts on communities through public nuisance. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from any nuisance caused by the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

The Licensing Authority will interpret 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Concerns

When addressing the issue of prevention of public nuisance, the applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the likelihood of public nuisance. These may include:-

- The location of the premises and their proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.
- The hours of operation, particularly if between 23.00 and 07.00.
- The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises.
- The design and layout of premises and in particular the presence of noise limiting features.
- The occupancy capacity of the premises.
- Last admission time.
- The steps the applicant has taken or proposes to take to ensure that staff leave the premises quietly.
- The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the premises.
- Whether routes to and from the premises, on foot or by car or service or delivery vehicles, pass residential premises within the vicinity of the Premises.
- Whether other measures have been taken or are proposed such as the use of CCTV or the employment of registered door supervisors.
- The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents.
- The likelihood of any violence, disorder or policing problems arising if a licence were granted.
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- The siting of external lighting, including security lighting that is installed inappropriately.
- Whether the operation of the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises and any measures or proposed measures to deal with this.
- The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licensees.

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance.

- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries.
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents.
- Effective ventilation systems to prevent nuisance from odour.

N.B. Where relevant representations are received which the Licensing Sub Committee consider material particular consideration will be given to the impact on residential amenity of proposals for the provision of late night refreshment where these are either located in, or encourage people to move through, residential areas.

23. Protection of Children from Harm

A mandatory condition will be applied requiring access to be restricted to those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification or in specific cases the Local Authority.

The relaxation in the Licensing Act giving accompanied children greater access to licensed premises is seen as a positive step, which may bring about a social change in family friendly leisure but the risk of harm to children remains the paramount consideration. Clearly, this relaxation places additional responsibilities upon licence holders as well as upon parents and others accompanying children.

The protection of children from harm includes the protection of children from moral, psychological and physical harm and, in relation to the exhibition of films, the transmission of programmes by video or DVD. This includes the protection of children from exposure to strong language, sexual imagery and sexual expletives.

In the event of an unclassified film, then it is expected that the Licensing Authority will view the film before it is shown in the Council's area.

In certain circumstances children are more vulnerable and their needs will require special consideration. This vulnerability includes their susceptibility to suggestion, peer group influences, inappropriate example, the unpredictability of their age and the lack of understanding of danger.

The Licensing Authority recognises Kent County Council Social Services, Mid Kent Area, District Office, Bishop's Terrace, Bishop's Way, Maidstone, Kent, ME14 1AF as a body representing those responsible for, or interested in, matters relating to the protection of children from harm and competent to advise it on such matters. It is therefore, a responsible authority for the purposes of Section 13(4) and Section 69(4) of the Act.

Concerns

The applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of children from harm. These may include the potential for children to:-

- purchase, acquire or consume alcohol
- be exposed to drugs, drug taking or drug dealing
- be exposed to gambling
- be exposed to activities of an adult or sexual nature
- be exposed to incidents of violence or disorder

- be exposed to environmental pollution such as noise
- be exposed to special hazards such as falls from a height

Additional Steps

The following examples of additional steps are given to assist applicants. The Licensing Authority considers them to be important matters that applicants should take account of in the preparation of their Operating Schedule, having regard to their particular type of premises and/or activities:-

- Effective and responsible management of premises.
- Provision of a sufficient number of people employed or engaged to secure the protection of children from harm.
- Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm.
- Adoption of best practice guidance (Public Places Charter).
- Limitations on the hours when children may be present, in all or parts of the premises.
- Limitations or exclusions by age when certain activities are taking place.
- Imposition of requirements for children to be accompanied by an adult.
- Acceptance of accredited 'proof of age' cards, 'new type' driving licences with photographs, passport, an official identity card issued by HM Forces or by an EU country bearing the photograph and date of birth of bearer.

N.B. In exceptional circumstances, where necessary, and only where the licensing authority has received relevant representations, it may impose conditions restricting access or excluding children from premises or part of licensed premises:-

- a) at certain times of the day, or
- b) when certain licensable activities are taking place, or
- c) to which children aged under 16 years should have access only when supervised by an adult, or
- d) to which unsupervised children under 16 will be permitted access.

Examples of premises where these conditions may be considered include those where:-

- a) There have been convictions for serving alcohol to minors or where there is some evidence of under- age drinking.
- b) There is a known association with drug taking or dealing.
- c) There is a strong element of gambling on the premises.
- d) Entertainment of an adult or sexual nature is commonly provided.
- e) There is a presumption that children under 18 should not be allowed (e.g. to nightclubs, except where under 18 discos are being held)
- f) Licensable activities are taking place during times when children under 16 may be expected to be attending compulsory full-time education.

The Licensing Authority commends the Portman Group Code of Practice on the naming and packaging of alcoholic drinks. See www.portman-group.org.uk for further information

9. **Options**

Legal options open to members -

- a) GRANT the licence subject to such conditions as are consistent with the operating schedule accompanying the application; MODIFIED to such extent as the Licensing sub-committee considers appropriate for the promotion of the licensing objectives and any relevant mandatory condition
- b) EXCLUDE from the licence any of the licensable activities applied for.

- c) REFUSE to specify a person in the licence as premises supervisor
 - d) REJECT the application.
10. Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority’s responsibility to co – operate in the reduction of crime and disorder in the Borough

Section 17 of the Crime and Disorder Act 1988 states:

"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that it reasonably can prevent, crime and disorder in its area".

11. **Implications Assessment**

The decision should be made with regard to the Secretary of State’s Guidance and the Council’s Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal/challenge is increased.

12. **Human Rights**

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to Fair Hearing
- Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices

13. **Conclusion**

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

14. **List of Appendices**

Appendix A	Application Form
Appendix B	Plan of Premises
Appendix C	Representations (Other Persons)
Appendix D	Plan of area
Appendix E	Human Rights Articles
Appendix F	Order of Proceedings

15. **Appeals**

The applicant or any interested party (objector) may appeal the Licensing Act 2003 Sub Committee’s decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates’ Court. Parties should be aware that they MAY incur an Adverse Costs Order should they bring an appeal.

Contact:
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