

Agenda Item No: 1 - Summary of Report

Licence Reference 18/02446/LAPRE

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

Date: 19 AUGUST 2018
Report Title: HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE,
STAPLEHURST, TONBRIDGE, KENT , TN12 0HX

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

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Mr Richard Balfour-Lynn
 2. Type of authorisation applied for: To vary a premises licence under the Licensing Act 2003. (Appendix A)
 3. Licensable Activities and hours:

		Current Hours		Hours: New Application	
E)	Live Music (Indoors & Outdoors)	-	-	Mon - Sun	10:00-24:00
F)	Recorded Music (Indoors & Outdoors)	-	-	Mon - Sun	10:00-24:00
L)	Late Night Refreshment (Indoors & Outdoors)	-	-	Mon - Sun	23:00-24:00
M)	Supply of alcohol (On & Off the premises)	Mon-Sun	10:00-24:00	Mon-Sun	10:00-24:00
O)	Opening Hours	Mon- Sat Sun	11:00 - 15:00 12:00 - 15:00	Mon - Sun	10:00-24:00

The variation also includes a substantial extension to the business and new plans have been submitted as part of the variation application for the premises to show the new building.

Affected Wards: Staplehurst

Recommendations: **The Committee is asked to determine the application and decide whether to vary the premises 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 appropriate to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**other persons**” (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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Agenda Item No. 1

Report Title: Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst, Tonbridge, Kent , TN12 0HX

Application to: Vary a premises licence under the Licensing Act 2003.

Purpose of the Report

The report advises Members of an application to vary a Premises Licence under the Licensing Act 2003,(Appendix A), made by Mr Richard Balfour-Lynn for Hush Heath Winery, Hush Heath Estate, Five Oak Lane, Staplehurst, Tonbridge, Kent , TN12 0HX in respect of which 6 responses have been received from other persons (Appendices C).

Issue to be Decided

Members are asked to determine whether to :

Grant the application as applied for,or

Grant the application and modify conditions of the licence, or

Reject all or part of the application

Background

1. The relevant sections are Part 3 S13 and 34 – 36 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
2. The application has been correctly advertised in the local press and notices displayed on the premises for the required period.
3. There were no representations received from responsible authorities.
4. 6 responses were received from other persons.
5. The table below illustrates the relevant responses which have been received

Responsible Authority /Interested Party	Licensing Objective	Associated Documents	Appendix
Objections			
Kim and Sally Humphrey	Public Nuisance	E-mail	C
Mr Paul and Doreen Stanley	Public Nuisance	E-mail	C
Andrea Hodgkiss	Public Nuisance	E-mail	C

Natasha Wyeth	Public Nuisance Public Safety		
Amanda Tipples and Bernard Tipples	Public Nuisance	E-mail	C
Ann and FrankTipples	Public Nuisance	E-mail	C

There appear to be concerns that the requested hours will contribute to noise nuisance at unsociable hours. The objectors believe it will have a detrimental effect on their quality of life in what is a rural setting. It would also increase traffic affecting public safety in a rural area. The premises has a current licence, Appendix D and original plans Appendix E. The current licence holder is the applicant.

6. The current licence hours are as per the licence attached at appendix D and set out at 3 of the summary above. The operating schedule offers a new condition by including a Challenge 25 scheme.
7. The applicant on receiving all the objections responded with an offer to limit the licence for live and recorded music and late night refreshment to 12 occasions per year where events go on until midnight, with live music finishing at 23.45.(Appendix F). The E-mail was forwarded to all objectors on 17 August 2018. To date only two responses have been received in respect of the proposal (Appendix G). One objector will withdraw subject to notifications to parties being agreed and the second objector does not wish to withdraw.
8. **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.;**
9. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**

Chapters 8 (8.74- 77) & 9 Determining Applications

Chapter 10 Conditions.

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:**

17.16 Public Safety

17.19. Prevention of Public Nuisance

3.1 CONDITIONS TO PROMOTE PUBLIC SAFETY.

The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

- 3.2 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.
- 3.3 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a

maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.

Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:

- (i) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol
- (ii) Nightclubs
- (iii) Cinemas
- (iv) Theatres
- (v) Other premises where regulated entertainment is likely to attract a large number of people.
- (vi) Where conditions of occupancy have arisen due to representations received.

17.19 CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

17.20 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premises
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation
- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (v) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (vi) Availability of public transport to and from the premises
- (vii) Delivery and collection times and locations.
- (viii) Impact of external security or general lighting on residents.
- (ix) History of management of and complaints about the premises.
- (x) Applicant's previous success in preventing Public Nuisance.
- (xi) Outcomes of discussions with the relevant Responsible Authorities.
- (xii) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
- (xiii) Collection of litter arising from the premises

- 17.21 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.
- 17.22 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

10. Options

Legal options open to members -

Grant the variation application as applied for., or

Grant the variation and modify conditions of the licence, or

Reject all or part of the application.

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”.

12. 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.

13. 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

14. Conclusion

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

15. List of Appendices

Appendix A	Application Form
Appendix B	Plan of Premises
Appendix C	Representations –Other persons
Appendix D	Existing Premises Licence
Appendix E	Existing Plans
Appendix F	Applicants offer to objectors
Appendix G	Objectors response to applicant offer
Appendix H	Plan of area
Appendix I	Human Rights Articles
Appendix J	Order of Proceedings

16. Appeals

The applicant or any other person(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.

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