

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.



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