

Agenda Item No: 1 - Summary of Report

Licence Reference 19/00380/LAPRE

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

Date: 7 MARCH 2019
Report Title: HUSH HEATH WINERY, HUSH HEATH ESTATE, FIVE OAK LANE,
STAPLEHURST, KENT , TN12 0HT

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- 17:00 save for 12 occasions per year. On those 12 occasions indoors only after 23:00 and to cease at 23:45.	No Change	No Change
F)	Recorded Music (Indoors & Outdoors)	Mon - Sun	10:00-17:00 save for 12 occasions per year. On those 12 occasions indoors only after 23:00 and to cease at 23:45.	No Change	No Change
L)	Late Night Refreshment (Indoors)	Mon - Sun	23:00-24:00 on 12 occasions per year only.	No Change	No Change
M)	Supply of alcohol (On & Off the premises)	Mon-Sun	10:00-24:00	Mon – Sun Off sales online and 12 events per year Mon –Sun On sales at the premises	10:00-24:00 10:00-19:00
O)	Opening Hours	Mon - Sun	10:00-24:00	No Change	No Change

The variation seeks to remove the condition “The supply of alcohol on the premises will be limited to tasting samples only.” from the operating schedule to enable on-sales to be made at the premises. The time requested for on sales at the premises are 10:00 – 1900 Monday to Sunday however the application further explains that on-sales will take place between 10:00 – 17:00 November to March and between 10:00 -18:00 April to October with sales

made until 19:00 being the exception rather than rule. These hours will not apply to the 12 Events per year agreed by Licensing Sub Committee on 3 September 2018 the hours for those events being 10:00 – 24:00 or to the online off-sales.

The application states quite clearly that Hush Heath is a winery which will only sell its own products which include sparkling and still wine, cider and beer. The supply of on sales alcohol is to be ancillary to the production of wine beer and cider and not to constitute use of the premises primarily as a public house or restaurant.

The application also asks 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 to continue.

The Police requested clarity from the applicant on this point as it was unclear which condition at Annexe 4 this was replacing.

Gullands the solicitor representing the applicant responded and clarified that the condition should be an additional condition to Annex 3 rather than an amendment of any condition at annex 4 of the existing licence **Appendix B**

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, Kent , TN12 0HT

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, Kent , TN12 0HT and clarified by correspondence from the Solicitor at Appendix B in respect of which 25 responses have been received from other persons (Appendix 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. 25 responses were received from other persons.
5. The table below illustrates the relevant responses which have been received in order of receipt for objections and order of receipt for support

	Other Persons	Licensing Objective	Associated Documents	Appendix
	Objections			
1	Mr Paul Stanley submissions on 7, 21 & 25/2	Crime & Disorder Public Nuisance Public Safety Children from Harm	E-mail	C

2	Natasha Davidson -Houston	Public Nuisance Public Safety	E-mail	C
3	Richard Davidson-Houston	Public Nuisance Public Safety	E-mail	C
4	Gill and David Ewbank	Public Nuisance Public safety		C
5	Richard Crumpling	Public Nuisance Public Safety	E-mail	C
6	Alison Martin-Clark and Jill Clark	Public Nuisance Public Safety Children from Harm	E-mail	C
7	Sally Humphrey	Public Nuisance Public Safety	E-mail	C
8	Shirley Stallman	Public Nuisance Public Safety	E-mail	C
9	Andrea Hodgkiss and Angus Codd	Public Nuisance Public Safety	E-mail	C
10	Malcolm Buller	Public Safety	E-mail	C
11	Polly Hardwick and Miss Tess Lamming	Public Nuisance Public Safety	E-mail	C
12	Richard Edmondson	Public Nuisance	E-mail	C
13	Kim Humphrey	Public Nuisance Public Safety	E-mail	C
14	David Twyman	Public Nuisance	E-mail	C
15	Julian and Lynn Eccles	Public Nuisance Public Safety	E-mail	
16	Nicola Feakin and David Taylor	Crime & Disorder Public Safety	E-mail	C
17	Mr. & Mrs K Vesma	Public Nuisance Public Safety	E-mail	C
18	Alan Beevor	Public Nuisance Public Safety	Letter	
19	Marcus Rennick	Public Nuisance Public Safety	E-mail	C
20	Amanda Tipples	Public Nuisance Public Safety	E-mail	C
21	Anne Tipples	Public Safety	E-mail	C
	Support			
22	Visit Kent - David Curtis-Brignell		Letter	C
23	Councillor Malcolm Greer		E-mail	C
24	Helen Grant - Member of Parliament for Maidstone and The Weald		E-mail	C
25	Councillor's John Perry & Louise Brice Ward Members for Staplehurst		E-mail	C

The majority of the objections received refer in large part to planning matters. The main matters related to promotion of the licensing objectives are that permitting alcohol to be served freely at the premises would create public nuisance and be a risk to public safety, because the roads in the area are not appropriate for further traffic created by increased visitor numbers. The increase in traffic and the nature of the roads in the area would lead to increased noise pollution and endanger riders, joggers and the general public who use the roads other than driving cars. Also the lack of public transport links in the area could encourage visitors to drive under the influence of alcohol, again endangering the general public and other road users. The increase in visitors at the Winery and the noise emitted by them could have a significant adverse effect on nearby residents because of disturbances visitors may cause.

One of the Objectors (Amanda Tipples at 20 of Appendix C, at page 40, conclusion, other points), does suggest the following condition be added to the Licence **“for the period between 23:00 and 23:45 music noise should not be audible within noise sensitive premises with windows open in a typical manner for ventilation”**. It is not clear if it is in addition or replaces

the condition addressing noise on the current licence which states “After 23:00 hours live and recorded music and late night refreshments will be indoors only and windows and doors will be closed save for entry and exit.”

There have also been representations submitted in support of the application where it is stated that the Winery is an asset for Staplehurst and the grant of the licence does not pose a threat to the tranquillity or safety of the neighbouring area. It is believed that the Winery promotes local employment and tourism which assists the local economy and exports.

Staplehurst Parish Council discussed this application at a meeting on Monday 18 February 2019. They heard representations from local residents and from representatives of Hush Heath Winery and submitted a description of the discussion which is attached as Appendix D. Two of the objectors attended that meeting and make reference to it in their objections. They are 7. Sally Humphrey and 20.Amanda Tipples who refers to the meeting at number 41 in her papers.

Mr Balfour Lynn, the applicant, in response to the objections and in an effort to clarify matters e-mailed the Licensing Department on 24.2.19 where he addressed the concerns raised, those clarifications can be found at Appendix E.

Sara Easton, the Manager at Hush Heath Winery e-mailed the Licensing Department on 26.2.19, her purpose stated as to correct inaccuracies found at pages 13 &14 of the representation submitted by 20. Amanda Tipples relating to the variation application and discussed at the meeting held by Staplehurst Parish Council on 18.2.19. Appendix F.

The premises has a current licence, Appendix G and current plans Appendix H. The current licence holder is the applicant

6. The current licence hours as per the licence attached at appendix G show some inaccuracies and does not fully reflect the conditions imposed at the last hearing on 3.9.18. The conditions are attached by way of annex 4 rather than reflected within the times section of the licence. The current premise licence will be amended to reflect the correct hours which are set out at 3 of the summary above. The application asks that the condition “The supply of alcohol on the premises will be limited to tasting samples only” be removed from annex 3 and the following added “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).”
7. **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.;**
8. **Relevant sections of The Guidance issued under section 182 of The Licensing Act 2003;**
9. **Chapter 2, Licensing Objectives**
Chapters 8 (8.41 onwards) & 9 Premises Licences & 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:**

17.9 Crime and Disorder

17.16 Public Safety
17.19. Prevention of Public Nuisance
17.23 Children from Harm

17.9 CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

17.10 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- Prevention of disorderly conduct and anti-social behaviour
- Prevention of underage drinking
- Prevention of sales of alcohol to intoxicated customers
- Prevention of drunkenness both on and in the vicinity of the premises
- Prevention of drug use and drug dealing
- Restriction to responsible drinks promotions
- Use of safety glass
- Inclusion of a wind-down time following alcohol sales period
- Adequate seating to discourage “vertical drinking”
- The offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.11 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) ‘wind down’ or ‘drinking up’ period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.12 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol, have later opening hours and are situated within the Town Centre night time economy area.

17.13 Where appropriate, applicants for licences in the Town Centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.14 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.15 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to promotion of the licensing objectives.

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.

17.23 CONDITIONS TO PROMOTE THE PROTECTION OF CHILDREN FROM HARM.

Applicants will be expected to detail any appropriate and proportionate steps to protect children at the premises from any harm. The Licensing Authority recognises the right of licensees (serving alcohol) to allow accompanied children into their premises. The Licensing Authority would not seek to restrict access by children (above that specified in the Act) unless it is necessary for the prevention of physical, moral or psychological harm.

17.24 Steps to protect children from harm must be carefully considered for inclusion where:

- (i) There is entertainment or services of an adult nature provided.
- (ii) There have been previous convictions for under age sales of alcohol.
- (iii) There has been a known association with drug taking or dealing.
- (iv) There is a significant element of gambling on the premises.
- (v) There is a presumption that children under 18 should not be permitted entry such as to nightclubs (apart from when specific events are held for under 18's).
- (vi) Outcomes of discussions with relevant Responsible Authorities suggest such steps are applicable.

17.25 Nothing in the Licensing Act prevents licensees from excluding children from a licensed premises and no condition can be added to require the admission of children.

17.26 Where there are no matters that give rise to concern in respect of children at premises the Licensing Authority would expect to see the relevant box on an application form completed to specify NONE.

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	Gullands letter
Appendix C	Representations –Other persons
Appendix D	Staplehurst Parish Council e-mail
Appendix E	Richard Balfour Lynn e-mail
Appendix F	Sarah Easton e-mail
Appendix G	Current Premises Licence
Appendix H	Plan of Premises
Appendix I	Plan of area
Appendix J	Human Rights Articles
Appendix K	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.

Contact: Email:	Senior Licensing Officer lorryneale@maidstone.gov.uk
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