

**Minutes of a meeting of Mid Sussex District Council Liquor Licensing Panel
held on Friday, 10th February, 2023
from 10.00 am**

Present: Councillors: J Knight (Chairman)
M Cornish
J Mockford

Officers in attendance: Paul Vickers, Solicitor to the Licensing Panel
Jon Bryant, Senior Licensing Officer
Lucy Corrie, Assistant Director Communities
Alison Hammond, Democratic Services Officer

Also in attendance: Stuart Beare, Joint Applicant
Sam Beare, Joint Applicant
Paul Thornton, Applicant 's Agent
Scott Castle, Applicant 's Sound Engineer
Jane Cooper, Senior Environmental Health Officer,
Environmental Protection
Oliver Benson, Environmental Health Protection Officer
Alexander Austin, Democratic Services Officer
Lucinda Joyce, Senior Democratic Services Officer

LS.1 TO RECEIVE APOLOGIES FOR ABSENCE.

None.

LS.2 TO RECEIVE DECLARATIONS OF INTERESTS FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA.

None.

LS.3 TO CONFIRM THE MINUTES OF THE PREVIOUS MEETING HELD ON 14 NOVEMBER 2022.

The minutes of the meeting held on 14 November 2022 were agreed as a correct record and were electronically signed by the Chairman.

LS.4 APPLICATION TO VARY A PREMISES LICENCE - LICENSING ACT 2003.

Introduction and outline of the report

Jon Bryant, Senior Licensing Officer introduced the report for the Panel to determine an application to vary the current Premises Licence pursuant to Section 34 Licensing Act 2003 made by BA Beare and Sons, at The Pumpkin Farm and he noted that one Responsible Authority and one member of the public who is also a local resident, referred to as Interested Parties had made representations on the grounds of the Prevention of a Public Nuisance. The variation sought to amend the name of the site, extend the times for the Performance of Live and Recorded Music, extend the times

for the sale by retail of alcohol and to add the licensable activity of the Performance of a Play.

The Panel were asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

The Senior Licensing Officer advised that the Pumpkin Farm, formerly known as the Maize Maze, had been licensed since 29 March 2003, however this is a separate location. He summarised the conditions on the licence to restrict times for live music, 20 days between 1st June and 30 September but the licensee had a difference opinion. He highlighted that the application would change the name to The Pumpkin Farm and the timings of the requested Licensable Activities.

In response to a question from the Chairman he confirmed the applicant now wished to have a licence for plays all year round. He noted the additional documents that had been received from the applicant and circulated to the panel and Interested Parties; and the email received from Mr Tilbury who was unable to attend. The report included amendments to the current conditions as agreed with the Police and mandatory conditions; the application had been correctly advertised on the site and in the press. He summarised the representations made by the Environmental Health Protection Team (EPT), Responsible Authority and Mr Tilbury on the grounds of Prevent of Public Nuisance through noise at the site, listed in Appendices 4 and 5. He reiterated that parts of Mr Tilbury's representation related to planning matters and were not relevant, The Pumpkin Farm was not a working farm and Mr Tilbury had listed details of their Christmas activities.

The Panel were asked to determine the application in accordance with Section 34 of the Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations. Relevant representations must address one of the four Licensing Objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. He highlighted several paragraphs of the Section 182 guidance: representations are relevant if they are about the likely effect of the grant of the application on the promotion of the licensing objectives; representations can support or be in objection to the application and a representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. The Local Authority had to decide if representations were frivolous or vexatious. Each Responsible Authority are experts in their field and may be Licensing Authorities main source of advice; Responsible Authorities can make representations if there is evidence to support them. He reiterated that the Panel should consider each application on a case-by-case basis. The determination should be evidence based, justifiable as being appropriate to the licensing objectives and proportionate. The final decision made by the Committee could be subject to appeal in the Magistrates Court by any party to the proceedings, and any decision by the Committee should be evidence based.

Questions to the Senior Licensing Officer

There were no questions for the Senior Licensing Officer.

Paul Thornton, Licensing Consultant for the Applicant

He started by querying whether the 70 days applied for was up for consideration; they had requested extended hours for 1 September to 31 December, and not for 70

days. They had discussed the application with the EPT, but no agreement had been reached.

With regard to the blanket opening times on the application for Licensable Activities, Paul Vickers, Solicitor to the Licensing Panel confirmed any conditions can be amended accordingly, and the wording on the current license lacks clarity. He advised that the Panel Members needed clarity on what was being sought by the application and clarity can be given as part of their decision. The Senior Licensing Officer confirmed 122 days were being requested, which included the 20 Summer days already permitted.

The Licensing Consultant confirmed the applicants wished to vary the existing premises licence, regularise the timings of licence and change it to a newer business model. Most activities occur in the autumn and winter, pumpkin picking and they wanted to give an enhanced experience, there would be low key entertainment similar to busking with a maximum of 300 visitors and a refreshment hut selling alcohol. These facilities would be ancillary for the site; the dwell times of people picking pumpkins is a maximum of 90 minutes.

He summarised the history of the farm which had been bought by the family in 1938, in 1971 it opened to public for pick your own fruit and vegetables - June to October for 12 hours a day, in 1998 maize maze with refreshments opened and ran until 2017. In 2018 pumpkin picking commenced with evening sessions in 2020 due to the pandemic and to permit social distancing. The farm also hosts Shocktober Fest Scream Park, a unique experience in the UK and 1 of only 10 worldwide. In 2020 an Outdoor Drive-In cinema which continues today. The farm owners have recently travelled to the USA to talk about their business model, and UK farmers also visit to as fact-finding missions. The family has been on the site for 86 years, they are an honest, trustworthy, and successful business.

He highlighted the Noise Management Plan (NMP) by Mr Scott Castle, and the Code of Practice which has been accepted by operators and regulators and is used at concerts. He reiterated that it is guidance and not the law, the table is in their NMP and is acceptable if there are no more than 12 events a year; this is the basis of the EPT's objection. A business can depart from the guidance if evidence is provided and explained, he referenced paragraph 1 (for large scale music events with high powered amplification in stadia, open air sites, and lightweight buildings) and paragraph 3 of the guidance. He noted that the purpose of the code is to give guidance to minimise the disturbance. He disputed that the EPT had taken into account the type or size of events Mr Beare and Sons would host. He requested the panel take a common-sense approach of their NMP, which detailed the training of staff, pre-event testing, testing during the event, using recording and monitoring equipment, which would be freely accessible to the EPT officers. He confirmed the output would be adjusted if a complaint was to be received via their complaints system which had a complaint template. They would also host a post-event feedback meeting with the EPT.

He noted that the Licensing Authority and Mr Beare and Sons responsibility to promote the Licensing Objectives and Police and EPT had to regulate it and provide advice. Little credit was given to their tailored NMP, the complaint by the EPT has a generic explanation and does not relate to their site, and there have been no substantiated complaints for site for the past last 10 years. He referenced the additional information sent to the Licensing Team, which advises how the NMP complies with the Noise Council's Code of Practice as referred to by the EPT. He reiterated that any comments made by Mr Tilbury on planning matters were

irrelevant, and he has not made any representations on behalf of anybody else. Mr Tilbury bought a barn on the farm and Mr Stuart Beare's mother, and his son are neighbours; the presentation is inaccurate as no alcohol this served after hours, the site closes at 22:00 and the existing license conditions have not been breached regarding the number of events. No dates were given for the installation of the recording equipment so it cannot be verified; he asked for the reference to complaints to be ignored. The portable toilets are used for the pumpkin picking and are not part of premises licence. The pick your own business which operates across 120 acres was operational when Mr Tilbury bought his barn. He confirmed that Mr Tilbury has not engaged with the applicants regarding any complaints; Mr Stuart Beare had contacted him but had not received a reply.

The Chairman reminded the applicant's agent to keep his comments to licensing activities.

In summing up Mr Thornton confirmed a floodlight had been left on overnight on one occasion by mistake, it was a working farm so there could be mud on the road. The panel should determine the application to vary the current license. They could modify, add or delete conditions, limit the number of events, and requested the condition relating to the NMP be approved by the EPT be removed. He thought this condition would permit an officer to block an event if they don't agree with a NMP sent by operator, and no appeal would be possible. Then Licensing Authority can refer an operator to their NMP, which should be done at the investigation stage. He thought this was unfair and against natural justice. Mr Stuart Beare is an experienced, respected businessmen with a successful business. The business must keep pace in a changing world, and they are a credit to Mid Sussex as a business, tourist site and an employer.

The Solicitor to the Panel corrected Mr Thornton and clarified that Section 4 subsection 1 of the Licensing Act states that it is the duty of the Licensing Authority to promote to Licensing Objectives and the EPT is part of the Licensing Authority.

Mr Thornton observed that a good EPT Officer will talk to an operator to check they know their responsibilities if they think their NMP is unprofessional or deficient. He expressed concern that Mr Beare and Sons could be held hostage because a Council Officer does not like their NMP. He outlined the roles of the operators, and the Licensing Authority, stating the NMP is comprehensive, has in-built monitoring and checking and permits reviews of noise levels.

Questions to the Applicant

There were no questions from the Senior Licensing Officer.

The EPT Officer expressed concern of the Agent's view (that the Agent thought her department were holding the applicants' hostage), they are fully aware of the guidance and had tried to negotiate on the number of days of operation and noise levels; no straight answer had been received. In principle with a higher the number of days of operation they would need to be quieter each day, the NMP does not take this into account.

In response to Member's questions Mr Sam Bear confirmed the pumpkin picking is a family event and ends at 22:00 and the car park is usually clear by 22:15; and they grow over 1,000,000 pumpkins each year. Mr Stuart Beare advised Mr Tilbury has been a good neighbour, they have not aggravated him, there are some boundary disputes that they are trying to resolve, and they are on good terms with Mrs Tilbury. Mr Castle noted the entertainment would be a guitarist and a singer from 18 :00 to

22:00 with sets every 15 minutes, it would be low key, and they could reduce sound levels if required, they want to be good neighbours.

In response to the Chairman's concern regarding possible heavy amplification in the future should the application be approved, Mr Stuart Beare stated it was not in their future plans and conditions could be added, they are not in the music business.

Mr Thornton advised is a heavy rock band was to play on the site, the operators would first look at mitigation measures to reduce the impact.

The Chairman advised as a responsible Council Mid Sussex must consider prevention.

Mr Stuart Beare advised they were not trying to hold a five-day event akin to Glastonbury and Mr Castle noted that the licensing regime and statutory regime were two different principles.

Jane Cooper, Responsible Authority:

The Officer stated the EHP object as they believe to allow the proposed changes will result in a public nuisance and she believed the Licensing Objectives would not be upheld, she noted a dispute on the number of days activities are currently permitted. She expressed concern for occasional low-key events and referred to the operator's website for tickets to pumpkin nights. She believed the application would result in intensification of the site, with more than 500 people a day. The monitoring last year following a complaint regarding loud music in October was referenced, the music was clearly audible in a home that the lyrics could identified, and it was deemed intrusive. The Council wants to support business but not at expense of the public. The application sought to increase the number of days and the hours, there must be agreement between the applicant and the EPT. If there is an increase in the number of days, the music must be quieter, and she confirmed no agreement had been reached.

The EPT use the same guidance, which has recommendations for up to 12 days a year, she advised there is no guidance for more than 12 days and this demonstrates it would be intrusive. For more than 12 days the event should be, held indoors. The applicant wants to hold the events in a field close to houses; she didn't believe they could control the music to prevent a public nuisance. The way forward was to reduce the number of days of live music so a realistic noise level can be set; the applicant needs to demonstrate how they can achieve the noise levels and it should be included on the licence. The approving the application will create a public nuisance and EPT object to application.

Questions to Responsible Authority

There were no questions from the Senior Licensing Officer.

Mr Thornton asked for the results of the investigation regarding the loud music and what action was taken. The EPT Officer confirmed a complaint was received, the EPT installed recording equipment and the Applicant's Agent was aware that the only action taken was a discussion with the operator. Mr Thornton reiterated that he did not believe the complaint had been substantiated against the Pumpkin Farm.

In response to further questions from the Agent the EPT Officer confirmed only one representation had been received from local residents, and the EPT wanted to agree a noise level that was achievable. She confirmed Mr Tilbury had signed a witness statement confirming the noise had come from the field.

Mr Castle stated the Noise Management code is there to make making events work, he accepted that the code was dated, and bespoke values are required for each site. They could measure values over several days to identify the background levels.

In response to the Chairmans' question concerning other residential properties close to the farm, the EPT Officer advised the village was approximately 500 – 600ms away, low frequency sounds travel easily, and a low beat can be evident inside a property.

The Chairman asked the EPT Officer what would be acceptable. She advised if the applicant gave the number of days they could then suggest a level; and all suggestions had been rejected by The Pumpkin Farm. The Chairman then asked if the applicants thought they could reach agreement, Mr Stuart Beare advised he thought they could, but they would be reliant on Mr Castle for advice on what was achievable. The last suggestion was not achievable, as the noise level was below ambient traffic noise. The EPT Officer noted the impact on local residents. Mr Stuart Beare advised Mr Tilbury bought a barn in the middle of an existing farm.

The Chairman confirmed the Council supports local business, and the Environmental Protection Team and applicants need to try and come to an agreement before the Committee can reach a decision.

The agent for the applicant suggested they take an adjournment for 20 minutes to see if they could reach agreement with the Environmental Protection Team; the committee agreed.

The Environmental Protection Team and applicants left the chamber at 11.45, and they all returned to the chamber at 12.19.

Mr Stuart Beare confirmed no agreement had been reached and requested an adjournment, so they could continue their discussions. A key factor was determining the background level of noise and as the Environmental Protection Team want to set a maximum level above the background noise level; they will conduct a test with their system, then the Environmental Protection Team will know what is achievable.

All parties agreed to reconvene on Friday 3 March to continue the consideration of the application. The Senior Licensing Officer confirmed the applicant will notify the Liquor Licensing Panel if an agreement has been reached before the next meeting.

The meeting was adjourned at 12.27,
and the Panel will reconvene at 10.00 am on Friday 3 March 2023.

The meeting finished at 12.27 pm

Chairman