

## APPLICATION FOR A NEW PREMISES LICENCE

REPORT OF: Judy Holmes, Deputy Chief Executive  
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Wards Affected: Ansty & Staplefield  
Key Decision: No  
Report To: Liquor Licensing Panel

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### Purpose of Report

- 1 To provide information in order that the Licensing Panel can determine an application for a Premises Licence.

### Summary

- 2 An application, pursuant to Section 17 Licensing Act 2003, has been made by Mr Robin Langton, the Managing Director of Highweald Wine Estate for the grant of a new Premises Licence at Highweald Wine Estate, Deaks Lane, Ansty, Cuckfield RH17 5JB. Five members of the public, referred to as 'Interested Parties' within the Act, have submitted representations objecting to the application on the grounds of the Prevention of Public Nuisance. The Interested Parties are local residents.
  - 3 The Licensing Panel is 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.
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### Background

- 4 Highweald Wine Estate is an established vineyard accessed off of Deaks Lane, Ansty, Haywards Heath. The vineyard land consists of around 100 acres with onsite office/vineyard store building and winery.
- 5 The application is to license the area which contains the Winery together with a new shop/Garden Bar in the same area. The application states that the intention is for alcohol to be consumed in the shop/garden bar as tasting samples and for the provision of on and off sales. The tastings are in connection with planned tours of the Vineyard. The Panel will be aware that the tours themselves do not constitute a licensable activity.
- 6 The applicant seeks the following licensable activities and timings:

Licensable Activity	Timings
Supply of Alcohol – On and Off Premises	Mon - Sun 11:00 - 21:00

- 7 The proposed opening hours of the premises will be:
- Mon - Sun 11:00 – 21:00
- 8 The application was originally accepted on the 20<sup>th</sup> September 2022, but due to advertising issues and then amendment and re-submission of the plan the application had been extended and concluded on the 1<sup>st</sup> December 2022.
- 9 The application was advertised at the site between 20<sup>th</sup> September 2022 to 1<sup>st</sup> December 2022 and in the Mid Sussex Times on the 27<sup>th</sup> October 2022.
- 10 In total there were 15 representations against the application received during the extended consultation period that were not accepted as they did not address the licensing objectives. They concerned matters that could not be considered as relevant to this type of application. A further representation was received in support of the application but again was not accepted as it did not address the licensing objectives.
- 11 Representations have been received from five members of the public, referred to as 'Interested Parties' which did have relevance to the licensing objectives. The main points raised within these representations that are relevant, relate to the licensing objective of the Prevention of a Public Nuisance.
- 12 No representations have been received from any of the Responsible Authorities including the Police and Environmental Protection Team.
- 13 During the Consultation period the applicant requested that the following additional information be passed to Interested Parties together with an offer to meet with them see if their concerns could be addressed.

The applicant, Mr Langton stated:

*I believe there is confusion here. We will not have piped/recorded music outside. We will not accept buses or coaches. We are super luxury brand, with responsible customers usually coming in couples. We will not accept ANY loud or raucous behaviour, full stop.*

*This is a special and high-end experience, and we expect our customers to respect it.*

*If anyone would like to meet me so I can explain or discuss further, I am happy to do so at Highweald, at their place or somewhere neutral.*

*We do not want to cause nuisance to anyone.*

The Licensing Team are unaware if Mr Langton was contacted by any of the Interested Parties.

- 14 The following further observations were received from the Applicant's agent during the consultation period

*In respect of recorded music, it was stated that any music was envisaged to be background only and therefore under these circumstances would not be considered to be regulated entertainment.*

*There were further observations regarding general noise nuisance that the nature of the business would be that visitors are only likely to attract wine enthusiasts, wine club members and commercial enterprises and therefore would not describe the clientele as 'high risk'. They point out the wine tours and tastings are not a licensable activity and they did not believe this would cause excessive noise*

*They stated that the applicant had considered noise mitigation and explained that a number of trees had been planted and that there are plans to plant 30 more and hedging to enhance the mitigation.*

They also offered two further conditions which are detailed in Appendix 10.

The full email is attached at Appendix 2

- 15 The Panel should be aware when reading the representations from the Interested Parties that some of the information contained within their representations would not be considered relevant within this type of application. These are, references to differences with the operating hours and the existing Certificate of Lawful Development, the absence of specific Planning consents or permissions, the road network, access to the site, the rural nature of the area and the potential for light pollution should be ignored when considering the representations.
- 16 The Panel must focus on the relevant parts only and disregard the irrelevant matters when determining this matter
- 17 The Police have agreed conditions with the applicant and in addition the applicant has offered further conditions to address the representations.
- 18 If the Panel decides to grant the licence, I would request that, in addition to the Mandatory conditions, the conditions offered in the operating schedule by the applicant and those agreed by the Police be attached to the licence. Full details are attached in the Appendix 11.

## **Representations**

### **19 Interested Parties Representations**

#### **Anita Batten**

Anita Batten has made representations on the grounds of the Prevention of a Public Nuisance.

She has stated that:

*The effect of the proposed wine tours, the public wine tasting, buying products from the shop, drinking alcohol in the garden area listening to recorded background music outside, will create excessive noise. For me personally it will have an adverse effect on my health and well-being. I have MS and a symptom of this chronic disease is fatigue. I have to sleep in the afternoon and/or early evening in order to function properly without such rest I am liable to falls, disorientation, slurred speech this list goes on. Perhaps if*

*you Google the MS Society website it may help you to understand why sleep is so vital.*

*The reason for our moving to Deaks Lane two years ago from Lindfield High Street was for the peace and quiet*

*I so desperately sort to facilitate this rest. I ask you please to consider the far reaching problems this licence will cause to myself and my neighbours.*

The applicant detailed the measures that have been put in place to mitigate any potential noise nuisance, but these were rejected by the Interested Party.

The full details of the representation and the response are appended to this report at Appendix 5.

### **Andrew Moss**

Andrew Moss has made representations on the grounds of the Prevention of a Public Nuisance.

There are parts of his representation relating to any potential increase in traffic, access to the site, the rural nature of the area, possible light pollution would not be relevant for the purposes of this application and the Panel should focus on the pertinent parts of the representation.

*Our first concern is regarding the recycling time - up until 11pm & from 7am - we believe the license application allows sale of alcohol between 11am and 9pm, so why so late & early? The noise recycling bottles makes (glass smashing on glass in outside containers) travels easily in this particular landscape and we believe would be a public nuisance so late into the evening or early in the morning. I feel the late night serving of alcohol would cause many problems as mentioned in Prevention of Nuisance Guidance but most specifically in relation to noise levels.*

*We are also concerned about the increased noise of people drinking alcohol outside, listening to music in large groups, noise naturally increases. In addition to the noise that will be generated by the additional staff, shop visitors, tasting tour guests and other corporate event visitors.*

The representation in full is appended to this report at Appendix 6.

### **Sue Charlton and John Barrett**

These Interested Parties have made representations by letter on the grounds of the Prevention of a Public Nuisance.

They state that they live opposite the entrance to Highweald Wine Estate and believe that the effect of the proposed application would cause excessive noise which is likely to affect them as a public nuisance. They further state that this is due to the noise from the Winery will travel downhill towards their address. They state that they can already hear music from Whitemans Green, Ansty and Hickstead which are a further distance away.

Their representation in full is appended to this report at Appendix 7.

## **Amanda Daniels**

Amanda Daniels has made representations on the grounds of the Prevention of a Public Nuisance.

There are parts of the representation that are not relevant for consideration in this application; these being references to the Lawful Development Certificate, other potential Planning issues, the location of the visitor shop (which is confirmed as the Garden Bar) and potential disturbance to people walking along the bridleway. Persons using the bridleway are transient in nature as they are passing by the location and therefore are highly unlikely to be affected by people tasting or buying wine from the shop to the degree that would be required to evidence any public nuisance.

She has stated:

*The running and the operation, of the proposed Wine Tours and its related wine tasting, people purchasing products at the shop, (wherever it might) be people drinking alcohol in the Garden Bar on the 'Away Days', the 'hiring' of the 'Garden Bar for a Special Occasion' as advertised on the website while listening to recorded background music inside and outside would create excessive noise, in this intrinsically quiet area. This together with the marquees and the visitors centre, the chinking of beer bottles being loaded and unloaded and the noise of the motors running whilst these deliveries take place on the site also add to this noise.*

*The effect of this noise that is likely to happen, whether generated inside or outside, will become a public nuisance to us and will affect our wellbeing since one of us suffers from Parkinsons and often sleeps during the day.*

*Travelling from the Winery the topography of the land slopes in a north to south easterly direction to where we live approx. 1000 m from the Winery. This will allow any noise to travel easily to our house particularly when there is no other industrial noise (or any other noise) generated anywhere else in the area. For example we can quite easily hear the hum of the electric generator that's used by the vineyard and noise as far away as the Cuckfield cricket ground, Ansty social club and Hickstead in the opposite direction when it hosts various events.*

*If we lived in the town the likely noise generated from the vineyard noise would be lost among other normal urban noise pollution, but this is a very quiet rural area, and the noise is able to travel more easily in this environment. It's usually a very peaceful place to live.*

*If the applicant proposes to continue until 9.00pm beyond the 5.00pm finish time as stipulated by the LDC (COPUD) then the likely effect generated from the prolonged time, would create an even greater public nuisance since it's even quieter in the evening in this area of OANB, you could almost hear a pin drop. Whilst the applicant has stated a finish time as to when alcohol will be served there is no time stipulated as to when visitors are to leave the site.*

The representation in full is appended to this report at Appendix 8.

## Angela Pope

Angela Pope has made representations on the grounds of the Prevention of a Public Nuisance.

There are parts of the representation that would not be considered as relevant which relate to the use of the footpath and the playing of unamplified music which in these circumstances would not be regulated entertainment.

The representations surround the rural location of the area. It details the location of the Interested Parties in relation to the proposed licensed premises and the associated quietness of the area. It is stated that as there is very little background noise and noise from the licensable activity would be perceived to be greater.

It details the fact that the 'Garden Bar' has access to the roof area, a decking area to the front for the customers which, when used by customers will cause the noise to carry further.

There is concern expressed around the timings mention in the application in respect of the disposal of empty bottles together with the opening times.

The Interested Party states that the measures to reduce noise from customers entering and exiting the premises are not applicable as the area for them is in the open and the Garden Bar has bi-fold doors that can be opened.

The representation in full is appended to this report at Appendix 9

## Policy Context

### 20 Determination of Application for a Premises Licence

The Licensing Panel must determine the application in accordance with 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.

### 21 Section 18 LA03 deals with the determination of the application:

Grant of premises licence

18. Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

(a) receives an application for a premises licence made in accordance with section 17, and

(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to—

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

(4) The steps are—

(a) to grant the licence subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

(6) For the purposes of this section, “relevant representations” means representations which—

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and

(d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

(7) The requirements of this subsection are—

- (a) that the representations were made by a responsible authority or other person within the period prescribed under section 17(5)(c),
- (b) that they have not been withdrawn, and
- (c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

## 22 Relevant Representations

The Licensing Act 2003 requires representations to address the four licensing Objectives which are

1. Prevention of Crime and Disorder
2. Promotion of Public Safety
3. Prevention of Public Nuisance
4. Prevention of Harm to children and young persons

- 23 A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of a grant - (ie more probable than not)

## 24 **Guidance Issued Under Section 182 of the Licensing Act 2003**

### 9.3

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

### 9.4

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. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.

### 9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be



intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

#### 9.9

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

#### 9.37

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

#### 9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- Guidance issued under Section 182 Licensing Act 2003;
- its own statement of licensing policy.

#### 9.42

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

#### 9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.....The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

**Other Options Considered**

- 25 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence.

**Financial Implications**

- 26 The final decision made by the Licensing Panel in this matter is subject to appeal in the Magistrates Court by any party to the proceedings.

**Risk Management Implications**

- 27 None

**Equality and Customer Service Implications**

- 28 None

**Other Material Implications**

- 29 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise, than under, and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 30 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

**Sustainability Implications**

- 31 None

## **Background Papers**

Appendix 1 – Application Form and plan of premises

Appendix 2 – Email from Applicant's agent

Appendix 3 – Ariel View and site plan of area

Appendix 4 – Photos of location

## **Interested Party Representations**

Appendix 5 – Representation - Anita Batten

Appendix 6 – Representation - Andrew Moss

Appendix 7 – Representation - Sue Charlton & John Barrett

Appendix 8 - Representation – Amanda Daniels

Appendix 9 - Representation – Angela Pope

Appendix 10 – Schedule of proposed conditions

Appendix 11 – Licensing Panel – Procedure at hearings.