

**Minutes of a meeting of Mid Sussex District Council Liquor Licensing Panel
held on Monday, 19th December, 2022
at 10.00 am**

Present: Councillors: N Webster (Chairman)
J Dabell
Anthea Lea

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

Also in attendance: Robin Langton, Applicant
Nick Semper, Applicant 's Agent
Amanda Daniels
John Daniels
Gesine Moss
Anita Batten
Sue Charlton
Angela Pope
Ellen Fisher, Democratic Services Officer
Lucinda Joyce, Senior Democratic Services Officer

The Chairman introduced the panel and officers to the applicants and Interested Parties.

LS.1 TO RECEIVE APOLOGIES FOR ABSENCE.

Apologies have been received from Cllr Mockford and Cllr Anthea Lea is substituting.

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

None.

LS.3 TO CONFIRM MINUTES OF THE PREVIOUS MEETING OF THE LIQUOR LICENSING PANEL HELD ON 1 JULY 2022.

The minutes of the meeting held on 1 July 2022 were agreed as a correct record and were signed by the Chairman.

LS.4 APPLICATION FOR A NEW PREMISES LICENCE.

Introduction and outline of the report

Jon Bryant, Senior Licensing Officer introduced the report for the Panel to determine an application for a Premises Licence pursuant to Section 17 Licensing Act 2003 made by Mr Robin Langton, Managing Director of the Highweald Winery Wine Estate and noted that five members of the public who are also local residents, referred to as Interested Parties had made representations on the grounds of the Prevention of a Public Nuisance. 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 Highweald Wine Estate, off Deaks Lane, Ansty is set in approximately 100 acres with an onsite office/vineyard store building and winery. The application was to licence an area containing the Winery and the new shop/garden bar; the applicant intends that alcohol will be consumed in the shop/garden bar as tasting samples, as part of a planned tour of the vineyard and the provision of on and off sales. He highlighted that the tours do not constitute a licensable activity. The application seeks to supply alcohol, on and off the premises Monday to Sunday 11 am to 9pm, with the same opening hours. Due to issues advertising the application, an amendment and re-submission, the application was extended and concluded on 1 December 2022. The application was correctly advertised on site and in The Mid Sussex Times. 15 representations were received but not accepted as they did not address the licensing objectives; a further representation was also excluded for the same reason. Representations from five Interested Parties were relevant and all relate to the Prevention of a Public Nuisance; he confirmed that no representations have been received from the Responsible Authorities.

During the consultation period Mr Langton asked for additional information to be passed to the Interested Parties and offered to meet them: he confirmed there would be no piped or recorded music outside, they would not accept buses or coaches loud or raucous behaviour would not be accepted. Most clientele would be couples as they are a luxury brand and offer a high-end experience. The agent had confirmed to the Licensing Team that any music would be background music; the Officer noted that this would not be regulated entertainment. The high-end clientele would be low risk. To mitigate noise the applicant had planted some mature trees, and more would be planted along with some hedging, they offered two additional conditions which were listed in Appendix 10 and the email was in Appendix 2. The Panel were reminded that some information in the representations were not relevant to the applicant as they referred to: the operating hours and the certificate of lawful development, planning consents, highway matters, site access, the rural location of the site and potential light pollution. In determining the application, the Panel should only consider the relevant representations. A number of conditions have been agreed between the Police and the applicant, and the officer requested these are included along with the mandatory conditions if the Panel decide to approve the application.

The Senior Licensing Officer summarised the unresolved representations made by the Interested Parties all on the grounds of Preventing a Public Nuisance: Tim and Anita Batten, Mrs Batten has a medical condition that adversely affects her health and well-being which requires her to sleep in the afternoons/early evenings; she moved to the area as it was quiet. Mrs Daniels did not accept the mitigation measures put forward by the applicant.

The Senior Licensing Officer reiterated that parts of the representation by Mr Andrew Moss, Amanda Daniels and Angela Pope did not relate to the Licensing Objectives and the Panel should disregard them.

Mr Andrew Moss was concerned with the times for recycling, extended time for the of sale alcohol, and noise from the site from visitors / staff would travel to local properties. He would be represented by Mrs Gesine Moss. The officer noted that the performance of live and recorded music is not a regulated activity if they have a licence and there are fewer than 500 people in attendance. Any matters relating to

noise from music should be directed to the Environmental Protection Team (EPT) to investigate.

Sue Charlton and John Barrett live opposite the entrance to the vineyard and stated they would be affected by noise travelling to them from the site; they advised they already hear music from other local places, Whiteman's Green, Ansty and Hickstead.

Amanda Daniels was concerned that people drinking in the garden bar and the hiring of the garden bar with background music would cause excessive noise in a quiet area. Her husband has a medical condition which means he sleeps during the day. She noted they can hear the winery's generator and noise from Cuckfield, Ansty Social Club and Hickstead. She expressed particular concern over the time by which visitors would have to leave the site and the late time of operation as the area is quieter in the evening.

Angela Pope was concerned that in a rural location with little background noise, any noise from the garden bar (which has a roof terrace) would carry further. She had concerns with bottling and opening times. She thought notices to ask people to be considerate of local residents would not work.

The Panel were asked to determine the application in accordance with Section 18 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. He reiterated that the Panel was not there to review the current licence and each application was determined 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.

He highlighted section 9.44 of the Home Office Guidance Issued Under Section 182 of the Licensing Act 2003: 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. The inclusion of the provision of recorded music in the application is an error as less than 500 people will be in attendance.

The Chairman highlighted that that consideration must be made of people's rights under the Human Rights Act 1998, the licensee has rights under the first protocol, and the objectors have rights under Articles 1 and 8. Some Interested Parties have protected characteristics, and these must be carefully considered under the Equality Act 2010.

Questions to the Senior Licensing Officer

Nick Semper, Applicant's Agent had no questions.

The Solicitor advised the Interested Parties of the procedure of the meeting, cross examination of the participants was not permissible and clarification of any points by the participants assists the panel in their determination of the application and any potential additional conditions.

Mrs Batten asked about the volume of non-amplified music. The Senior Licensing Officer reiterated that it was not relevant as the playing of recorded, live or amplified music is not a regulated activity if fewer than 500 people are present at the premises with a licence between 8am and 11pm. If unregulated music from a premises causes a statutory nuisance the Environmental Protection Team (EPT) should be contacted to investigate.

The Chairman confirmed any matters relating to unregulated music are not covered by the Liquor Licencing Panel and affected residents must make their concerns known to the correct department when it occurs. Applicants can put systems in place to record complaints and a contact person at the licenced premises be identified in order to receive complaints. The Senior Licensing Officer suggested a noise management plan could be in place to deal with noise issues and noted that the applicant had not yet addressed the attendees or the Panel.

Mrs Moss, representing Mr Andrew Moss queried why the licensed area was so large and not just for the shop/garden bar, why the Winery needed a licence and not the tasting room and enquired about Temporary Event Notices (TEN). The Senior Licensing Officer suggested the applicant would be better placed to answer her questions. However, he advised that a licence enables the consumption of alcohol on and off the premises. Premises Licences and TENs are different activities. If no premises licence is held a person can apply for up to 20 TENs a year for a location, totalling 26 days, a person can apply for 50 notices a year.

Mrs Pope was also unclear of the process and questioned the scope of the licence sought, queried the intentions of the applicant noting the visitor shop had a maximum of 20 people on the tasting tour/garden bar. However, the email from the applicant noted a maximum of 60 people outside. She enquired if providing a venue for corporate hospitality would increase footfall, was concerned that excessive noise travels easily in a quiet environment and any licence should have appropriate conditions. The Senior Licensing Officer advised the applicant would answer some of her concerns in their representation and the application for the grant of a premises licence for the consumption of alcohol both on and off premises.

Members' Questions to the Senior Licensing Officer

The Members had no questions for the Senior Licensing Officer.

Nick Semper, Licensing Consultant for the Applicant

Nick Semper, Licensing Consultant for the applicant advised the winery was founded in 2015. Previously it was a working farm and the winery, which has won several trophies for their quality wine is not as intrusive as a farm. Currently they market their products through a third party and the licence will enable them to sell direct to the public through tours and tastings. To provide on and off sales the winery needs a licence. He confirmed there would be some entertaining in the garden, a maximum of 60 people, 11am to 9pm daily; it would not be regulated entertainment and would be *de minimis* by nature. He thanked the Senior Licensing Officer for sorting the non relevant representations, advised the Interested Parties must demonstrate that the Licensing Objectives would be impacted, and each applicant looked at on a case by case basis.

He noted there had been no representations from the Responsible Authorities. He advised wine tours, tasting and consumption of wine are not licensable activities, and disputed that the sale of alcohol would cause a public nuisance, reiterating it would be for a maximum of 60 people. The recycling times had been amended to 9 am until 9pm, and there would be no regulated entertainment at the site. He disputed that the scale and style of events at other locations which Interested Parties alleged to be audible were the same. With regards to the noise from the generator, there had been a farm on the site for a long time and the winery operation is quieter than a normal farm. He did not believe the application would cause a disproportionate and unreasonable adverse impact to a person living and working in the area. He confirmed all references to regulated music have been removed, no food other than canapes would be served, and these activities are not licensable. Mr Langton had written to all the Interested Parties confirming the Highweald Winery is a luxury brand, did not want to cause a public nuisance, offered a high-end experience and expect their clientele to respect the same.

They had provided additional information to the Senior Licensing Officer and the Interested Parties: the premises are surrounded by trees; 10 extra mature trees have been planted with plans to plant 30 more mature trees and 200ms of hedging to minimise noise escape from the site. He noted two extra conditions regarding noise from the site on page 34 of the agenda pack: no noise vibration to emanate from the site and they would turn down the music immediately at the request of the Police or EPT. He confirmed they were happy to develop a Noise Management Plan (NMP) and the Panel had to balance the ambitions of the applicant against the concerns of the neighbours. He advised "there was no evidence of public nuisance, just fear and speculation if the application is approved and the Licensing Act provided the means to remedy through review and that can be requested by anyone". The process should be evidence based and they have a quality operation that has not and will not impact adversely on anyone.

Mr Langton added he was happy to develop and implement a NMP and wanted to be a good neighbour.

Questions to Mr Langton

Mrs Daniels queried Mr Semper's comment that the vineyards operation was *de minimis* and if their licence was approved would their activities be greater/same as *de minimis*. Mr Semper advised the activities were described as *de minimis* to show the small scope and effect. There would be limited hours, a tight operating schedule, with a maximum of 60 for wine tasting, and a maximum of 20 for the tours and they would not be licensable activities.

Mrs Daniels expressed concern with the away days and hiring of the garden bar advertised on their website. She was concerned they would add to the noise levels and asked how many they would expect at these corporate events. Mr Langton confirmed the garden bar takes a maximum of 20 people, as it is small and the deck between 40 and 50 people, they are not expecting to host large corporate events. Their main activities will be the vineyard tours and tastings. They want to educate the public on the growing and production of their products and hope they will also buy when visiting the vineyard. Their web site had been updated and he confirmed "they would only do activities that fit the remit of the application".

Mrs Pope thanked them for a comprehensive representation and advised the Interested Parties would have liked sight of the applicant's representation before the meeting. She requested a copy of his representation. She asked why the

licence did not just cover the garden bar, and with the doors closed and sound insulation their concerns might be alleviated to some degree. She asked what noise management strategies they would propose for people outside. Mr Semper advised the NMP would be produced by a noise expert, and it will detail control measures necessary to prevent noise nuisance at the nearest premises. He could not advise what these measures were until the plan was complete. With normal good management, if are people making a lot of noise they will be warned or asked to leave. Mr Langton reiterated that they would not accept big groups or buses, and they sell a high-end wine. The tours will be managed, if there is another tour directly after one in progress there could be 40 visitors on the site. To mitigate sound the doors are double glazed, they have planted 4m mature trees with more trees and 1.4m hedges around the building, at significant cost. The vineyard and winery are part of the tour, and the licensable area is large as the wine is sold from the winery.

The Chairman asked how long it would take for a NMP to be in place and who would be in control of the tours. Mr Langton advised he had been the Chief Operating Officer at Ridgeview, running a similar operation; at no time were there any issues with noisy people. If visitors are out of order, they will be asked to leave. Mr Semper added that they use generic NMP and bespoke plans take about one month.

The Chairman advised they expect a specific NMP if the application is approved.

Mrs Pope expressed concern that they had not thought of developing a NMP prior to the meeting following receipt of all the representations. She had read that trees and hedgerows don't mitigate the transference of noise and act as acoustic barriers, they only help visually. She asked if they would consider restricting the licence to use of garden bar area with doors closed, reduce the hours and days, currently open 363 days and indoors; she also enquired where the wine sales would take place.

Mr Langton said their "proposed application was not unreasonable; they are happy to do a NMP to address her concerns and are not willing to amend the application as suggested". He confirmed the wine sales would be a small operation distributed from the winery and that would require additional activities and deliveries.

The Chair confirmed the recycling times had been amended to recycling 9am until 9 pm, and the NMP would be the responsibility of the Designated Premises Supervisor (DPS) as a condition of licence if it is approved. He noted that any business on that site would have deliveries to and from the site, whether a farm or winery and there would be extra traffic. He noted that the highway network was not a relevant matter in the application.

The Solicitor confirmed highway matters were not relevant to the Licensable activity and the Licensing Objectives.

Mrs Daniels asked how the applicant would deal with the noise generated by vehicles loading / unloading. Mr Semper advised the winery currently produces 250,000 bottles per annum and there would only be a change if the winery expanded its production.

The Chairman advised the noise of trucks unloading and bottles were not a licensing consideration.

Mrs Batten thought the licensing issue was a public nuisance with regard to noise from trucks and people. The Chairman confirmed it was a balancing act when dealing with the rights of applicant and the rights of the residents, and those with protected characteristics.

The Solicitor noted when dealing with the issue of a public nuisance, it is the likely effect of the granting of the licence that must be considered. If there is no licence to use the garden bar, the winery could still sell wine by selling through a third party, noise from trucks is not affected by the licensable activity. Noise nuisance is a separate matter and would be investigated by the EPT. If noise relates to the grant of a premises license, then the licence can be reviewed by the panel. All concerns raised relate to public nuisance, if license is not granted by the panel, all points raised re trucks, bottle noise trucks and use of site will still happen as not licensable activities.

In response to a question from Mrs Moss the Senior Licensing officer confirmed the licence application was specific to Mr Langton.

Mrs Moss queried what would happen if the winery was sold. The Senior Licensing officer confirmed if the winery was sold, the owner could transfer the licence over or Mr Langton could surrender his licence and new license could be applied for.

The Chairman requested information on exit times from the premises and how long after closing would they anticipate visitors remaining at the vineyard. Mt Langton confirmed they closing time had been revised from 11 pm to 9pm; there would be no tours in the last hour, and all visitors should have left by 9pm.

Mrs Gesine Moss representative of Mr Andrew Moss, Interested Party

Mrs Moss advised they live one field away from the vineyard and noted concerns with the long hours of operation at the site and bottling, noting some issues had been addressed to a degree. Their other concerns were the expansion from tours 3 days a week, noise of people arriving / leaving, and the staff would have little control over visitors as they can be noisier when they have had alcohol. They also expressed concern that the future format may change, fear of the unknown, but did appreciate it is a high-end operation. They highlighted the medical condition of their daughter.

Mr Langton advised they had a long-term business plan and suggested having ongoing dialogue and neighbourhood meetings.

The Chairman noted that there are a number of high-end vineries in the local area, all in rural quiet areas, and all valid concerns and would be considered.

Mrs Sue Charlton, Interested Party

Mrs Charlton advised she lives opposite the entrance, has a small farm and is aware of farm noise. Her recently diagnosed medical condition requires lots of rest.

Mr Langton noted that the driveway needs work and suggested adding sleeping policemen to reduce speed / noise.

Angela Pope, Interested Party

Mrs Pope asked the Panel to delay their decision until the NMP had been received. She was aware of the balancing act of the rights of the applicant and the neighbours. The previous farming activities on the site had been reasonable and the applicants proposed operation could be for 363 days a year.

The Chairman confirmed the Panel could agree conditions for the licence, can add additional conditions and when deliberating can agree an outcome based on the submission of an approved NMP.

Anita Batten, Interested Party

Mrs Batten reiterated that she needs to rest / sleep in the afternoon, and they moved to the area as it is quiet. Whiteman's Green is one mile away and they still hear noise from there through the trees. She also enquired how the staff could control the noise of visitors.

The Chairman noted that noise does travel, and some background noise is not always heard as people don't register it.

Mrs Amanda Daniels, Interested Party

Mrs Daniels expressed concerned on how the applicant would control noise of visitors and suggested not all local vineyards have residents living close by. She queried whether sleeping policeman were permitted on a public bridleway. Noise would be a greater nuisance as the area is quieter in the evening. She requested that they scale back their operating times. The use of the site as a vineyard has significantly increased when compared to the use as a farm.

The Solicitor confirmed that any concern needs to be evidence based, but conditions can be added to prevent a potential problem arising. The panel can add conditions to those already proposed or refuse the application.

Mr John Daniels, Interested Party

Mr Daniels noted they live 1km away and highlighted his medical condition, and how the effect of noise from the vineyard will disturb him and create a public nuisance. He confirmed he uses the bridleway on a regular basis as part of his normal daily activities. The area is quiet and peaceful, and more noise will be intrusive to him.

A Member stated the Interested Parties are fearful of the unknown, the vineyard will still be there tomorrow, and the applicant wants to make a small change to permit the sale and tasting of wine on the site in limited numbers. They appreciated the various health issues of the local residents, and the likelihood of extra noise when tours take place. If visitors are noisy the staff will ask them to leave.

Mrs Pope confirmed there is fear of future operations at the site, and the prevailing wind brings the sound to them and proximity to the noise source is critical.

The Chairman confirmed all their concerns had been noted and would be considered during the Panel's deliberations.

Mr Langton, Applicant summed up

He thanked everyone for attending and advised they would continue to work with their neighbours and the authority.

The Solicitor advised that the Members would retire to deliberate and asked the other attendees to the meeting to remain in the Council Chamber. The Members left the Chamber at 12.28 pm.

The Members returned to the Chamber at 12.52 pm.

The Chairman thanked all the attendees for their representations, and he advised the Panel understood the residents' concerns. He advised the panel must abide by the licensing regulations, have taken account of the equalities act and protected characteristics, and the rights of the business owners to earn a living. He recommended good communications, possibly by a WhatsApp group between the winery staff and the local residents, noting residents can make representations to the Council if the need arises in the future. The decision of the Panel was to approve the application with the additional conditions and subject to receipt of an agreed Noise Management Plan with Mid Sussex District Council.

RESOLVED

The application for a premises licence was approved with the following conditions:

Proposed Conditions: Conditions agreed by the applicant with Police

1. The premises will operate an age verification policy set at a minimum of 25 years, whereby any person attempting to buy alcohol who appears to be under the specified age will be asked for photographic ID to prove their age. Signage advertising the "Challenge" policy will be displayed in prominent locations in the premises and shall include the point of sale and the area where the alcohol is displayed, as a minimum.

2. All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive full training pertinent to the Licensing Act, specifically in regard age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs. Induction training must be completed prior to engaging in any sale of alcohol. Refresher training shall be conducted thereafter at intervals of no more than sixteen (16) weeks (this may be verbally delivered) All restricted sales training undertaken by staff members shall be fully documented and signed by the employee and a trustee member. All training records shall be made available upon request to an officer of a Responsibly Authority.

3. The premises shall at all times maintain and operate a sales refusals log and an incident log will be kept to record all refusals and incidents of crime or disorder. These shall be reviewed and signed by a trustee member at intervals of no more than four (4) weeks. Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises. These records shall be kept for a minimum of twenty-four (24) months and made available upon request to an officer of a Responsibly Authority.

4. Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.

a) The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.

b) CCTV footage will be stored for a minimum of 31 days.

c)The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.

d)The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.

e) Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police) for the police without difficulty or delay and without charge to Sussex Police.

f) Any breakdown or system failure will be notified to the police immediately & remedied as soon as is practicable.

Conditions Proposed within the Applicants Operating Schedule

5.Customers will not be permitted to take open containers of alcohol from the Premises.

6.The number of persons allowed for on-site tastings or group tastings will be limited to a maximum of 20 persons.

7.Notices are displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and the area quietly.

8.Disposal of empty bottles into waste receptacles outside the premises will not be permitted to take place between the hours of 2100 hrs and 0900 hrs to minimise disturbance to nearby occupiers.

Conditions Additionally Proposed by the Applicant during the Consultation period

9.The Premises Licence Holder or DPS must immediately comply with any request to adjust noise levels/ frequency spectra made by an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the Police

10.Noise or vibration shall not emanate from the premises so as to cause a nuisance.

11. Any licence is subject to the agreement of an appropriate Noise Management Plan with Mid Sussex District Council.

The meeting finished at 1.00 pm

Chairman