SOUTH HAMS LICENSING SUB-COMMITTEE

Minutes of a meeting of the **South Hams Licensing Sub-Committee** held on **Thursday, 7th January, 2021** at **1.30 pm Via Teams**

Present: **Councillors:**

Chairman Cllr Brown
Vice Chairman

Cllr Holway Cllr Smerdon

In attendance:

Officers:
Senior Specialist – Licensing
Monitoring Officer
Democratic Services Manager

Also in Attendance:
Mr Lance Whitehead (Applicant)
Mr James Clarke (Objector)
Mr David Furneaux (Objector)
Ms Emma Cane (Objector)
Mrs Sally Hosking (Objector)

5. **Declarations of Interest**
LSC.5/20
Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting. These were recorded as follows:-

Cllr Holway declared a personal interest in agenda item 3: 'Application for a Variation to the Premises Licence at The Boathouse, 28-30 Island Street, Salcombe TQ8 8DP' (Minute LSC.3/18 below refers) by virtue of knowing two of the objectors for the application.

6. **Application for a new Premises Licence at Calancombe Winery, Modbury, Ivybridge, Devon, PL21 0TU**
LSC.6/20
The Sub-Committee considered a report that sought to determine an application for a new premises licence at Calancombe Winery, Modbury, Ivybridge PL21 0TU.

The Senior Case Manager – Licensing introduced the report and outlined the details of the application (as stated in the application form at Appendix A of the presented agenda report). In so doing, she highlighted that the 'wards affected' in the published agenda report had incorrectly shown that the premises were located in the 'Ermington and Ugborough' Ward when they were actually sited in the 'Charterlands' Ward.

1. Address by the Applicant

In his address, the applicant provided some background information to the establishment of the business and proceeded to make specific reference to:-

- there being absolutely no intention for either a farm shop, pub or restaurant to be created through the proposals. Furthermore, Mr Whitehead confirmed that he had no desire to open the premises outside of the hours that were being sought as part of the application;
- planning permission not being required alongside this licensing application. At this point, the Monitoring Officer clarified to the Sub-Committee that this Hearing was solely concerned with consideration of the merits of the application in line with the four Licensing Objectives and the planning merits were therefore outside the jurisdiction of this Hearing;
- the intention to tightly control the numbers and timings of groups visiting the application site. When questioned, Mr Whitehead advised that, whilst difficult to predict demand, he did not envisage groups being in excess of 12 people at any given time. Also, Mr Whitehead was of the view that there would be no more than six tours taking place each week and it was the aim of the business to target both local visitors and tourists;
- the local economic benefits of granting this application. In expanding the point, Mr Whitehead informed that the premises would be recruiting a number of employees;
- the potential to expand the business into alcoholic spirits that were based upon the fruits grown on site; and
- he was fully aware and appreciative of the concerns that had been raised over traffic implications. Whilst Mr Whitehead had suggested a number of potential traffic mitigations to the objectors, unfortunately each one had been rejected by them.

2. Addresses by the Objectors

In their respective addresses, the objectors made particular reference to:

- the traffic access routes into the application site being wholly inappropriate (and indeed dangerous) for any additional vehicular movements. In addition, the objectors were of the view that the applicants had vastly underestimated the access issues especially when considering that a number of drivers were unfamiliar with driving on such narrow and dangerous roads;
- if approved, a condition should be imposed whereby tours should be booked by advanced appointment only;
- the lack of dialogue with the applicants was felt to be unfortunate and causing some ill feeling between the objectors and the applicants;
- some contradictions between the comments expressed by the applicants and the contents of their website;

- the proposals having a detrimental impact on neighbouring farm businesses; and
- the public notice being inappropriately displayed.

Once all parties were content that they had no further issues or questions to raise, the Sub Committee then adjourned (at 3.15pm) in the presence of Mr Fairbairn to consider the application and then reconvened at 4.00pm.

3. The Decision

In announcing the Sub-Committee decision, the Chairman read out the following statement:

1. *The aim of the Licensing Act 2003 is to provide a more flexible licensing system, by reducing the burden of unnecessary regulation, but still maintaining public order and safety.*

2. *The 2003 Act makes it clear that licensable activities are to be restricted only where it is necessary to promote the four Licensing Objectives.*

3. *In determining an application with a view to promoting the Licensing Objectives in the overall interests of the local community, the Sub-Committee is required to give appropriate weight to:*
   - *the steps that are appropriate to promote the Licensing Objectives;*
   - *the representations (including supporting information) presented by all the parties;*
   - *the Guidance issued under section 182 of the 2003 Act; and*
   - *our own statement of licensing policy.*

4. *The statutory guidance provides that it is imperative that our decision is evidence-based and that in reaching a decision the factors which are to be taken into account are limited to a consideration of the promotion of the licensing objectives and nothing outside those parameters.*

5. *The Licensing Specialist's report also highlighted relevant provisions of the statutory guidance and our own statement of licensing policy.*

6. *Finally, by way of setting the scene for our decision, the Licensing Sub-Committee is mindful that an application that must be considered on its own merits. Our function is to take such steps as we consider appropriate for the promotion of the licensing objectives having regard to the representations we have received and heard.*

7. *It is against this background that the Sub-Committee has considered the application by Calancombe Estate Holdings Limited, for a new premises licence at Calancombe Winery, Modbury. The Application is for the supply of alcohol for consumption on and off the premises Monday to Saturday 11:00am to 5:00pm, and Sunday 11:00am to 4:00pm. These hours had been modified following the consultation process as a result of representations from the Police about non-standard timings.*

8. *The Applicant represented by Lance Whitehead set out its arrangements for promoting the Licensing Objectives in the Application and in evidence before the Licensing Sub-Committee. Mr Whitehead explained that the proposals were limited in scope with guests being invited to taste and buy wines made from produce grown on the Estate and that there was no desire to open outside of the hours applied for. The number of guests on organised tours would be limited given that the premises were part of a working farm and had to be managed by the Applicant. He suggested that there might be two groups of 12 guests on 3-4 days a week. At certain times of the year Mr Whitehead said the number of guests would be very low as there would be nothing for them to see. There would be sales to passing people.*

9. *Mr Whitehead also responded to the objections received by suggesting that they were not relevant to the licensing objectives. Nevertheless he explained his understanding of the judgment in Millington v Secretary of State for the Environment, Transport and the Regions [2000] JPL 297 and how it concerned the "right" of a vineyard to open the site to public viewing of the wine making process and to offer the wine for sale along with light refreshments.*

10. *With regard to road safety Mr Whitehead said that the roads giving access to the premises were no different from others in this part of the country. He also referred to other venues in the vicinity that hosted other social events involving large numbers which he said had similar road access.*

11. *The Sub-Committee also heard from a number of local residents who had made written representations, either in person or by their representatives.*

12. *Graham Clarke objected to the Application. Mr Clarke lives at Bearscombe near Modbury. He set out his objections in writing and was represented by his son, James Clarke at the Sub-Committee. Mr Clarke's objections were he said related to public safety, prevention of public nuisance and protection of children from harm. The basis for his objections were that there were few passing places on the roads leading to the premises; the roads were not safe due to the number of blind bends and drivers unfamiliar with the roads would drive too fast.*

13. *David Furneaux objected to the Application. Mr Furneaux lives and farms land at Spriddlescombe Manor Farm, Modbury. Like Mr Clarke he told the Sub-Committee that the access roads were a problem and had it not been he would not be objecting. He considered that the increase in traffic that would be the result of the Application would have a detrimental impact on his farm business. He questioned the Applicant's ability to rely on the Millington judgment referring to the sale of Dartmouth Gin, which he said relied on 99% of its ingredients being brought into the Estate. Mr Furneaux drew a comparison with Sharpham Estate and told the Sub-Committee that Calancombe had twice as many vines. He believed that the numbers of guests to the premises would therefore be more than the Applicant was suggesting and that the Applicant was underplaying the impact of numbers on the roads.*

14. *Emma Cane and Martin Daw objected to the Application. They live at Higher Witchcombe Farm, Ugborough. Mrs Cane said that she shared the views of Mr Clarke and Mr Furneaux. She said that she recognised that the Applicant was trying run a commercial business, but suggested that if it extended with more*

signs, this would raise interest and encourage the simply curious to visit the premises which would add to the issues with the road. Mrs Cane then drew the Sub-Committee's attention to the Applicant's website which she said suggested that there would not be any need to pre-book an organised tour and therefore there would be, she said, continuous custom. Mrs Cane concluded by saying that she also was trying to build a farm business and that it was not possible for her or any other farmer simply to operate their business depending on whether the premises were open or closed as had been suggested by the Applicant.

15. *Mr Roger Hosking also made representations objecting to the Application on the basis of public nuisance. He lives at Crofts Park Modbury and was represented at the hearing by his wife, Mrs Sally Hosking. Mrs Hosking explained on her husband's behalf that the access roads to the premises were totally unsuitable and that existing traffic was already causing problems and incidents. She therefore agreed with what had been said by the other objectors. Mrs Hosking questioned the ability of visitors to the premises to drive along the roads in the vicinity of the Estate safely. She referred to there being an increase in traffic since the vineyard started. Finally, she suggested that the notice publicising the Application had been deliberately placed so that it would be difficult to read and described the steps some people had told her they had taken to read it. She also complained about the choice of newspaper in which the notice had been published.*

16. *With regard to the last point raised by Mrs Hosking, the Licensing Specialist confirmed that she was satisfied that the statutory requirements had been met.*

17. *None of the Responsible Authorities raised objections nor were any representations received from local councillors.*

18. *All of the representations that have been made objecting to the Application have alleged that the roads giving access to the premises are unsuitable and as a result their use to access the premises for the purposes of the licensable activities would give rise to a public nuisance or otherwise offend the Licensing Objectives. The Sub-Committee was also invited by more than one of the objectors to have regard to planning matters. As was said during the hearing and has been repeated earlier, the Sub-Committee is bound to consider only those matters that relate to the Licensing Objectives. The Sub-Committee cannot take into account any issues that are dealt with in other legislation. Planning and highway safety are not matters that can be taken into account. In view of the obvious feelings and differences of opinion on such issues however, the Sub-Committee would encourage all parties to seek to resolve those differences insofar as they are able to do so.*

19. *Having considered what had been said and written by the various parties, and having regard to the statutory guidance, and the adopted Statement of Licensing Policy, it is considered that the Application should be granted on the terms applied for subject to the Mandatory Conditions.*

20. *All parties have the right to appeal to the Magistrates' Court within 21 days of receipt of written notification of the Licensing Sub-committee's decision.*

21. *Finally, at any stage, following the grant of a premises licence a responsible authority, or any other person, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.*

The Meeting concluded at 4.15 pm

Signed by:

Chairman