

LICENSING SUB-COMMITTEE

Thursday, 20 April 2023

Attendance:

Councillors:
Read (Chairperson)

Achwal

Laming

Officers in attendance:

Claire Humphreys – Licensing Officer
Carol Stefanczuk – Licensing Manager
Nathan Mountney – Litigation Solicitor

[Full recording of the hearing](#)

1. **TO CONFIRM A CHAIRPERSON FOR THE MEETING**

RESOLVED:

That Councillor Read be confirmed as Chairperson for the meeting.

2. **DISCLOSURE OF INTERESTS**

There were no disclosure of interests made at this meeting.

3. **APPLICATION FOR PREMISES LICENCE - EXTON PARK, ALLEN FARMS LANE, EXTON, SO32 3NW (LR572)**

The Chairperson welcomed all those present to the meeting:

Applicant:

Lana Tricker – Principal, LT Law (representing the Applicant)

Robin McMillan, Chief Executive - Exton Park Vineyard LLP
Kit Ellen, Commercial Director - Exton Park Vineyard LLP

Other Persons who have made written representations:

David Frere-Cook – Speaking in objection to the application (representation on pages 77 & 78).

David Frere-Cook also spoke on behalf of the following five objectors:

Christine Frere-Cook (representation on pages 73 -76)

Diane Arthur (representation on page 96)

Huw Arthur (representation on page 90)

Jane Chase (representation on page 107)

Trevor Chase (representation on page 108)

Amanda Berwick – Speaking in objection to the application (representation on pages 80-81) Roy Middleton – Speaking in support of the application (also on behalf of Claire Middleton) - representation on page 101

Kevin Robertson – Speaking in support of the application (representation on page 86) (also spoke on behalf of the Sue Robertson - representation on page 83)

The Licensing Officer introduced the report which set out an application for the grant of a new premises licence under section 17 of the Licensing Act 2003 for Exton Park Vineyard, Allens Farm Lane, Exton, Hampshire, SO32 3NW. The application proposed the supply of alcohol, for consumption on and off the premises, Monday to Sunday 1000 to 2300 hours. The full application was set out in Appendix 1 to the report. In addition, the Sub-Committee also noted two supplementary agendas (appendices 1e and 2a) that were circulated and published separately to the agenda pack.

The Licensing Officer reported that several of the representations received in objection to the application, made reference to how the application could increase traffic on narrow country roads putting public safety at risk. It was for the Sub-Committee to determine if the grant of the licence would undermine any of the four licensing objectives. In addition, some of the representations referred to the grant of the premises licence resulting in a potential breach of the planning permission granted to Exton Park. The Licensing Officer clarified that the licensing and planning regimes were separate and confirmed that the licensing committee was not bound by decisions taken by a planning committee. Therefore, these matters were not relevant in the consideration of this licensing application.

The Sub-Committee were advised that Exton Park already held a premises licence (PREM667) permitting alcohol off sales Monday to Sunday 0900 to 1800 hours and noted that facilities at Exton Park Vineyard included Exton Hall, a wine promotional building with an external terrace.

The Sub-Committee were reminded that, in respect of applications for the consumption of alcohol on and off the premises, under the Deregulation Act 2015, if a premises has a licence for on sales between the hours of 0800 and 2300 hours, they do not require a licence for live or recorded amplified music, provided there were no more than 500 people in attendance and that, should the Sub-Committee be minded to grant the licence, Exton Park would benefit under this act.

The Sub-Committee were advised that no representations had been received by any of the Responsible Authorities, this included the South Downs National Park Authority who had been consulted on the application and submitted a comment set out in the report but had made no representation. 44 written representations had been received from 'Other Persons'; 18 against and 26 in support of the application, four of whom addressed the Sub-Committee with some also speaking on behalf of others. These representations were set out in full in Appendix 2 and related to all four of the licensing objectives; the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

The Licensing Officer made reference to one correction to Appendix 2, page 98 of the report, to note that the address for the representation received from Dougal Christie should have read 'West Meon' and not 'Exton', noting that the individual resided approximately 5.8 km away from Exton.

In conclusion, the Licensing Officer advised the Sub-Committee that, if minded to grant the application, there were conditions offered by the Applicant to consider, as set out in the operating schedule and Section 5 of the report, which the Sub-Committee could consider and amend as appropriate to promote the licensing objectives.

At the invitation of the Chairperson, Lana Tricker of LT Law, representing the applicant, Exton Park Vineyard LLP, addressed the Sub-Committee to set out the application in full. Ms Tricker also referred to the submission statement set out in Appendix 1b (page 43) and the plans set out on page 39 of the report and responded to questions of the Sub-Committee. In summary, she referred to concerns in relation to traffic, access and dispersal from the premises, where applicable to the licensing application and addressed comments made within the written representations raising objection to the application.

Ms Tricker reported that the applicant had hosted a community meeting and held a tour of the site in January 2023, where plans for the vineyard were discussed. This was attended by approximately 60 local people where the concerns of local residents regarding the sensitivities of the area had been taken on board with the generation of a traffic management plan. In addition, she reported that no objections had been received to the previous trading under temporary event notices at the premises for similar sized gatherings to promote the wine at the vineyard, which indicated that the trading proposed would have zero impact on the community whilst operating at the premises.

In conclusion, Lana Tricker clarified concerns that there was no intention to 'on sale' at the premises and stated that, if the Sub Committee deemed it appropriate, the applicant would have no objection to the imposition of a further condition, that licensable activities would only take place by Exton Park Vineyard LLP.

The Chairperson then invited four 'Other Persons' who had made relevant written representations to address the Sub-Committee. David Frere-Cook (also speaking on behalf of five other objectors - Christine Frere-Cook, Diane Arthur, Huw Arthur, Jane Chase and Trevor Chase), Amanda Berwick,

Roy Middleton (also speaking on behalf of Claire Middleton) and Kevin Robertson (also speaking on behalf of the Sue Robertson) all spoke in relation to their written representations and answered questions thereon. In addition, points raised were answered by the Applicant and the Licensing Officer accordingly.

Lana Tricker and the Applicant addressed the Sub-Committee to clarify matters not already addressed in her opening statement in response to the points raised during the representations given by Other Persons and answered further questions of the Sub-Committee.

At the conclusion of summing up and the open part of the hearing, the Chairperson advised that the Sub-Committee would retire to deliberate in private to make its decision. The Chairperson announced that the formal decision of the Sub-Committee would be provided in writing to the Applicant and Other Persons who had submitted written representations to the application, within five working days of the hearing.

The meeting of the Sub-Committee was declared closed.

The meeting commenced at 1pm and concluded at 2.25 pm.

Chairperson

The following decision was provided to all parties in writing within five working days of the hearing.

DECISION

In reaching its decision the Sub-Committee has carefully considered the application, the representations made by Other Persons and the Applicant's evidence given at the meeting. It has taken into account the Council's Statement of Licensing Policy, the Public Sector Equality Duty, the Home Office Guidance issued under section 182 of the Licensing Act 2003, the duties under the Crime and Disorder Act 1998, and the rights set out in the Human Rights Act 1998.

The Sub-Committee concluded that the application should be granted in accordance with the additional conditions set out in the Operating Schedule, and subject to the following additional conditions:

Operating Hours:

1. Hours the premises may be used for the sale of alcohol shall be:-
 - Sunday to Thursday 10:00 hours to 22:30 hours
 - Friday to Saturday 10:00 hours to 23:00 hours
2. Hours the premises shall be open for other than Licensable Activities:-

- Sunday to Thursday 10:00 hours to 22:30 hours
- Friday to Saturday 10:00 hours to 23:00 hours
- Numbers of people visiting Exton Park to be limited to 70 per week.
- Licensable activities shall only take place by Exton Park Vineyard LLP.

SDNP conditions

- SDNP and Dark Sky Reserve Area status – when artificial lighting is used indoors, use blackout blinds, and exterior lights to be of such a design and layout to reduce light pollution and prevent a nuisance
- Doors to the premises to be closed by 9pm to prevent noise emanating from the premises.

REASONS

General Points

The application has been determined on its own merits.

The licensing regime is permissive unless there are sound and reasonable arguments against the grant of a licence raised under the four licensing objectives.

The Sub Committee noted that no objections had been received from Responsible Authorities.

In addition, it was noted that no objections had been raised under the current licence, nor during or following the holding of events under Temporary Event Notices.

The application had attracted more representations in support, than against. Each representations for and against the application has been considered in full. Given the scale of representations received, the objections have been dealt with generally, save for citation of specific points raised. These were dealt with in turn under the relevant licensing objective heading below.

Agreed Conditions

Two conditions were offered by the Applicant during the hearing. These were:-

- (i) They were prepared to close the licensed premises at 22:30 hours; and
- (ii) Licensable activities would be solely held by Exton Park Vineyard LLP.

Matters irrelevant to the four licensing objectives

The Sub-Committee noted that a number of representations contained irrelevant matters in the determination of the premises license application.

These were as follows:

Planning permission – it is noted that whilst the planning and licensing regimes are separate (Policy 1.8) and as such submissions on planning matters have not been taken into consideration, this application is in line with the conditions attached to 2015 planning application, as detailed in the submissions from the applicant's legal representative. However, any evidenced breach of the planning permission reported to the Council's Planning Department would be investigated and, where appropriate, relevant enforcement would ensue.

Absence of Need – The submission that there were already licensed premises within the Exton village, so no need for a further licensed premises has not been considered.

Traffic as a Public Safety matter – A number of submissions referred to the increase of traffic and perceived consequences as falling under the public safety licensing objective. The Sub-Committee has not considered these under this licensing objective. However, this has been given due consideration under the relevant licensing objective - prevention of public nuisance.

Prevention of public nuisance

The representations against the application contained objections in relation to noise, light and traffic arising from events held at the proposed premises. These are dealt with in turn below:

The Sub-Committee considered the following matters when coming to its decision:

The s182 Guidance states at 2.15 "The 2003 Act enables licensing authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences.

It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result

of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health”.

The WCC Licensing Policy at 2.9 states “It will consider any demonstrable link between particular licensed premises and reported problems of nuisance and anti-social behaviour, although the Council recognises that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are away from that premises/place and, therefore, beyond the direct control of the individual, business or club holding the licence or certificate concerned.

C2. Stricter conditions with regard to noise control will be expected in some circumstances. This includes:

(ii) Areas of the District that have low levels of background noise (such as within South Downs National Park)

Must have regard to the purposes of the SDNP are:

- Purpose 1 - ‘To conserve and enhance the natural beauty, wildlife and cultural heritage of the area’.
- Purpose 2 - ‘To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public’.
- The SDNPA also has a duty ‘To seek to foster the social and economic wellbeing of the local communities within the National Park in pursuit of our purposes’. Where there is a conflict between the purposes and/or duty then Purpose 1 must have priority.

Noise

No evidence was received of actual noise nuisance emanating from the Exton Vineyard which would have relevance to the licence applied for.

It is clear from the application that the nature of venue and clientele is not such as to create a noise nuisance during events or upon egress of the premises. No representation evidenced to the contrary.

Events have been run under TENS without complaint, and no submissions have been received from Environmental Protection or the SDNPA.

The premises is geographically situated in a prominent situation such that any noise arising from the premises may travel into the village and surrounding protected area, and is located in the SDNP.

Whilst no demonstrable link was evidenced from other representatives regarding nuisance, regard must be given to the SNDP Two Purposes. Specifically with regard to noise control strict conditions are expected given the premises licence

is situated in the SDNP. To that end it is necessary to reduce any noise coming from the licensable premises to preserve the SDNP.

A condition requiring doors be closed by a reasonable time to prevent noise nuisance is reasonable and proportionate.

Light

The application provided a description of the premises, and particular reference was given to its external terrace where guests are encouraged to take in the view. It is safe to assume that access will be granted in the evening and so the siting of external lights was required. There was potential for light pollution from interior and exterior lights.

No evidence was received of actual light pollution emanating from the Exton Vineyard which would have relevance to the licence applied for.

The applicant made clear during the meeting that the venue had black out blinds that are deployed in the evening to eliminate light pollution from the venue.

Events have been run under TENS without complaint, and no submissions have been received from Environmental Protection or the SDNPA.

The premises was geographically situated in a prominent situation such that any light arising from the premises would significantly impact the SDNP's Dark Sky Reserve Area status.

In addition to the s182 Guidance and WCC Licensing Policy excerpts above, 2.20 to the s182 Guidance states that the Sub-Committee will have regard to balancing the need for light (to prevent crime and disorder and for public safety) and the rights of those affected by light pollution.

Given the setting of the premises to be licensed it is appropriate to mitigate if not eliminate any light pollution arising from its licensable activities. The Sub-Committee therefore propose a condition to counter light pollution, as detailed above.

Traffic

It is worth considering rehearsing some of the principles from guidance and policy detailed above here.

Whilst the Applicant states this is principally a planning matter, the Licensing Act 2003 also states that the act "enables licensing authorities, through representations, to consider what constitutes public nuisance..."

The "focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable".

2.6 goes on to say “It may include in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises”.

A significant number of the objections referred to the issues of traffic within Exton Village. Only one person, Mr Robertson, made actual observations that 21 vehicles per day visited the premises to deliver under the current licence. No evidence was submitted of increased delivery if the licence applied for were granted.

The applicant’s representative reminded the Sub-Committee that there was already a licence in existence. This application adds nothing to the level of traffic experienced (i.e. service vehicles), save for the patrons attending. The Applicant stated in its planning application that there would be groups of 6-8. When asked in the hearing about attendance, the CEO stated 2022’s attendance to be 20-25 people per week on average. The current application is for 30-40 people per week. This is in line with the applicant’s submission that the events would be small and bespoke.

Factoring in the Applicant’s submissions regarding the number of patrons per week and the potential for shared transport, the Sub-Committee concluded that the increase in traffic as a consequence of this application was not significant enough to amount to a nuisance. Even in the event it was established to be a public nuisance, the effect on the locality was proportionate and reasonable to the scale of the licensable activity granted.

It is noted that this finding was based on the Applicant’s submissions regarding the number of patrons per week. There was some concern expressed that the application, if not curtailed, could permit the attendance of up to 499 people, which would have a disproportionate and unreasonable effect on the locality. To that end it was necessary for the Sub-Committee to place a condition on the number of patrons who can attend in any given week.

Proposals by Glyn Richards to utilise the land to the north of the licensed premises to ease traffic in the Exton Village are untenable in that the land is owned by a separate legal person and the costs of creating access (£300-400k) compared to the minimal promotion of the licensing objective, that would result is such that the cost of works would be disproportionate.

The current risk assessment and additional actions by the Applicant show an awareness of the need to monitor its impact on traffic and respond accordingly.

Drink driving was the responsibility of the person driving, not of the establishment (s182 Guidance 2.21).

Prevention of crime and disorder

There was no direct evidence presented to the Sub-Committee connecting the proposed licensable activity at Exton Park to a risk of increased crime and disorder. There were suggestions that the increase of traffic would lead to more

crime and disorder based on numbers and this is the case against the applicant at its strongest.

The Applicant clearly demonstrated that the nature of the clientele was such that the likelihood of crime and disorder arising as a consequence of the sale of alcohol on the premises was minimal.

Representations for the grant of the licence stated that some have been employed by the vineyard either permanently or temporarily contributing to the reduction of crime and disorder. 2.15 to the Policy states that Employment and Local investment can be taken into consideration insofar as they are relevant to the licensing objectives.

The Sub-Committee found no good reason to suppose that crime or disorder will arise, and that prevention was encouraged. There was no need to add further conditions to those on the Operating Schedule to prevent crime and disorder. DPS, staff, systems and policies in place were deemed competent. The Applicant's proposed conditions deemed sufficient to promote the objective.

Public safety

No representations were received in relation to public safety. Many representations cited public safety but went on to discuss the issues of traffic outside of the proposed licensed premises which was beyond the scope of this licensing objective. Traffic had already been dealt with above.

Issues regarding children and traffic are dealt with under the protection of children from harm licensing objective.

Protection of children from harm

Many representations against the application discussed the potential of increased traffic as a threat to the safety of children who live in the area, and those on site. This objective is however focussed purely at licensable activities on site.

The Applicant explained that children are unable to attend the premises without an adult. Visitation was by appointment or invitation only, and the premises was gated.

Regard should be given to the fact this is a vineyard that produces and sells alcohol and that the proposal was that this be sold on site.

However, it was also noted that the existing licence would enable the sale in any event and there is no evidence to show that children have experienced, or been close to experiencing, any harm on site.

The Sub-Committee were of the view that the risk of physical harm arising from the application (additional patrons) was minimal, not requiring intervention by any additional conditions on the licence.

The Parties will be formally notified of the decision in writing shortly. This notification will include details of the right to appeal against this decision to the Magistrates' Court, which must be made within 21 days of the notification.

Any person or Responsible Authority can apply for a Review of a Premises Licence where they consider that the premises are undermining one or more of the Licensing Objectives. Further information about this process can be found at: www.winchester.gov.uk/licensing/alcohol-entertainment-late-night-refreshment/review-of-premises-licence-club-premises-certificate.