

Minutes of the meeting of the **Alcohol and Entertainment Licensing Sub-Committee** held in Committee Room 2, East Pallant House on Monday 5 October 2015 at 2.30 pm

Members Present: Mr J W Elliott, Mrs D Knightley and Mr J Ridd

Members not present:

In attendance by invitation:

Officers present all items: Mr N Bennett (Litigation Lawyer), Mr L Foord (Licensing Manager) and Mrs K Jeram (Member Services Officer)

1 To elect a Chairman for this Hearing

Resolved

that Mr Ridd be elected Chairman of the Sub-Committee.

2 Application for a New Premises Licence - Cellar Door Shop, Tillington Barn, Tillington

Applicant

Ms S Best, Head of Finance and Business Development, Nyetimber
Mr A Whitfield, Group Estate Manager, Nyetimber
Mr N Walton, Solicitor, Poppleston Allen

The Chairman formally opened the hearing and introduced the Sub-Committee members and Chichester District Council officers present. He also asked that the applicant and representatives, and interested parties introduce themselves.

Mr Foord outlined details of the application for a new premises licence. He referred to the Sub-Committee Protocol and Procedure Note and the order of presentation. He also referred to the list contained in the report of interested parties who had made a representation.

He explained that the premises had been described by the applicant as a converted building to accommodate tasting events for Nyetimber wines with an area to provide off sales of product. He referred to a letter dated 8 May 2015 contained on page 46 of the agenda papers, sent from the applicant to Mrs Holmes a nearby resident, that explained the new barn would be predominantly used by their vineyard team as an office and for the storage of equipment and vehicles. The letter also explained that the proposed shop would sell their wines both by the caseload and the bottle to the public. However, they did not expect a huge increase in traffic and the opening hours would be limited. It stated that in order to sell alcohol, a premises licence was required and advised that the shop would not open until an unspecified date during 2016. He explained that Ms Best would be the designated premises supervisor and currently held a personal licence issued by Hackney London Borough Council. A full copy of the application form was set out on pages 16-23 of the agenda papers and

the main elements summarised on page 7. The applicant had entered into discussion with Sussex Police and had agreed pre-conditions, although the outcome would ultimately be a matter for the Sub-Committee to consider.

He advised that there could be confusion between the need for a premises and community impact. Need concerned the demand for a public house and was a matter for the Planning Authority and the market. Other regimes such as planning permission and building control must be separated from the licensing regime and were not matters for consideration by the Sub-Committee and vice versa. He referred to the terminal hour granted by planning permission and advised that where this hour was different to those allowed on a premises licence then the applicant must observe the earlier closing time.

He reported that a valid application was received on 28 May 2015 and that the representation period had run for 28 days until 25 June 2015. The statutory notices had been duly displayed at the premises and published in the Chichester Observer series of newspapers on 17 June 2015. Three representations had been received from the local community. No responsible authorities including the South Downs National park had submitted representations. Sussex Police had though entered into substantial mitigation with the applicant early on during the representation period. The applicant had shown how the four licensing objectives would be met, which were set out on page 10 of the agenda papers. Live and recorded music had not been applied for as under the Live Music Act 2012 it would be incidental to the sale of alcohol and therefore unlicensable. The retail sale of alcohol on and off the premises had been applied for between 10:00 and 22:00 hours and could potentially take place every day of the week. The Sub-Committee was required to determine the application for a new premises licence and provide reasons for their decision.

Mr Walton confirmed that Mr Foord's summary was an accurate outline of his clients application.

Mr Walton, representing the applicant, addressed the Sub-Committee. He advised that it was a modest application that would enable his client to provide a service. The proposal supported the applicant's business objectives to have a facility close to the vineyard to provide sparkling wine without the need for buyers to attempt to source the product. He explained that the Nyetimber brand was a significant premier brand in the UK. Its products were sold in Harvey Nichols and Harrods. He explained that the application was totally transparent. Vineyard tours took place from 10.00am and finished between 19:00 and 20:00 hours during the summer. The application would allow their own products to be sold at the Tillington Barn vineyard, which would be stored in a domestic refrigerator as the volume of alcohol expected to be sold would not be high. The applicant was a responsible operator and he advised that as the grapes produced during 2012 would not have provided an adequate crop they would be ploughed back into the field. He advised that the supply of alcohol had been applied for from 10:00 to 22:00 hours and could take the form of wine tasting or the form of sales of alcohol in sealed bottles and cases only. He confirmed that the applicant was a responsible operator who wanted to offer a service to people. He advised that the applicant had invited the representors to an informal meeting to discuss their concerns, which were understood. He referred to the plan of the vineyard on page 72 of the agenda papers and the small area south

of the plan where the house of one of the representors was situated. He referred to two photographs, the first showed the previous grain drying facility and the second showed the applicants building as it was now. He advised that communication had been stilted and conciliation impossible as the applicant had received no response from the representors. The applicant had been notified that the representors would not be entering into mitigation with the Licensing Authority's Licensing Team before today's hearing. He explained that the applicant did not wish to do anything that would cause harm. He referred to the Nyetimber vineyard also owned by the applicant and advised that no incidents concerning alcohol had happened there. The premises was currently used as an office and the storage of equipment, and was intended to be used as a shop. He referred to the responsibility of selling alcohol and advised that any staff involved in the sale of alcohol would be required to be trained in respect of the requirements of the four licensing objectives. He referred to the issue of due diligence and advised a Challenge 25 Policy was now proposed that would require passports, driving licences, military ID or proof of age cards. He confirmed that staff would receive full training specifically concerning age restriction sales and would receive training at intervals of no less than 12 weeks. A sales refusal log and an incident log, which he thought was unlikely to have much use, would be kept and made available to Sussex Police and/or the Licensing Authority.

Following his representation Mr Walton answered a number of questions from the Sub-Committee. He stated that it was not envisaged that there would be lots of signage saying "get your bottle of wine here". He confirmed that customers could purchase wine for off sales. With regard to events put on by the applicant these would be by invitation only for which a charge would be made as the invitees would be those in the wine business who would receive a presentation about the wine produced. Open days had taken place for the sampling of wine but not sufficient amounts of alcohol was consumed by those present to get drunk. He advised that his clients business was a premier brand supplying to Henley Royal Regatta, horse racing events and classic car events. With regard to the access to the premises he advised that prior to the vineyard there was a grain store and drying facility with vehicles accessing the site all the time. The useable space for entertaining and sampling was 10m x 5m. There would not be a significant numbers of people attending at the same time and he did not envisage that the premises would be used continuously. The visitors who would be shown around would be far and few between. The maximum number of people the premises could accommodate was 25. The use of the track, which was owned by the applicant, would continue and he confirmed there had never been any issues concerning its use with regard to safety and public nuisance. He confirmed that no nuisance would be caused by the lighting of the premises as it was located inside the premises only. It was screened by a hedge and advised that someone would have to stand on a roof to see the lights. With regard to the products produced by his client he advised that a number of sparkling and non-sparkling products consummate with the type of grapes produced, including possibly Perry. Distilled products would not be sold. He confirmed that "pop up" restaurant events with food trailers would not take place. Events would be inside the premises and would be ancillary to wine tasting. He confirmed that only single bottles of wine, not cases of wine, would be stored in a domestic refrigerator and that no external cooling plant would be used.

The interested parties who had made written representations addressed the Sub-Committee.

Mrs Brown explained the reason that they had not met with the applicant was because of a planning application previously submitted by the applicant and how it was dealt with. The Council's planning officers had discussed the application with her mother, Mrs L Holmes but when the officers spoke to the parish council had told them something different. Also plans were not received when requested. This was why they had not wanted to discuss the application and had wanted it to be considered at today's hearing. She advised that the reason her sister had not responded to email correspondence was because the emails had been sent to the wrong address. She referred to Mr Walton's remark there was not much to see as there were only grapes and a building there and she stated that in light of his comments there was no need to provide wine selling and tasting facilities as there were the same facilities nearby. She pointed out that other nearby facilities operated restricted hours. The premises could be open for twelve hours a day, seven days a week. She questioned why the applicant wanted to sell wine from this premises as it was already sold to a large number of outlets where purchasers could obtain the wine rather than visiting the premises. The road leading to the premises had never had much traffic along it. It was a narrow track used by ramblers and dog walkers who also walked along there at night. With regard to the prevention of Crime and Disorder, visitors to the premises could be over the drink drive limit which could affect the ramblers and dog walkers. Currently the only vehicles to use the track were trackers and staff vehicles. She explained that her mother had to stop in the track and get out of her car to open her gate. She referred to the applicant's comments in the application form that made reference to the provision of pop-up restaurants. However an email from the applicant stated that there would not be a restaurant, only wine and nibbles. The application also made reference to live and recorded music and not background music as stated in the applicant's email. With regard to the area where the sale of alcohol, regulated entertainment and late night refreshment would take place, the plan on page 15 of the agenda papers showed a red line surrounding the premises and the outside area. However the plan on the website showed only one quarter of the barn where these licensing activities would take place.

Mr Bennett responded to some of the points raised by Mrs Brown. He advised that the key to be used was the smaller area in red showing where these licensing activities would take place. Mr Bennett also referred to the human rights that Mrs Brown's mother was entitled to, which included the quiet enjoyment of her home. With regard to the issue of need it was not for the licensing authority to decide if a business was needed in an area. This was a planning function and was dependent on the market. The application should be considered only against the licensing objectives and he referred to the case of *Thwaites PLV v Wirral Magistrates Court* which provided guidance on when objections were not relevant to the licensing objectives.

He explained that live and recorded music was not classed as a licensable activity if the activity took place between 08:00 and 23:00 hours unless more than 200 people were in attendance. The applicant had advised that there would not be more than 25 people at the premises at any one time and that the activity would only ever be

ancillary. The purpose of having visitors to the premises was to educate them about products. With regard to “need”, the Licensing Act 2003 did not allow the Licensing Authority to take need into account and the applicant would only have regard to the four Licensing Objectives. Under the Act each application was required to be looked at on its own merits.

In response to a question from Ms Brown asking if Mr Bennett was saying that her mother’s human rights as one individual were less important than the visitors to the premises. Mr Bennett replied that this was not the case and that her mother’s rights were relevant to the Sub-Committee’s decision. However, other people’s rights should also be weighed up and it was part of a balancing act where various rights would be considered. Ms Brown added that her mother was quite frail and that she was concerned about the effect of the changes at the premises that had been going on for the last four years.

Mr Walton responded to questions from the Sub-Committee. He confirmed that there would not be any external licensing activities. With regard to clarification sought concerning the summer barbeque for 60 members of staff when the application advised that only a maximum of 25 would be on the premises, he advised that the plan had been for the barbeque to take place externally but the weather had been bad. All members of staff had arrived in an old routemaster bus which most stayed in. He pointed out that this event did not require a licence as it was for staff members only. He advised that the reason that the applicant had asked to lop branches of trees that Mrs Holmes owned was so that the routemaster bus could drive to the premises.

Ms Holmes advised that she was pleased that Mr Elliott had visited the site. The Chairman confirmed that he knew the location. She referred to the comments that her sister had made earlier in the meeting about not agreeing to discuss the application as she felt the Council’s planning officers had been economical with the truth and had shown different plans to the Parish Council. She pointed out that her mother was very ill with uncontrollable hypertension and referred to her medical notes which stated that her blood pressure was over 200. She referred to a letter dated 10 July 2014 on page 47 of the agenda papers from Mr A Whitfield of Nyetimber Ltd that arrived the same day it was typed.

The Chairman informed Mrs Holmes that she was going too much into depth about her mother’s medical condition.

Mr Bennett advised Mrs Holmes that the members of the Sub-Committee would have read the agenda papers in detail. The sole factor for consideration was the four licensing objectives. Planning history were not things that the Licensing Authority could take into consideration as there was a risk of straying into areas that the Sub-Committee was not legally able to do so. Ms Holmes replied that she needed to explain about the letter. When the letter arrived her mother had got so upset that on 11 July 2014 she had to be taken to the accident and emergency department. This information was relevant as it came under health and safety. She asked if she could display a photograph of her mother’s bloodshot eye. At this point Mr Walton objected to the request. The Chairman advised that it was accepted that

her mother had a medical condition but they should now come back to the matter in hand and her objection to the application.

Ms Holmes advised that the premises was not suitable for the area. She referred to Upperton Vineyard which was a family run business that already put on tours etc. The Nyetimber Estate, 10 miles away, had a shop and wine tasting events, as well as already being used for pop up events.

The Chairman commented that Ms Holmes wished to support her sister's objection to the application and asked if she had any further objections that had not been heard. Mrs Holmes added that the access to the premises was a single track. She had photos with her today which were intended to show regarding health and safety issues. Traffic at the entrance to the track travelled at 60mph and when approaching the entrance from Petworth turning right she had experienced near misses from behind and cars trying to overtake. To get into her mother's gate the car had to be stopped in the track to open it outwards and she explained she was concerned of the car being hit by another when entering or leaving her mother's house. She advised that her niece helped her mother get in and out and that she herself had an estate car and had to back out of her mother's property. Another health and safety issue was that the farm opposite was a wedding venue and that if the premises, Tillington Barn also had an event and everyone left at the same time it would be dangerous.

With regard to the photos that Ms Holmes had brought with her the Sub-Committee expressed an initial view that it would be useful to see them. However as the documents had not been previously submitted, the applicant was asked to comment. Mr Walton objected to the showing of the photographs to the Sub-Committee. He referred to the commencement of the application for a premises licence on 28 May 2015 and the unavailability of the objectors to attend a hearing. Ms Holmes referred to the entitlement to a fair hearing. She advised that the photographs of the track should be seen by the Sub-Committee as access to her mother's property would be compromised and there would be accidents. Mr Bennett advised that the right to a fair hearing was applicable to both parties.

Mr Foord referred to Mr Walton's comments. He explained that once the application for a new premises licence was received three representations were received. The Licensing officers endeavoured to mediate but it soon became clear that the objectors wanted the matter to be considered at a hearing. The initial date was not convenient and further dates were considered. Mr Walton referred to a date agreed in September 2015 for the hearing, which the applicant was then told would be rearranged. Ms Holmes confirmed that this was the unsuitable date.

Mr Bennett advised that the angle of the road was clearly shown on the plans and referred to the two members of the Sub-Committee who knew the road well. Based on the views of Mr Walton and Mr Holmes it was for the Sub-Committee to decide if they wished to see the photos, but his advice was that on balance the photos had been produced too late in the day for the Sub-Committee to see.

The Sub-Committee accepted this advice and agreed to continue without viewing Ms Holmes photographs and were content that they had sufficient information that

they could continue with the information before them. The Chairman advised that the Sub-Committee was aware of the representors views that the track was an issue and that it was used by farm vehicles. He referred to the issue of Mrs Holmes entrance gate and advised that the Sub-Committee would duly take this into consideration when they retired to make their decision.

Mrs Brown said that she was concerned that the emails in the agenda papers showed that her family was not trying to sort things out. With regard to the lopping of the branches on the track this was done on Friday 17 July 2014, which was within days of the request. In response the Chairman said that the Sub-Committee did not want to come down in favour of either side but would consider the application as it was before them.

Mrs Knightley asked Mr Walton in view of the licensing objectives how the notices asking visitors to leave the premises quietly would be implemented. Mr Walton explained that such a condition was used as a due diligence condition by many operators. The wording of such notices would include the following wording to the following effect "Please remember we are only here for so long if you make a noise. Please remember there are residents...etc". These notices would be stuck on a wall so visitors would see them as they left and would not be placed along the road. The premises was a premier operation and not a place where visitors would have drunk four or five pints at the end of the evening.

In response to a question from Mr Elliott, Mrs Brown confirmed that her mother still drove a car but was nervous driving in and out of her house. Although her mother used a stick to walk following a hip operation she was safe driving on the roads.

Mr Walton was invited to make his closing statement. His client was only selling Nyetimber manufactured produce and advised that it was not an application for an off licence. It was a vineyard application for a certain type of product for a certain well off type of person due to the price of the products. The playing of recorded music would only ever be ancillary. Some of the events that took place would include wine and nibbles and he could not say there would not be hot canapés also. He referred to the case of Thwaites PLC v Wirral Magistrates Court. Saughall Massie Conservation Society, who had concerns that people leaving the premises would urinate and destroy farm equipment, had appealed against the licensing decision. He referred to paragraph 63 of the judgement in respect of the case, which clearly stated that the magistrates' approach was coloured by the failure to take into account the changed approach following the introduction of the Licensing Act. If the magistrates had given proper regard to the guidance they would have looked for real evidence for which there was none. With regard to the representors comments made at the hearing about the issues that may arise from the premises, there was no evidence as licence not been granted.

With regard to the use of the track there were no incidents of people screaming down the track and knocking ladies over. The track, which was a public right of way, was kept in good order and the area would be managed to ensure accidents would not occur.

The Members of the Sub-Committee then retired to discuss and make their decision, the Litigation Lawyer having first obtained the consent of all the parties to retire with the Sub-Committee in order to offer legal advice, only if required.

Resolved

The Sub Committee noted the Act, relevant Home Office guidance and case law including the case of Thwaites PLC v Wirral Magistrates Court expressly referred to in submissions, along with local policies and protocols in particular the Council's statement of Licensing Policy. The Sub Committee was advised on the interpretation of Thwaites by their solicitor both in open session and in private session.

The Sub Committee noted all submissions and representations.

The Sub Committee noted in particular the representations of the applicant in respect of the operating practices and history of the applicant at this site and other locations. They noted that the applicant continues to operate successfully within the licensing objectives at other locations. They noted good practices including the responsible training regime on licensing act duties for relevant company employees. The Sub Committee noted the scale of operation and the representations as to number of visitors who could physically use the premises for licensing events and the assurances made by the applicant as to their intention of being a well- managed business.

Due to the representations received, the Sub Committee gave particular consideration to the potential for public nuisance at the site in particular the submissions as to lighting, site access and customer arrangements as well as the lack of external refrigeration. The Sub Committee felt the application properly considered and promoted the licensing objective of prevention of public nuisance.

Due to representations received, the Sub Committee gave particular consideration to the potential for public safety concerns in particular site access noting the history of the access road being used by users or visitors to the premises. The Sub Committee felt the application properly considered and promoted the licensing objective of ensuring public safety.

The Sub Committee noted that there had been no representations from the responsible authorities.

The Sub Committee noted the detailed concerns of the representors and in particular their submissions as to the impact and potential impact of the application upon Mrs L Holmes. The Sub Committee was most sympathetic to these concerns and the submissions as to her human rights and those were considered throughout their deliberations as to the application.

On the basis of all the above deliberations the Sub Committee GRANT the license, as requested.

Mr Walton thanked the Sub-Committee for what he described as their wise decision and again commented that his client was a responsible operator. He advised Mrs Brown and Ms Holmes that if there was any cause for concern in relation to any issues at the premises then they could telephone his client who could then talk to them and reassure them to make sure their lives were not affected.

3 Consideration of any late items

There were no late items for consideration at the meeting.

The meeting ended at 4.45 pm

CHAIRMAN

Date: