

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING SUB-COMMITTEE

WEDNESDAY, 12TH JULY 2023, AT 10.58 A.M.

PRESENT: Councillors A. M. Dale, D. J. A. Forsythe and C.A. Hotham

Observers: Councillor B. McEldowney

Officers: Mrs. V. Brown, Mr. P. Morrish, Ms. S. Royall (observing)
and Mrs. P. Ross

1/23 **ELECTION OF CHAIRMAN FOR THE MEETING**

RESOLVED that Councillor C. A. Hotham be appointed Chairman of the Sub-Committee for the meeting.

2/23 **APOLOGIES**

There were no apologies for absence.

3/23 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

4/23 **APPLICATION FOR THE GRANT OF A PREMISES LICENCE - HARBOURS HILL VINEYARD, HARBOURS HILL FARM, HANBURY ROAD, BROMSGROVE, B60 4AG**

The Council's Legal Advisor having opened the Hearing, and in doing so, apologised to all those present for the Hearing commencing late. It was explained that late information had been received and that all parties to the proceedings had agreed that the late information would be presented at the Hearing. Therefore, the Democratic Services Officer had to prepare enough photocopies for Sub-Committee Members.

The Chairman then welcomed everyone to the Hearing and asked all parties present to provide a brief introduction.

The Technical Officer (Licensing), Worcestershire Regulatory Services (WRS) presented his report and in doing so drew Members' attention to the application and supporting documentation, as detailed at Appendix 1 to the report.

Two representations had been received from 'Other Parties,' as detailed at Appendix 2 to the report.

In response to Sub-Committee Members, the Technical Officer confirmed that the application had been advertised in accordance with the requirements of the Licensing Act 2003 and associated regulations. The applicants had advertised the application in a local newspaper and had displayed signs around various suitable locations around the premises.

In response to Mr. D. Craig, the 'Other Parties' legal representative, querying this; Mr. N. Pretorius, the applicant, also clarified that he had placed the correct blue signs at 50 metre intervals, wherever it was suitable to do so without destroying any hedgerow.

In response to Mr. N. Semper, the applicant's legal representative, the Technical Officer confirmed that the representations received were in respect of public nuisance.

Mr. D. Craig further added that his clients were also concerned about public safety.

At the invitation of the Chairman, the applicant's legal representative, Mr. N. Semper, Director, The Licensing Guys Ltd, addressed Sub-Committee Members.

Mr. Semper informed Members that Harbours Hill Vineyard was an eight hectare site situated adjacent to Moorgate Road, Hanbury. The site consisted of a one hectare vineyard and two brick built farm buildings. There were two tracks to the site, one west of Hanbury Road and one south of Moorgate Road; as per the Ordnance Survey map provided. There was access via both gates, one into the site and one out of the site.

His client has purchased the site in 2017 and the vineyard was introduced in 2018/2020, in 2024 the wine would be ready to sell. There would be no commercial wine sold, it would be sold on-site or via on-line purchases.

There was plenty of parking with 10/12 people visiting per day and up to 20 people for weekly wine tasting sessions. The premises was therefore low risk with a low number of clientele visiting the premises. The hours being sought for the sale of alcohol (sales at the premises) was not unreasonable.

Worcestershire Regulatory Services (WRS) had been engaged with by the applicants, who had used their pre-application service. The licensing objectives were not being undermined. The schedule, as detailed on the application form was capable of meeting the licensing objectives.

Evidence was required as to how the applicants would undermine the licensing objectives and those who had submitted representations

needed to produce that evidence. Under Section 182 of the Guidance, representations had to be relevant and proportionate.

The application form detailed: -

- the operating schedule
- the steps that would be taken to promote the licensing objectives
- the Designated Premises Supervisor (DPS)
- a description of the premises

Mr. Semper state that there was no history of disorder or noise complaints at the premises before Sub-Committee Members.

No objections had been received from the police, environmental health, public health, the Council's planning department, trading standards, children's services; and no district or community group. Not one lead or expert consultee had raised an objection, so the application did not undermine the statutory requirements.

Mr. Semper then referred to the representations received and the concerns detailed in those representations: -

- Increase in traffic, creating noise and dust.
- Debris from the farm track
- Access - dangerous traffic conditions due to the Hanbury Road being a 60 mph limit and visibility splays.
- Failure to inform neighbours
- By products of the business - carbon dioxide and hydrogen
- Suggestion that the applicant moves their business to the Business Park
- Planning permission

Mr. Semper highlighted that highways and planning concerns would be addressed by highways and the planning department. The applicants had not applied for any music, and they would not tolerate any disruptive behaviour at their premises.

Mr. Semper further stated that those who had submitted representations were being fearful and speculative should the licence be granted. Their representations were not evidence based as the premises was not as yet open. Judgement should only be attached to a licence to support the licensing objectives and there was no history at the premises. Parliament had already provided a mechanism for reviewing a premises licenses and that review mechanism could be used.

Mr. Semper further informed the Sub-Committee that he had corresponded with Mr. D. Craig, the 'Other Parties' legal representative with regards to suggested conditions in order to provide reassurance that the licensing objectives would be met, the suggested conditions were as follows: -

Prevention of Public Nuisance

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

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

Alcohol – Online Sales

All sale of alcohol arising from an online order for delivery must be paid for, at the point of ordering, by credit card or debit card.

The delivery of alcohol shall be made only to a residential or business address and to a customer ordinarily resident or employed at the address.

Orders will not be accepted or completed to any person in a public place (for example a street corner, park or bus stop).

Where a third-party courier is used to supply alcohol, only reputable courier services will be utilised and they must provide an age verification service or adopt a policy of checking age and ID at the time of delivery. During the course of the Hearing, Mr. Semper also agreed for Challenge 25 be included

The courier must ensure that any order containing alcohol was received by a person over 18 years of age and measures must be in place for the refusal of delivery of items containing alcohol where no person over 18 years of age was able to receive the order.

Mr. Semper further clarified the boundary of the farm and the area where licensable activities would take place, namely the two buildings, the barn and winery. An amended plan was circulated to all parties to the proceedings for further clarification. The plan further detailed areas which could be used for the consumption of alcohol on occasions when the weather was inclement. Mr. Semper and Mr. Pretorius both further clarified that a gazebo would be used on such occasions and not a marquee as referred to in Part 3 of the Operating Schedule (page 16 of the main agenda pack).

Mr. Semper stated that to sum up, the premises would not undermine the licensing objectives. WRS had not objected to the application and there was no history of noise nuisance at the premises. There was also no pollution or public safety concerns.

In response to the Chairman, Mr. Semper confirmed that his client would look to make use of a marquee in the grounds, if events became bigger (50 people attending); then his client would then look to apply for a

Temporary Events Notice (TENs). The area adjacent to his nearest neighbours would not have a marquee sited near them, but he would require some sort of cover during any inclement weather. A gazebo would accommodate up to 50 people who wanted to eat sandwiches, drink tea or taste wine, he did not intend to have wine tasting sessions for a very large number of people.

Mr. Pretorius further added that he intended to have one wine tasting session per week through the summer months, with wine being sold; there would be no 'walk-ins' in order to purchase wine. With regard to having 50 maximum people attending (possible coach parties), Mr. Pretorius further clarified that he would not be looking to receive coach parties and he could not see a time when there would be more than approximately 20 people attending of an afternoon. There would also be volunteers working on site. His wine would retail at around £20 per bottle and he would look to attract clientele who could afford this.

In response to the Chairman with regard to the amended plan, Mr. Craig stated that he had enquired about the 'boundary' and licensable area, as his clients were concerned about live music; as the Live Music Act 2012 enabled live or recorded music between 8:00am and 11:00pm. His clients had not suggested that the premises licence application should be refused. They would just welcome a reduction in the licensable area and the area they had suggested was sensible, to use the three areas furthest away from their property, as they had concerns with events taking place near to their property.

At this stage in the Hearing, the Council's Legal Advisor asked Mr. Semper to mark an A3 copy of the plan, to show the amended licensable area. Mr. Craig and Sub-Committee Members were then provided with a copy of the definitive amended, marked plan for the areas to be licensed.

Mr. Craig continued and stated that his clients were still concerned by the area being by the gate, which was close to their property. However, he very much welcomed the reduced licensable area, as highlighted by the blue line on the amended plan, which provided some guidance.

Mr. Craig further commented that he wanted it to be clear on the Operating Schedule, as to what constituted an event, an appointment and a booking.

In response, Mr. Semper referred to Section M of the Operating Schedule (page 29 of the main agenda pack).

Mr. Pretorius further added that basically a record of every person entering the farm to buy wine/cider, on-line booking, telephone booking would be taken, he would not accept 'walk-ins.'

At the invitation of the Chairman, Mr. D. Craig, the 'Other Parties' legal representative addressed the Sub-Committee.

Mr. Craig stated that he would like to address some legal points with regard to relevant representations being submitted and that people were entitled to make representations and observations. Often representations were mis-quoted or mis-advised. With regard to fear, speculation or evidence provided, that was for Sub-Committee Members to decide as to what weight was given.

Members would evaluate what was heard from both parties. His clients were not seeking a refusal, they were concerned with the impact and disturbance it would have on their lives.

It was for Members of the Sub-Committee to arrive at an appropriate determination, with what Members would hear during the course of the Hearing. He was happy that the area to be licensed had been amended. He did not accept though what Mr. Semper had stated that the Operating Schedule was perfectly structured, if it were then Mr. Semper would not have had to alter things.

Mr. Craig continued and further stated that he would like to see Challenge 25 added to on-line sales and would like further clarification and it to be clear on the Operating Schedule Part d), as to how long a tasting event would last, how many tasting events would be held each day, as this was not clear. His clients did not want people turning up all day, every day for all of the licensing hours being sought. It was also not clear if someone could just turn up, book a tasting event and then enter the premises. The premises needed to be run in a proper way, with proper conditions explained as to how the premises would operate, his clients had been caused some concern by the Operating Schedule not providing enough detail. He was just trying to prevent the licence from being reviewed, should a licence be granted. If the conditions were fully covered and explained it would avoid a review' for example: -

'Visitors to the premises will be by appointment only' – could they just turn up and book and appointment two minutes before?

'Visitors will not be left unattended whilst on the premises' – what did this mean, how could this be enforced?

'We will deliver our wine to 18 yrs. and over and if any doubt, proof of ID will be requested' – Mr. Craig suggested this be amended to 25 yrs. How would on-line alcohol sales be monitored for proof of age? As stated earlier he did not accept that the Operating Schedule was perfect, as stated by Mr. Semper.

Mr. Craig further informed Members that the pathway did not form part of the licensable area, and his clients had expressed real concerns with regard to the public safety aspect, there were no limits to stop people /

prevent people and delivery lorries using the access 24 hours a day. The access was right next to their property ingress/egress.

Public safety element with people using the premises and people using the pathway. He had visited the path/road and in his opinion it was unsafe. His clients did not want an accident to occur outside of their home. The means of exit was not safe to be used on a regular basis, and this was their biggest concern. They were not concerned for their own safety but concerned that someone was going to die using that pathway. The road was not a safe road and his clients had genuine, real concerns.

In response to the Council's Legal Advisor with regard to Mr. Craig referring to the 'pathway,' Mr. Craig clarified and confirmed that he had meant 'driveway.' Mr. Craig and his clients further clarified and confirmed where their property was located on the amended plan.

Mr. Craig stated that in summary, his clients were not here to stop Mr. Pretorius from having a premises licence, this was not in his instructions from his clients. It was only fair and proper for their concerns to be raised if their lives were going to be interfered with. Any interested party could make a representation, there was no such thing as 'vicinity.' Local Councillors would make a proper and adequate decision on the premises licence application based on fear / speculation not based on knowledge of the area. They would hear his client's representation as per representations from any responsible authorities.

Further discussion took place on the two gates that had been referred to by Mr. Craig, and Members sought further information from all parties in respect of the gates.

Members referred to and further commented that the applicant had submitted further conditions once they had been made aware of the concerns raised by Mr. Craig's clients.

At the invitation of the Chairman to sum up, Mr. Craig suggested he would firstly deal with obvious certain matters to be addressed by defined conditions outside: -

- Use of the track
- Public Safety
- Public Nuisance
- Marquees being sited closest to his client's property to be restricted.
- Condition the gate that was sited right next to his client's property.

- Two defined areas for marquees and some restrictions on the number of marquees.

His clients did not want the premises licence to be refused, they simply wanted conditions placed on the premises licence. It was only fair and right for them to enjoy their property and for the business not to impose on or burden their lives. His clients wished Mr. Pretorius a successful business.

At the invitation of the Chairman to sum up, Mr. Semper responded to Mr. Craig and in doing so commented that with regard to the concerns raised about the pathway / driveway, the driveway was a vehicular driveway. Marquees would only be used should a TENs be applied for. The gazebos were not 'Big Top' tents, they would be used to provide cover for pre-booked clientele at the premises during inclement weather.

The vehicular access was not a licensable activity. Harbours Hill Farm was a working farm and for years tractors and vehicles had used the access. Since the farm had changed to a vineyard less tractors used the access.

Mr. Semper continued and explained that pre-bookings only would be taken, as explained by Mr. Pretorius, there would be no 'walk-ins.' The road was not a dangerous road and he had researched the area using Crash Map UK, and there had been no accidents in the last five years, only two slight injury accidents in 2001 with one casualty in both accidents.

In his opinion it was not a dangerous piece of road for vehicles to access. The Council's Planning department and Worcestershire County Council, Highways department, who had been consulted with, had raised no concerns or matters.

His client had voluntarily offered additional conditions in order to offer reassurance to those who had raised representations.

With the agreement of the Chairman, the Council's Legal Advisor took the opportunity to reiterate that Mr. Pretorius had implied that it was a small business and unlikely to generate more than 50 people on site at any one time and that only approximately 20 people would attend the wine tasting sessions, and that the rest would be volunteers working on site.

At the invitation of the Chairman, the Council's Legal Advisor addressed the Sub-Committee and in doing so stated that Members had received and heard a lot of information during the course of the Hearing.

Members should make a determination on the licensable activities, as detailed on page 10 of the Agenda Report pack.

Members could: -

- (a) Grant the application as requested
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the application in whole or in part.

Members should consider the evidence as presented, the amended plan, the additional conditions offered by the applicant and licensing objectives.

At this stage in the Hearing, the meeting stood adjourned from 12:46 hours until 13:20 hours in order for Members to consider if they had received all of the information required to make their decision.

Having had regard to:

- The licensing objectives set out in the Licensing Act 2003.
- The Council's Statement of Licensing Policy.
- The guidance issued under section 182 of the 2003 Act.
- The Report presented by the Technical Officer, Licensing, Worcestershire Regulatory Services.
- The application and oral representations made at the Hearing by Mr. Semper, legal representative and Mr. Pretorius.
- The written and oral representations made by Mr. Craig, legal representative for three local residents.

The Sub-Committee decided to grant the application for a premises licence relating to Harbours Hill Vineyard in the terms as set out in the Operating Schedule, along with the additional conditions submitted at the Licensing Sub-Committee Hearing by the applicant.

Members considered it appropriate to make amendments, for clarification, to the additional conditions and that this would be detailed in the Decision Notice to be sent to all parties to the proceedings.

The meeting closed at 1.25 p.m.

Chairman