

Rother District Council

Report to:	General Licensing Panel
Date:	31 January 2023
Title:	Application for a Premises Licence at Tibbs Farm Café, Udimore Road, Udimore, Rye, TN31 6AR
Report of:	Head of Service Environmental Services, Licensing and Community Safety
Ward(s):	Brede and Udimore
Purpose of Report:	To determine the Premises Licence application WK202210458 made under Section 18 of the Licensing Act 2003 for Tibbs Farm Café, Udimore Road, Udimore, Rye, TN31 6AR
Officer Recommendation(s):	It be RESOLVED: That the application for a Premises Licence be determined.

1. Introduction

One representation has been made regarding the application for a premises licence; therefore, it has been referred to this Panel for determination.

1.1 Applicant Details:

Mr Philip Wheeler (application as an individual)

Parsonage Farm, Udimore Road, Udimore, Rye, TN31 6AX

1.2 The Premises:

Tibbs Farm Café, Udimore Road, Udimore, Rye, TN31 6AR

Please see the location plan, proposed licensed area plan and photographs (Appendices B, C & D).

Location:

The premises is situated in a rural country setting, set back from the road and accessed from Udimore Road. The location of nearby residential premises can be seen on the location map.

Description:

The proposed licensed premises is the existing café building as shown on the proposed licensed area plan. The red line on the plan shows where it is proposed that alcohol sales and consumption will take place including the

outside area. The café currently opens 9am to 4pm, 6 days per week for non-alcoholic drinks and food.

2. **The application**

The applicant applied via an agent on 7/12/22 for the licensable activity:

Sale/supply of alcohol (on and off sales)

Monday to Sunday 09:00 to 23:00hrs

Description of Premises

The applicant described the premises on the application form as follows:

“Farm shop café set back from a road in a rural country setting. Serving cakes and savoury bakes, breakfast and seasonally inspired lunches throughout the year. Approx. 40 covers inside and 20 covers outside on balcony/decking and area. Café is normally open 6 days a week from 9am to 4pm, premises licence application beyond these times is to allow seasonal events and occasional licensable activity outside of normal trading hours. Maximum occupancy is 60.”

Operating schedule

The applicant has described, in their Operating Schedule, the steps they intend to take to promote the four licensing objectives. These are reproduced in Appendix A1 and in the event that the application is granted, these will be translated, along with the additional conditions agreed with Sussex Police (Appendix A2) into conditions included in the licence (unless the conditions have been modified by the licensing authority following consideration of relevant representations).

Regulated entertainment

The government has deregulated many aspects of regulated entertainment.

The applicant has not applied for any authorisation for regulated entertainment.

However, no licence is required for unamplified live music at any place between 08:00hrs and 23:00hrs if the audience is less than 500.

No licence is required to put on amplified live music at a workplace (including outdoor spaces) between 08:00hrs and 23:00hrs if the audience is less than 500.

The provisions of the Live Music Act 2012 / Legislative Reform (Entertainment Licensing) Order 2014 enable premises granted an ‘on sales’ alcohol premises licence to put on performances (in the alcohol licensed area) of amplified live and recorded music between 08:00hrs and 23:00hrs if the audience is less than 500, without a licence to do so. These entitlements can only be conditioned, restricted or removed by the Licensing Panel during a premises licence ‘**review**’ application.

3. Licensing History

There is no previous premises licence history.

There were four Temporary Event Notices submitted for events in 2022 for Tapas Evenings occurring on 29 October (19:00 to 23:00), 18 November (19:00 to 23:00), 25 November (19:00 to 23:00) and 9 December (17:00 to 23:00).

Environmental Health Complaints

There is one noise complaint (WK/202010291) recorded at the premises on the environmental health database from a Hastings resident. This was reported 6 November 2020 during lockdown and the resident did not pursue their complaint, so the case was closed.

There is one COVID-19 non-compliance complaint (WK/202010287) recorded on the environmental health database from the same Hastings resident as above. The premises was visited and no issues were found.

4. Relevant representations of interested parties

The application has been subject to the usual public advertisement.

One representation was received from a person in the vicinity; the representation is reproduced in full in Appendix E. The representation objecting to the application is concerned with crime and disorder, public safety and public nuisance.

5. Representations of the responsible authorities

The Licensing Act 2003 requires that a copy of the application is sent to the responsible authorities.

Rother DC Planning	No representation
Rother DC Env Health Pollution Team	No representation
Rother DC Env Health Food & Safety Team	No representation
East Sussex Fire and Rescue Service	No representation
Sussex Police	No representation*
ESCC Child Protection	No representation
ESCC Public Health	No representation
ESCC Trading Standards	No representation
Home Office Immigration Enforcement	No representation

Planning

Planning did not make a representation but made the following comments:

“It is noted that a restrictive planning permission has been granted for the mixed use of the building as “farm shop and tea room only” under planning permission RR/2018/254/P. Condition 4 of the permission states:

4. The premises shall be used as a mixed use farm shop and tea room only and for no other purpose (including any other purpose in Class A1 or Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). In this respect the farm shop element of the premises shall be restricted to the retail of farm produce only, grown or reared at Parsonage Farm, Tibbs Farm or from nearby farms only, and shall not extend to imported produce or other grocery provisions. The tea room element of the premises shall be restricted to that set out in the application, i.e. sale of hot and cold drinks, cakes, sandwiches, salads and some heated foods only. Any cooking shall be restricted to that required to make the limited foods to be sold in the tea rooms.

Reason: For the avoidance of doubt and in the interests of proper planning having regard to the arguments put forward in the application for the need of the development in the interests of maintaining a viable agricultural business and to avoid unrestricted and unsustainable development and uses in the countryside in accordance with policies OSS3, RA2 and RA3 of the Rother Local Plan Core Strategy.

As such the use of the tea room element of the building as a restaurant serving cooked meals and alcohol would be in breach of the planning condition.

Please can you inform us of the outcome of the licence application in order that we may pursue any enforcement action as may be necessary.”

Sussex Police

*A representation was withdrawn following the applicant’s agreement to include additional conditions (these are reproduced in full in Appendix A2).

6. **Summary**

There is one representation from a person in the vicinity objecting to the application.

The applicant has agreed conditions with Sussex Police.

7. **Legislation**

The Licensing Act 2003 requires that the Council, as the local Licensing Authority, carry out its functions with a view to promoting the four Licensing Objectives:

- a) The Prevention of Crime and Disorder
- b) Public Safety
- c) The Prevention of Public Nuisance
- d) The Protection of Children from Harm

In exercising those functions, the Licensing Authority must also have regard to Guidance issued by the Secretary of State and its own Statement of Licensing Policy.

Under Section 181 and Schedule 5 (Part 3) of the Licensing Act 2003, rights of appeal exist to the Magistrates' Court against the decision of the Licensing Authority. Such appeal may be made on behalf of:

- a) the applicant;
- b) the holder of the Premises Licence; or
- c) any other person who made relevant representations in relation to the application.

8. **Consideration**

Under s18 Licensing Act 2003 the following options are available to the General Licensing Panel:

- a) to grant the licence subject to the conditions consistent with the operating schedule modified to such extent as considered necessary for the promotion of the licensing objectives;
- b) to exclude from the scope of the licence any of the licensable activities to which the application relates; or,
- c) to refuse to specify a person in the licence as the designated premises supervisor; or,
- d) to reject the application.

Conditions are modified if any of them is altered or omitted, or any new condition is added.

The General Licensing Panel will be required to give reasons for their decision.

Implications

9. **Legal Implications**

The applicant and others party to the hearing have a right of appeal to the Magistrates' Court.

10. **Human Rights**

The Panel's decision making is guided by the principles of proportionality which require, amongst other things, the Panel to strike the appropriate balance between the competing interests of the applicant, the premises licence holder, the interested parties and the wider community. This balance is achieved by having regard to the provisions of the Licensing Act 2003; the Regulations and Guidance made thereunder, the Council's Statement of Licensing Policy and

the Councils obligation to act in a way that is consistent with the provisions of the Human Rights Act 1998.

11. Crime and Disorder

The Prevention of Crime and Disorder is a specific licensing objective and the Council also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in its district.

12. Conclusion

Having considered the application, representations, written and oral submissions made at the hearing, the Panel shall determine the application.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	Yes	Equalities and Diversity	No
Crime and Disorder	Yes	Consultation	No
Environmental	No	Access to Information	No
Sustainability	No	Exempt from publication	No
Risk Management	No		

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Ruth Edson, Licensing Assistant Mark Randolph, Senior Licensing Officer
e-mail address:	licensing@rother.gov.uk
Appendices	

Appendix A: Operating schedule
Appendix B: Location plan
Appendix C: Proposed licensed area
Appendix D: Photographs
Appendix E: Representation received from interested party

Relevant Previous Minutes:	N/A
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Background Papers:	NONE
Reference Documents:	Revised guidance issued under Section 182 of Licensing Act 2003 https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003 RDC Licensing Policy 2021 https://www.rother.gov.uk/wp-content/uploads/2021/02/Rother-Licensing-Policy.pdf

Operating Schedule.

How the applicant intends to promote the four licensing objectives. These will be translated into conditions included in the licence (unless the conditions are modified by the licensing authority following consideration of relevant representations).

Describe the steps you intend to take to promote the four licensing objectives:

b) The prevention of crime and disorder**Café Bar**

Alcohol will only be served to people for consumption whilst seated at tables.

Food will be always available when the premises is open and trading. The primary use of the premises shall be as a café, not be that of a bar and any promotions and advertising will refer to it as such.

Training/Authorisation:

The Premises Licence Holder will ensure that all staff members, including delivery staff, engaged, or to be engaged, in selling alcohol, at the premises shall receive the following induction training. This training will take place prior to the selling of such products:

*The lawful selling of age restricted products *Refusing the sale of alcohol to a person who is drunk

Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.

All such training undertaken by staff members will be fully documented and recorded and signed by both the employee and the DPS. All training records will be kept on the premises and made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.

A list of staff members who are authorised to sell alcohol on the premises will be kept. This shall be endorsed by the DPS with the date such authorisation commences.

c) Public safety

All parts of the premises and all fittings and apparatus therein, door fastenings and notices and the seating, lighting, heating, electrical, ventilation, sanitary accommodation, washing facilities and other installations, will be maintained at all times in good order and in a safe condition.

The requirements to comply with of The Regulatory Reform (Fire Safety) Order 2005 will be met. A fire risk assessment and a Fire Evacuation plan will be completed. Suitable early means of early detection such as smoke detectors, fire alarms will be installed. Staff will be trained in the emergency evacuation plan.

d) The prevention of public nuisance

Noise or vibration will not emanate from the premises such as to cause persons in the neighbourhood to be unreasonably disturbed. In general terms, noise from the premises should not be audible within any noise sensitive premises (e.g. dwelling) with windows open for normal ventilation. This will be assessed from the boundary to the nearest residential properties, on all sides of the licensed premises.

The volume of amplified sound used in connection with the entertainment provided will at all times be under the control of the Licensee/Management and the controlling mechanism shall be operated from a part of the Premises not accessible to the public.

Noise levels within the premises resulting from the operation of any musical instrument or amplified equipment will be regulated so as to protect the hearing of any employee therein in accordance with current standards.

Prominent, clear and legible notices will be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

f) No rubbish including bottles will be moved, removed or placed in outside areas between 23:00hrs and 08:00hrs.

g) The placing of refuse, such as bottles, into receptacles outside the premises takes place at times that will prevent disturbance to nearby properties.

h) Deliveries of kegs, bottles, food or other materials necessary for the operation of the business will be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents.

e) The protection of children from harm

A notice shall be displayed in and at the entrance to the premises where it can be clearly seen and read and shall indicate that it is unlawful for persons under 18 to purchase alcohol or for any person to purchase alcohol on behalf of a person under 18 years of age.

The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram. The list of recommended forms of ID may be amended or revised with the prior written agreement of Sussex Police, the Licensing Authority and Trading Standards without the need to amend the licence or conditions attaching to it.

Additional conditions agreed with Sussex Police

CCTV:

Subject to GDPR guidance and legislation:

- (a) 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 entrances/exits to the premises as well as any outside space. The system shall be on and recording at all times the premises licence is in operation.
- (b) The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.
- (c) CCTV footage will be stored for a minimum of 31 days.
- (d) 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.
- (e) The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.
- (f) 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 Police e.g. USB) or provide footage via an online link as initiated by Police, without difficulty or delay and without charge.
- (g) Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable.
- (h) In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Police or for any other reason, the premises will be expected to install a replacement hard drive or a temporary replacement drive as soon as practicable.

Training/Authorisation:

- a) The Premises Licence Holder shall ensure that all staff members engaged, or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products: *The lawful selling of age restricted products *Refusing the sale of alcohol to a person who is drunk* Know how to operate the CCTV system and including the downloading of the footage*.
- b) Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.
- c) All such training undertaken by staff members shall be fully documented and recorded and signed by both the employee and the DPS. All training records shall be kept on the premises and made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.
- d) A list of staff members who are authorised to sell alcohol on the premises shall be kept. This shall be endorsed by the DPS with the date such authorisation commences.

Challenge 25:

- a) The premises will operate an age verification policy set at a minimum of 25 years (e.g. "Challenge 25") whereby any person attempting to buy alcohol who appears to be under the specified age e.g. 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram.
- b) Signage advertising the age verification or 'Challenge 25' policy will be displayed in prominent locations in the premises.

Incident/Refusal Log:

- a) An incident/refusal log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at intervals of no more than four (4) weeks.
- b) The logbook should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the police. An incident will be defined as being one which involves an allegation of a criminal offence.
- c) Feedback shall be given to staff to ensure these are used on each occasion that a refusal or incident occurs at the premises.
- d) Any refusals made for alcohol service e.g. underage, will also be recorded within this log (either in electronic or written form) and feedback given to staff as relevant. The log will be kept at the premises for a minimum of twenty-four (24) months.

Café Bar:

- a) Alcohol shall only be supplied by waiter/waitress service to people seated at tables.
- b) Food shall be always available when the premises is open and trading. The primary use of the premises shall be as a café, not be that of a bar and any promotions and advertising will refer to it as such.

Outside Areas:

- a) Any empty glasses or bottles will be immediately cleared from the outdoor seating by staff and management.
- b) Any broken glass from the premises will be immediately cleared and cleaned up by the staff of 'TIBBS FARM CAFE'.

OFF Sales:

All sales of alcohol, for consumption off the premises, to be made in a sealed container.

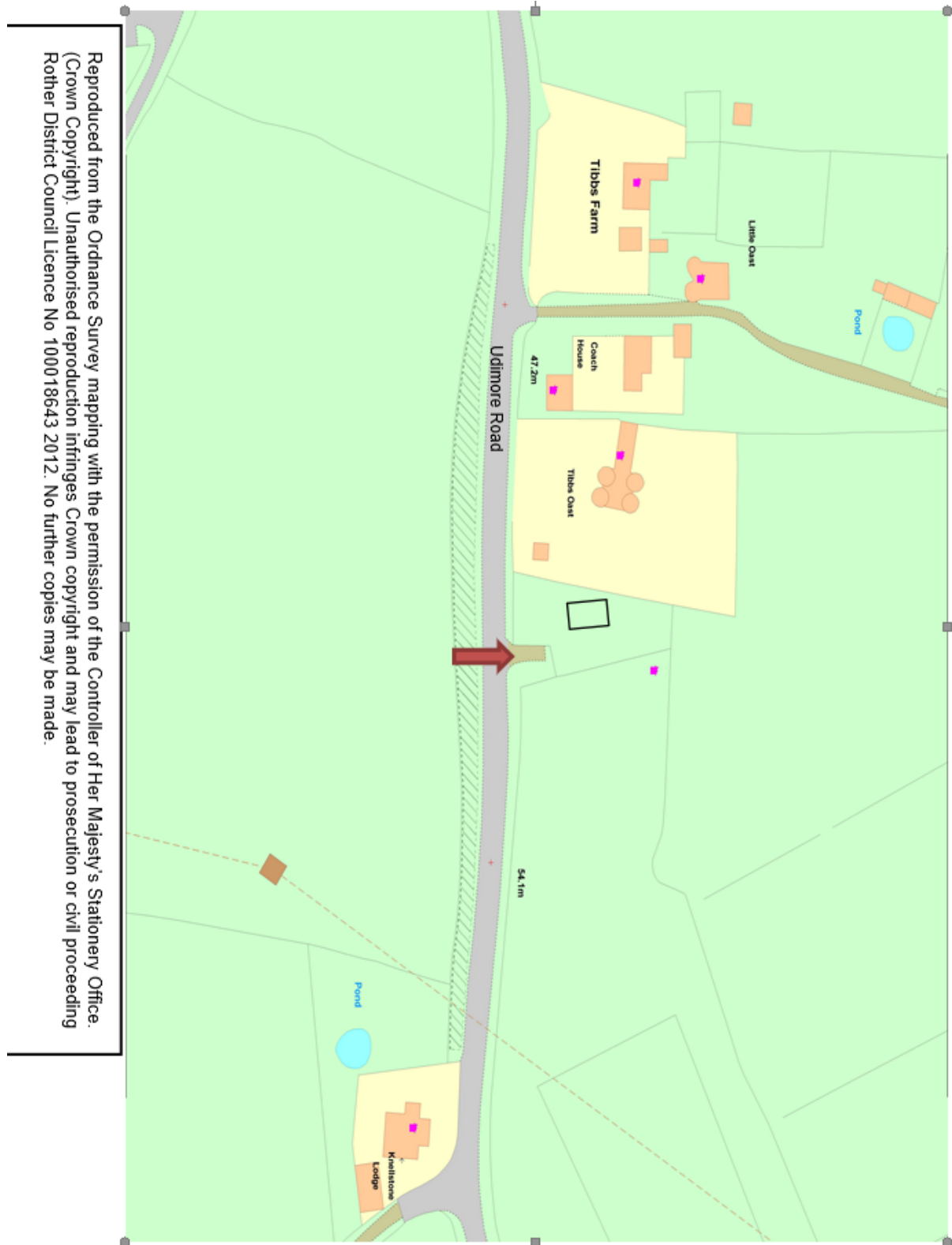
SIA:

All pre-booked events shall be risk assessed by the Designated Premises Supervisor and a minimum of two SIA registered door staff shall be on duty on any occasion where

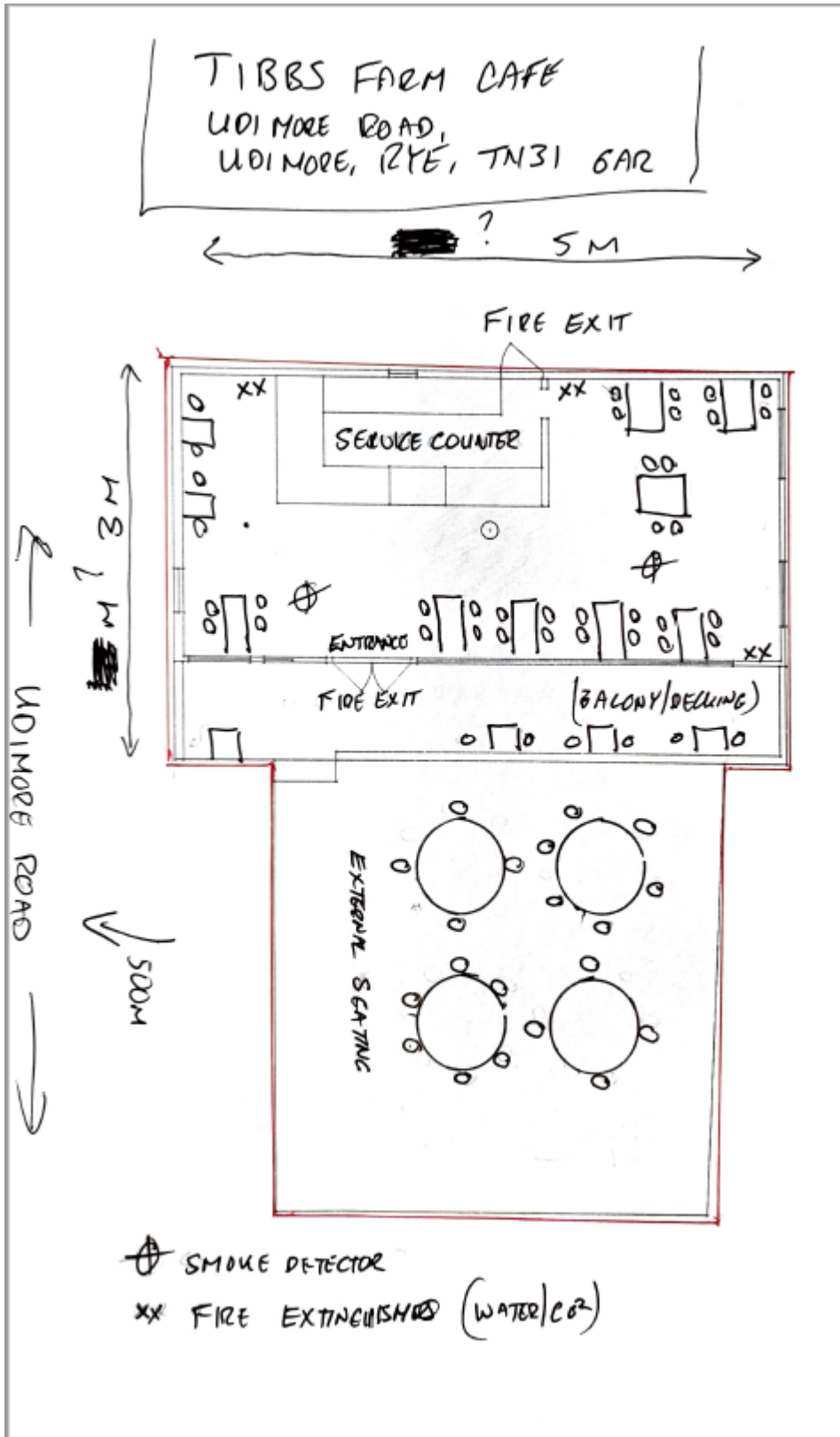
the risk assessment shows it to be necessary. The door staff shall be on duty from 30 minutes prior to the start of the event until 30 minutes afterwards.

There will be a written Dispersal Policy in place as agreed with Sussex Police to prevent groups gathering, engaging in altercations and persons remaining in the vicinity of the premises.

Location plan



Proposed licensed area



Photographs

Entrance to Property from Udimore Road



Entrance taken from Car Park



Internal view



Outdoor Space



Veranda



Side of Premises



Side of premises showing boundary of neighbouring property (fence and leylandii trees) - Tibbs Oasthouse



Representation from interested parties

1. Tobi Butler

XXXX, Udimore Road, Udimore, Rye, TN31 6AR

From: Tobi Butler

Sent: 04 January 2023 23:57

To: licensing <licensing@rother.gov.uk>

Cc: Ruth Edson <Ruth.Edson@rother.gov.uk>

Subject: Tibbs Farm Cafe - Tibbs Farm, Udimore Road, Udimore, Rye, TN31 6AR

Dear Sir/Madame

I am writing to lodge a formal objection to the application made by Mr Philip Wheeler of Tibbs Farm Cafe - Tibbs Farm, Udimore Road, Udimore, Rye, TN31 6AR for a premises licence to sell alcohol and provide the hiring out of the premises for events etc.

The basis for this opposition is that granting a licence for these premises will not promote the licensing objectives, particularly the prevention of crime, disorder and antisocial behaviour, public safety and the prevention of public nuisance.

I am a long-standing and suffering resident.

Due to the very close proximity of Tibbs Oast the property is within earshot of Tibbs Farm Cafe. From the outset there is ongoing noise pollution generated by Tibbs Farm Cafe on weekdays, weekends and Bank Holidays. Noise pollution increases more during the Spring and Summer months. I have also made several complaints to Philip Wheeler about their noisy refrigeration/freezer unit which has been housed as close as possible to the boundary in an old metal shipping container, which typically runs all day and night of the week and takes at least 20/30 minutes before it stops and then the cycle is repeated. Even more so in the summer as the motor kicks in more often. There have been additional concerns and disturbances, again he has been less than helpful and in some cases, very rude and somewhat obnoxious.

Given that Tibbs Farm Cafe is already actively advertising the facility as a venue for corporate and other social events, and clearly promoting and already serving alcohol - making it seem that the application for a licence has been already granted.

We must assume that above and beyond the noise from any amplified sound system or audio equipment, or in turn live musical instruments used for entertainment purposes - you must also add the people noise, particularly as alcohol is being proposed as well - which in turn increases the audio levels of most individuals when combined.

Their proposal to house outdoor public and private events, be it in the café, be it in marquees, tents or open aired events in the surrounding fields will no doubt generate extra unacceptable and unreasonable levels of noise and light pollution potentially 7 days a week, from 09:00hrs – 23:00hrs and later into the early hours.

Their new application proposal seems entirely based on commercial gain and will add little to the community other than creating a further public nuisance for the residents of the small Parish of Udimore.

Tibbs farm Café is raised up on top of the Tillingham Valley, therefore, any additional sound, will certainly travel far out, across and beyond the valley as it is open farmland and not restricted by obstructions.

Additionally, Tibbs Oast is within earshot and we object to the proposed license on the grounds that alcohol and music potentially 7 days a week from 10:00hrs to 23:00hrs will be a public nuisance and breach any entitlement to the quiet enjoyment of the property.

What about the future owners, and potential tenants residing at Tibbs Oast, has that been taken into consideration?

There is already a fair amount of interest from the Rother District Council Planning Enforcement Department concerning the current outdoor seating area, which has gradually increased in size. In turn – the seating area especially in the summer months gets extended further and further.

Rother District Council Planning Enforcement Department is also monitoring other known planning breaches and will be taking action imminently.

Licensing Objectives:

b) The Prevention of crime and disorder

The applicate clearly states that the primary use will be as a café, however, it is clear they have already been actively promoting and advertising on the public domain, on social platforms such as Facebook, Instagram, and their own website - promoting the sale of alcohol and hosting and operating various evening "Tapas events" out of the permitted planning opening time frames.

Attached are some links connected to the said business:

Website - <https://www.tibbsfarm.com>

Facebook - <https://www.facebook.com/tibbsfarm/>

Instagram page- <https://www.instagram.com/tibbsfarm/>

https://www.airbnb.co.uk/rooms/635480030817604347?source_impression_id=p3_1672859602_GIQOdf5YKgvJtms6

Images and screenshots will follow in a separate email.

c) Public Safety

I've been advised that the police had advised that a home office-approved CCTV system will be a requirement.

For the CCTV to comply with the conditions there will need to be additional lighting - which will lead to additional light pollution.

d) The prevention of public nuisance

I have already experience odours from the one bin they currently have.

I have also made Mr Philip Wheeler aware of the strong chemical smell coming from the toilet block, which again is housed very close to the garden, and entertainment area of Tibbs Oast - again nothing has been done to rectify this.

Since the introduction of the alleged prep facilities building recently erected at the rear of the building, with an attempt to hide its location behind some fences, and the toilet block. An extractor fan has been added, and in turn, the smell of eggs, bacon, and other food odours is experienced on a regular basis.

Again, a condition of the planning there should not be any hot food cooked on the premises.

There is evidence of outside businesses delivering products prior to the permitted opening times, which I imagine will only increase with additional deliveries of alcohol.

I have been woken by the banging of the doors of the delivery lorries and vans, on some occasions, it has been around 06:00hrs and at times there was an occasion of a driver, leaving his vehicle running with the radio on while he dropped off his delivery ..total disrespect for anyone living in the vicinity.

There is also an ongoing disturbance, of bottles being thrown into a bin housed right adjacent to the boundary.

Best Regards & Wishes

Tobi John Butler