



## LICENSING SUB COMMITTEE

Notice of a Meeting, to be held in the Committee Room No. 1 (Fougères Room) - Ashford Borough Council on Friday, 15th June, 2018 at 10.00 am.

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The Members of the Licensing Sub Committee are:-

Cllrs. Bradford, Feacey, Krause.

Cllr. Pickering (Reserve)

### Agenda

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| 1. | <b>Election of Chairman</b>  |         |
| 2. | <b>Apologies/Substitutes</b>   |         |
|    | To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii)                              |         |
| 3. | <b>Declarations of Interest</b>  | 1 - 2   |
|    | To declare any interests which fall under the following categories, as explained on the attached document:     |         |
|    | a) Disclosable Pecuniary Interests (DPI)   |         |
|    | b) Other Significant Interests (OSI)   |         |
|    | c) Voluntary Announcements of Other Interests  |         |
|    | See Agenda Item 3 for further details  |         |
| 4. | <b>Minutes</b>   | 3 - 14  |
|    | To approve the minutes of the Meeting of this Sub-Committee held on 30 April 2018                              |         |
| 5. | <b>Guidance Note for Hearings</b>  | 15 - 18 |
| 6. | <b>Bottega Montelbano, 3 Highbury Lane, Tenterden, Kent, TN30 6LE<br/>- Application for a premises licence</b> | 19 - 66 |
|    | (a) Clarification and Determination of Equal Maximum Time to be allocated to each party                        |         |
|    | (b) To note withdrawal of any representations  |         |

(c) The Hearing of the case

Please refer to the Guidance Notes on the procedure to be followed at this meeting as attached to this Agenda.

If you know the applicant/objector(s) and have a possible conflict of interest or have any queries concerning the Agenda please contact Member Services (details below)

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## Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency reasons alone, such as:

- Membership of outside bodies that have made representations on agenda items, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute either an OSI or in some cases a DPI].

### **Advice to Members on Declarations of Interest:**

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5962/2193362.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf)
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Corporate Director (Law and Governance) and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

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## Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **30<sup>th</sup> April 2018**.

### **Present:**

Cllr. Feacey (Chairman);

Cllrs. Mrs Webb, White,

Cllr. Shorter (Reserve).

### **Also Present:**

Licensing Officer, Legal Advisor, Senior Member Services Officer.

PC Alistair Pringle – Licensing Enforcement Officer, Kent Police.

Mr Chemjong – Licence Holder.

Mr Keating – Licence Holder's Representative.

## **433 Election of Chairman**

### **Resolved:**

**That Councillor Feacey be elected as Chairman for this Meeting of the Licensing Sub-Committee.**

## **434 Minutes**

### **Resolved:**

**That the Minutes of the Meetings of this Sub-Committee held on the 21<sup>st</sup> November 2017 and 1<sup>st</sup> December 2017 be approved and confirmed as correct records.**

## **435 The Gurkha Villa, 30 Bank Street, Ashford – Review of the Premises Licence**

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Officer then gave a brief summary of his report. He said the application to be considered by the Sub-Committee was for the review of the premises licence under the provisions of Section 51 to the Licensing Act 2003. The

application had been made by Chief Inspector Andrew Somerville on behalf of the Chief Officer of Kent Police. The review was set out in Appendix A of the report. The grounds for the review as stated by the Applicant were various incidents involving violence or criminal damage at or near the premises, poor management and supervision and breaches of conditions over a sustained period of time. He advised that the premises was a Nepalese Bar and Restaurant serving hot food and playing live and recorded music at events. He also summarised the current opening hours set out in the licence. The Licensing Officer concluded by outlining the decision options available to the Sub-Committee.

Mr Keating introduced himself and Mr Chemjong, who had recently replaced Mr Dewan as the Designated Premises Supervisor (DPS) at The Gurkha Villa. He said that the Company had taken the concerns of the Police very seriously and that Mr Chemjong acknowledged that Mr Dewan had not often been at the premises. Going forward, Mr Chemjong would be there a large part of the time when the premises was open. The venue had inherited a previous nightclub licence which had a lot of conditions that were inappropriate for the premises' current use. The Police had suggested a number of variations to the conditions which Mr Chemjong agreed, particularly regarding the proposed changes in licensing hours and the use of CCTV. He advised that all staff would be trained in the use of the newly installed CCTV system and be made aware of the licensing conditions and the objectives of the Licensing Act. He said that there would be five staff present on Friday and Saturday nights and less staff during the week when the premises was less busy. The only issue of concern they had with the suggested conditions was the requirement for registered door staff as it would not be normal to have door staff at a restaurant. Mr Keating suggested that the premises had two trained door staff only when they were holding a ticketed event with music.

Regarding the other concerns, Mr Keating confirmed that there would not be unaccompanied children on the premises, no off-sales permitted and confirmed that the primary purpose of the premises would be as a restaurant with alcohol as ancillary to the service of food as table meals. He hoped that the Sub-Committee could see that the Company had responded to the concerns of the Police and that they were happy with what had been put in place.

The Sub-Committee then asked various questions of Mr Chemjong and Mr Keating, raising the following concerns:-

- That whilst not the appointed DPS, Mr Chemjong had been managing the premises for some time and there had been a lot of problems during that period. The Company had had numerous opportunities to respond to the problems and amend their previous nightclub licence, but nothing had been done. Therefore, how could they have any confidence that Mr Chemjong would be able to improve the situation going forward? In response, Mr Chemjong advised that Mr Dewan had previously run the premises but had experienced difficulties because of also running his other restaurant in Aldershot. He had therefore asked Mr Chemjong to step in. Mr Chemjong had asked Mr Dewan many times to amend the licensing conditions, but he had not dealt with it.

- There were also concerns about the CCTV which had not been managed properly for more than a year and, on two occasions, Mr Chemjong had not been able to provide CCTV recordings of incidents to the Police. Police and Licensing Officers had given a lot of guidance on the use of CCTV, in addition to compliance with other conditions, but again nothing had happened. In response Mr Chemjong said they now had a properly installed, working CCTV system which recorded simultaneously over a 24 hour period, and he had received training on its use. It was acknowledged that the previous CCTV had not been correctly installed, however a completely new system was now in place, and Mr Keating had been to the premises to see it and it was working and recording properly. Mr Chemjong was confident that if there were any other issues he could provide CCTV footage.
- Members said they were also confused as to whether the premises was run as a restaurant, a bar or a nightclub. They were also concerned that there seemed to be no plan in place for Mr Chemjong to meet the licensing conditions and improve operation of the premises going forward. In response, Mr Chemjong confirmed it had been a nightclub but his Company wanted to run the premises properly as a restaurant. He confirmed that as yet he had no formal plan in place to ensure that the premises met the licensing objectives.

PC Pringle, on behalf of the Chief Officer of Police, outlined the application for a review of the premises licence. The application was summarised in Appendix A of the report. He emphasised the two incidents of criminal damage and the serious disturbance involving a number of customers and glass throwing in April 2017. There had been poor management, failure to comply with conditions and failure to provide CCTV on two occasions despite warnings and guidance from the Police. Since the first incident on 22<sup>nd</sup> April 2017, the Police and Ashford Borough Council Officers had had more than 30 interactions with Mr Chemjong to coach, advise and assist. Those interactions were all set out at Appendix A of the report. As a result of the Company's failure to respond positively to any of the advice, they had severely undermined the Licensing Objectives and therefore the Police considered they had little choice but to apply for a review of the licence. It was the view of Kent Police that revocation of the licence should be considered, but if not they recommended a number of changes in the licensing conditions, particularly with regard to hours, as summarised in the report.

In response to questions from the Sub-Committee, PC Pringle said that the Police had real concerns about Mr Chemjong's ability to comply with the licensing conditions. This was because he had been the manager throughout the whole period that the Police had been involved. Despite a lot of guidance and advice, in his view there had been no action.

Also in response to questions, Mr Chemjong confirmed that it was one customer, a member of the Nepalese community, who had caused the first incident at the premises in April 2017. He had been banned for six months and then came back in January 2018 and caused criminal damage at the premises on the 15<sup>th</sup> January 2018. However, the man had now been banned completely. Mr Chemjong confirmed that approximately 95% of their customers were Nepalese and 5% were others in the community. Finally, the Chairman asked if Mr Chemjong was going to take advice on

putting together a plan of how he would address and meet the Licensing Objectives. Mr Chemjong confirmed that he would do that.

The Sub-Committee then retired to deliberate and make their decision.

On return the Chairman read out the Licensing Sub-Committee's decision and reasons.

The Sub-Committee were very concerned that Mr Chemjong had not put in place any measures during the last year despite all of the advice from the Police and Licensing Officers. They were mindful of the importance of the business, particularly to the Nepalese community, however they were very concerned about whether either Mr Dewan or Mr Chemjong really understood the importance of the Licensing Objectives. They agreed with all of the amended conditions proposed by the Police, but thought that Mr Chemjong should supply a clear plan of how he was going to put in place all of the conditions before he should be allowed to operate the licensed premises. For those reasons the Sub-Committee made the following decision.

**Resolved:**

**That the licence be varied as follows:**

**Timings**

- 1. Authorised hours for all licensable activities will end at 23.00 hours Monday to Thursday and 00.00 hours on Friday to Sunday.**
- 2. Opening hours (closing times of premises) will be 23.30 hours on Monday to Thursday and 00.30 hours on Friday to Sunday.**
- 3. Non-Standard timings and seasonal variations:  
Bank Holiday Mondays – 11.00 to 01.00  
Christmas Eve – 11.00 to 01.00  
New Year's Eve – 11.00 to 01.00**

**Proposed Conditions**

- 1. Alcohol On-Sales Only**

**Prevention of Crime and Disorder**

- 1. A CCTV System be installed at the premises and maintained in good and efficient working order to the satisfaction of both the Licensing Authority and Kent Police; The system will be operated by trained staff, be in operation at all times that the premises are being used for any licensable activity, ensure coverage of entrances and exits to the licensing premises, externally and internally and provide continuous recording facilities for each camera to a good standard and clarity. Recordings will be retained on disc or otherwise for 30 days and will be supplied to the Licensing Authority or Police Officer on request.**

2. **The License Holder will ensure that an incident record is maintained at the premises and all staff will be trained in its use. This will be bound and clearly marked with the following information: - time and date of incident; full description of incident; description/name of any persons involved in incident; actions taken by any staff member; details of all staff present at time of incident; name of staff member making the entry; time of entry.**
3. **The Licence Holder will ensure that staff are fully trained in responsible sales of alcohol (BIIAB or equivalent) and that training records are kept.**
4. **The Licence Holder shall ensure that appropriate numbers of staff are on duty to monitor for crime and disorder. Such staff are to be trained as appropriate to promote the prevention of crime and disorder objective.**
5. **Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and as ancillary to the meal.**
6. **Anyone leaving the premises will not be permitted to remove or take with them open bottles or containers of any kind that contain or have contained beverages of any type.**

#### **Public Safety**

1. **A Minimum of two SIA licensed door supervisors to be present at the premises for any organised ticketed or advertised event as defined by the Licensing Authority/Kent Police. SIA registered door staff will remain until everyone has left the building and immediate vicinity.**

#### **The Prevention of Public Nuisance**

1. **The Licence Holder will ensure where necessary that noise from the premises is monitored and any concerns are addressed immediately.**

#### **Protection of Children from Harm**

1. **Children to be accompanied by an appropriate adult in the restaurant at all times.**

#### **Temporary Suspension of the Licence**

**Although the Sub-Committee have decided to amend the Licence as recommended by the Police, Members are so concerned about the poor management of the premises over the last year, that they have decided to suspend the licence for a maximum period of one month to enable the Company to prepare and agree with the Licensing Authority a plan for how Mr Chemjong and all staff will be aware of and comply with the conditions on the licence in order to meet the Licensing Objectives.**

**The suspension is for a maximum period of one month and it will be for the Licensing Authority to confirm that they are satisfied with the plan and that the suspension can be lifted. If that is not achieved within the month, a further review meeting will be held.**

The decision notice and formal wording read out by the Legal Advisor is appended to these minutes.

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**LICENSING SUB-COMMITTEE**  
**Monday 30<sup>th</sup> April 2018**

**APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR THE  
GURKHA VILLA, 30 BANK STREET, ASHFORD, KENT, TN23 1BA UNDER THE  
PROVISIONS OF SECTION 51 OF THE LICENSING ACT 2003**

**LICENSING SUB-COMMITTEE DECISION AND REASONINGS**

**OFFICER CASE  
STATEMENT OF :**

Licensing Officer

**REASON FOR  
MEETING:**

An application was made by the Police to review a premises licence for the Gurkha Villa, 30 Bank Street, Ashford TN23 1BA.

**DELIBERATION:**

The Licensing Officer summarised the review which had been brought by Kent Police and was set out in Appendix A of the report. The premises is a Nepalese Bar and Restaurant serving hot food and playing live and recorded music at events. The Officer summarised the current opening hours set out in the licence and the representations from Police relating to various incidents, poor management and supervision and breaches of conditions over a sustained period of time.

Mr Keating, Solicitor for Gurkha Villas, confirmed that Mr Chemjong has applied for and been appointed as Designated Premises Supervisor (DPS), replacing Mr Dewan the previous DPS. He said that Mr Chemjong acknowledged that Mr Dewan was not often at the premises. Mr Chemjong would be there a large part of the time when it was open. He had inherited a previous nightclub licence which had a lot of conditions that were inappropriate for the premises' current use. The Police had suggested a number of varied conditions which Mr Chjemjong agrees, particularly re. the change in licensing hours and use of CCTV. All staff will be trained in use of the CCTV and be made aware of the licensing conditions. He said that there will be five staff present on Friday and Saturday nights and less staff during the week when the premises is less busy. The only issue of concern was the requirement for registered door staff as it was not normal to have door staff for a restaurant. He suggested that the premises had two trained door staff only when there is a ticket event with music.

Re the other concerns Mr Keating confirmed that there would not be unaccompanied children on the premises, no off-sales and the

primary purpose of the premises would be as a restaurant with alcohol as ancillary to the service of food.

The Sub-Committee asked various questions of Mr Chemjong and Mr Keating and raised the following concerns:-

1. That Mr Chemjong had been managing the premises for some time, there had been a lot of problems during the time and he had had adequate time to respond to the problems and amend their previous nightclub licence. In response Mr Chemjong that Mr Dewan had previously run the premises but had difficulty because of his other restaurant in Aldershot so had asked Mr Chemjong to step in. Mr Chemjong had asked Mr Dewan many times to amend the licensing conditions, but he had not dealt with it.
2. Concerns about the CCTV which had not been managed properly for more than a year and on two occasions Mr Chemjong had not been able to provide CCTV recordings of incidents to the Police. Police and Licensing Officers had given a lot of guidance on use of CCTV, in addition to compliance with other conditions, but nothing had happened. In response Mr Chemjong said they now had a properly installed, working CCTV system which records simultaneously over a 24 hour period, and he has had training on its use. He is confident that if there are any other issues he can provide CCTV footage.
3. That the Sub-Committee was confused as to whether the premises were run as a restaurant, bar or nightclub. They were also concerned that there seemed to be no plan in place for Mr Chemjong to meet the licensing conditions and improve operation of the premises going forward. In response, Mr Chemjong confirmed it had been a nightclub but his company wanted to run the premises properly as a restaurant. He confirmed that as yet he has no plan in place to ensure that the premises meets the licensing objectives.

PC Pringle then summarised the grounds of application for the review which are summarised in Appendix A of the report. He emphasised the two incidents of criminal damage and the serious disturbance involving a number of customers and glass throwing in April 2017. There has been poor management, failure to comply with conditions and failure to provide CCTV on two occasions despite warnings and guidance from the Police. Since the first incident on 22<sup>nd</sup> April 2017 the Police and Ashford Borough Council have had more than 30 interactions with Mr Chemjong to coach, advise and assist. Those interactions are all set out at Appendix A of the report. Because of the Company's failure to respond positively to any of the advice, the Company had severely

undermined the Licensing Objectives and therefore the Police had no choice but to apply for a review of the licence. In place of revocation, they recommend changes in the licensing conditions as summarised in the report.

PC Pringle said that the Police had real concerns about Mr Chemjong's ability to comply with the licensing conditions. This is because he has been the manager throughout the whole period that the Police have been involved. Despite a lot of guidance and advice there had been no action. In response to various questions from the Sub-Committee Mr Chemjong confirmed that he had been a Director of the Company since 2017 and Mr Dewan was still involved as a business partner. He explained that he had repeatedly asked Mr Dewan, as DPS, to put in place compliance with the licensing objectives, but Mr Dewan never did anything. He also explained that the CCTV Engineer had not installed the CCTV correctly the first time, however he has now changed the system completely, Mr Keating has been to the premises to see it and it is working and recording properly.

Mr Chemjong also confirmed that it was one customer, a member of the Nepalese community, who had caused the first incident in April 2017. He was banned for six months and then came back in January 2018 and caused criminal damage on the 15<sup>th</sup> January 2018. However the man was now banned completely. Mr Chemjong confirmed that 95% of their customers were Nepalese and 5% others in the community.

Finally, the Chairman asked if Mr Chemjong was going to take advice on putting together a plan of how he would address and meet the Licensing Objectives. Mr Chemjong confirmed that he would do that.

The Sub-Committee then retired to deliberate and make their decision.

The Sub-Committee were very concerned that Mr Chemjong had not put in place any measures during the last year despite all of the advice from the Police and Licensing Officers. They were mindful of the importance of the business, particularly to the Nepalese community, however they were very concerned about whether either Mr Dewan or Mr Chemjong really understood the importance of the Licensing Objectives. They agreed with all of the amended conditions proposed by the Police but thought that Mr Chemjong should supply a clear plan of how he was going to put in place all of the conditions before he should be allowed to operate the licensed premises. For those reasons the Sub-Committee made the following decision.

**DECISION MADE:**

That:

The licence be varied as follows:

**Timings**

1. **Authorised hours for all licensable activities will end at 23.00 hours Monday to Thursday and 00.00 hours on Friday to Sunday.**
2. **Opening hours (closing times of premises) will be 23.30 hours on Monday to Thursday and 00.30 hours on Friday to Sunday.**
3. **Non-Standard timings and seasonal variations:  
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Christmas Eve – 11.00 to 01.00  
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**Proposed Conditions**

1. **Alcohol On-Sales Only**

**Prevention of Crime and Disorder**

1. **A CCTV System be installed at the premises and maintained in good and efficient working order to the satisfaction of both the Licensing Authority and Kent Police; The system will be operated by trained staff, be in operation at all times that the premises are being used for any licensable activity, ensure coverage of entrances and exits to the licensing premises, externally and internally and provide continuous recording facilities for each camera to a good standard and clarity. Recordings will be retained on disc or otherwise for 30 days and will be supplied to the Licensing Authority or Police Officer on request.**
2. **The License Holder will ensure that an incident record is maintained at the premises and all staff will be trained in its use. This will be bound and clearly marked with the following information: - time and date of incident; full description of incident; description/name of any persons involved in incident; actions taken by any staff member; details of all staff present at time of incident; name of staff member making the entry; time of entry.**
3. **The Licence Holder will ensure that staff are fully**

trained in responsible sales of alcohol (BIAB or equivalent) and that training records are kept.

4. The Licence Holder shall ensure that appropriate numbers of staff are on duty to monitor for crime and disorder. Such staff are to be trained as appropriate to promote the prevention of crime and disorder objective.
5. Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and as ancillary to the meal.
6. Anyone leaving the premises will not be permitted to remove or take with them open bottles or containers of any kind that contain or have contained beverages of any type.

#### **Public Safety**

1. A Minimum of two SIA licensed door supervisors to be present at the premises for any organised ticketed or advertised event as defined by the Licensing Authority/Kent Police. SIA registered door staff will remain until everyone has left the building and immediate vicinity.

#### **The Prevention of Public Nuisance**

1. The Licence Holder will ensure where necessary that noise from the premises is monitored and any concerns are addressed immediately.

#### **Protection of Children from Harm**

1. Children to be accompanied by an appropriate adult in the restaurant at all times.

#### **Temporary Suspension of the Licence**

Although the Sub-Committee have decided to amend the Licence as recommended by the Police, Members are so concerned about the poor management of the premises over the last year, that they have decided to suspend the licence for a maximum period of one month to enable the Company to prepare and agree with the Licensing Authority a plan for how Mr Chemjong and all staff will be aware of and comply with the conditions on the licence in order to meet the Licensing Objectives.

**The suspension is for a maximum period of one month and it will be for the Licensing Authority to confirm that they are satisfied with the plan and that the suspension can be lifted. If that is not achieved within the month, a further review meeting will be held.**

**Additional notes made by the Sub-Committee at the meeting –**

**Right of Appeal**

- This decision does not take effect until
  - (a) The end of the period given for appealing the decision or
  - (b) If the decision is appealed against, until the appeal is disposed of.

An appeal must be commenced by notice of appeal given by the Appellant to the Magistrates Court within 21 days of the date of this notice.

## PROCEDURE NOTE FOR LICENSING HEARINGS

1. Prior to the meeting of the Committee<sup>1</sup>, the Committee will have read and familiarised themselves with the Licensing Officer's report and documents referred to in it.
2. The hearing will take place in public, subject to a discretion to exclude the public and/or parties where the public interest in doing so outweighs the public interest in the hearing taking place in public<sup>2</sup>. The Committee may also exclude anyone behaving disruptively.<sup>3</sup>
3. The parties<sup>4</sup> are entitled to be assisted or represented by any person, whether or not legally qualified. A party is entitled to withdraw any of their representations orally at the hearing or at least 24 hours before the day or the first day of the hearing.<sup>5</sup>
4. The Committee may extend any time limit in the Regulations for a specified period where it considers this to be necessary in the public interest, but must state the period of the extension and the reason for it.<sup>6</sup> For example, the Committee may extend the time for making a request to call a witness (see paragraph 16- below).
5. Where a party has notified the authority that he does not intend to attend, the Committee will proceed with the hearing in his absence. Where he has not so notified the authority but does not attend, the Committee may adjourn the hearing to a specified date where it considers it necessary in the public interest to do so. Otherwise, it will proceed with the hearing.<sup>7</sup>
6. Before proceeding in the absence of a party who has not indicated that they do not wish to attend, the Licensing Officer will attempt to ascertain the reason for that party's non-attendance.
7. The Committee may adjourn the hearing to a specified, or extra, date where it considers this to be necessary for the determination of the case.<sup>8</sup> There are limitations on the ability of the Committee to adjourn the case beyond the time limits for determination during the transitional period and on reviews following closure orders by the police.<sup>9</sup>
8. At the outset of the meeting, a Chair will be elected and any personal and/or prejudicial interests declared.<sup>10</sup>

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<sup>1</sup> In this Note the expression "the Committee" includes a sub Committee.

<sup>2</sup> Reg 14 Licensing Act 2003 (Hearings) Regulations 2005

<sup>3</sup> Reg 25.

<sup>4</sup> Reg 2(1) "a person to whom notice of the hearing is to be given under Reg 6(1)" – includes objectors and responsible authorities, such as the Police.

<sup>5</sup> Reg 10

<sup>6</sup> Reg 11.

<sup>7</sup> Reg 20.

<sup>8</sup> Reg 12.

<sup>9</sup> Reg 13.

<sup>10</sup> Model Code of Conduct

9. Except where the Regulations make specific requirements, the procedure will be in the discretion of the Committee.<sup>11</sup>
10. At the beginning of the hearing, the Committee will explain to the parties the procedure it proposes to follow.<sup>12</sup>
11. The Chairman will indicate that all the papers before the Committee have been read and that the Committee is familiar with the issues. He will ask the parties to avoid repetition.
12. The Chairman will indicate the order of presentation.
13. If there are a number of objectors present, the Chairman may request that a spokesperson be appointed. He will make it clear that any party<sup>13</sup> who wishes to speak will be able to do so, and that the appointment of a spokesperson does not mean that the objections of any interested party will be given less weight.
14. The Chairman may also indicate how the Committee intends to deal with conditions proposed by the parties or by the Committee itself. He may ask the parties to attempt to agree a schedule of conditions for use if the Committee is minded to grant the application. This will not mean that the Committee has formed any view of the merits. It will only come to its decision at the end.
15. A party is entitled to be represented or assisted by another person, whether or not that person is legally qualified.<sup>14</sup>
16. If a party wishes a person (other than himself or his representative) to appear at the hearing he must have made a request to do so prior to the hearing within the times prescribed in Reg. 8. The request must name the person and give a brief description of the point(s) on which that person may be able to assist. In such a case, the Committee will determine the application for permission at the outset of the hearing.<sup>15</sup> In determining that request, the authority will consider the representations of all parties upon the matter and may consider the relevance of the proposed evidence, the assistance it will in fact offer to the Committee and the prejudice to the parties, if the evidence is admitted or excluded.<sup>16</sup>
17. Each of the parties has a right to:
  - a. address the Committee;
  - b. give clarification of any point, where such clarification has been sought by the Council in its notice of hearing;
  - c. question any other party, but only where this is expressly permitted by the Committee (see para 21 below).<sup>17</sup>

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<sup>11</sup> Reg 21.

<sup>12</sup> Reg 22

<sup>13</sup> see footnote 4

<sup>14</sup> Reg 15.

<sup>15</sup> Reg 22

<sup>16</sup> Reg 22

<sup>17</sup> Reg 16.

18. The Committee must allow an equal maximum time for the parties to exercise their rights as set out in para 17 above.<sup>18</sup>
19. The Committee will set the time of the hearing at the outset, having regard to its view of the length reasonably required for the hearing. It may hear the parties briefly before setting the maximum time. It may extend the time where circumstances require.<sup>19</sup>
20. The hearing is to take the form of a discussion led by the Committee.<sup>20</sup> The Chairman will ensure that within the discussions, all parties are given an opportunity to state their case as set out in their written application/representations and to meet the case of opposing parties.
21. Cross-examination will not be permitted unless the Committee considers that it is required for it to give proper consideration to the case.<sup>21</sup> Any application to cross-examine will be heard and dealt with at the hearing.
22. The Committee may consider cross-examination to be required, for example, where there is a genuine issue of fact, which can only be resolved fairly through cross-examination.
23. The Committee may question any party or other person(s) appearing.<sup>22</sup>
24. The Committee may take into account documentary or other information provided by a party before the hearing. Information produced at the hearing may only be taken into account with the consent of all other parties.<sup>23</sup> The parties are therefore strongly recommended to exchange documentary evidence and brief summaries of any proposed witness evidence at least 5 days before the hearing, otherwise they may be restricted in the information they can put before the committee. Any material exchanged should also be given to the licensing authority at the same time.
25. The Committee must disregard any information given which is not relevant to the application, representations or notice of the party giving the information. The Committee must also disregard any information which is not relevant to the promotion of the licensing objectives.<sup>24</sup>
26. In certain circumstances, the Committee is required by law to make its determination at the conclusion of the hearing. This includes certain applications made during the transitional period, counter-notices following police objections to temporary events notices, and reviews of premises licences following closure orders. Otherwise the Committee is required to determine the application within five working days of the day or the last day on which the hearing was held<sup>25</sup>.

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<sup>18</sup> Reg 24.

<sup>19</sup> Reg 11

<sup>20</sup> Reg 23.

<sup>21</sup> Reg 23.

<sup>22</sup> Reg 17.

<sup>23</sup> Reg 18.

<sup>24</sup> Reg 19.

<sup>25</sup> Reg 26.





**Agenda Item No:**

**Licence Reference**      **WK/201802967**

**Report To:**                      **LICENSING SUB COMMITTEE**

**Date:**                                **23 MAY 2018**

**Report Title:**                    **Licensing Act 2003 - Application for a premises licence for: Bottega Montelbano, 3 Highbury Lane, Tenterden, Kent, TN30 6LE**

**Report Author:**                Julian Postlethwaite

**Summary:**

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type:      **Application for a premises licence**

Applicant:                **Bottega Montelbano**

Premises:                **3 Highbury Lane, Tenterden, Kent, TN30 6LE**

Members are asked to determine whether to grant the premises licence, with or without additional conditions pursuant to the Act

**Key Decision:**                    NO

**Affected Wards:**                Tenterden south

**Recommendations:**        **The Committee is asked to determine the application and decide whether to grant the premises licence, with or without additional conditions pursuant to the Act.**

**Policy Overview:**                The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

**Financial Implications:**        The costs associated with processing the application are taken from licensing fee income.

**Other Material Implications:**    **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

**LEGAL:** Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

**Exemption Clauses:**            Not applicable  
**Background**                        None

**Papers:**

**Contacts:** Julian.Postlethwaite@ashford.gov.uk

**Agenda Item No. 5**

**Report Title:** **Licensing Act 2003 - Application for a premises licence, Bottega Montelbano, 3 Highbury Lane, Tenterden, Kent, TN30 6LE**

**Purpose of the Report**

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application for a premises licence**

Applicant: **Bottega Montelbano Ltd**

Premises: **Bottega Montelbano, 3 Highbury Lane, Tenterden, Kent, TN30 6LE**

**Issue to be Decided**

2. Members are asked to determine whether to grant the premises licence, with or without additional conditions pursuant to the Act.

**Background**

***The Licensing Objectives***

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

***Application details***

4. The application is for a premises licence. See **Appendix A** for the application for a premises licence, along with a plan of the internal layout of the premises (**Appendix B**) The application has been made and advertised in the correct manner. Licensing officers confirmed that the public notice was on display at the premises on Monday 14 May 2018. By means of background, a planning application was received (17/01279/AS) for prior approval of the change of use from A1 (Retail) to A3 use (Delicatessen) and determination was made that prior approval was not required under general permitted development (**Appendix C**) and the following conditions were included;
  - The development hereby permitted shall be begun before the expiration of 3 years from the date of this application.

- **Reason:** To comply with the requirements of Class C, Part 3 schedule 2 of the Town and Country (General Permitted Development) order 2015
- The premise shall not be open to the public other than between the hours of 08:00-7:00pm Monday to Sunday.
  - **Reason:** To protect the residential amenity of the locality.
- The development approved shall be made available for inspection, at a reasonable time, by the local Planning authority to ascertain whether a breach of planning control may have occurred on the land (As a result of departure from the plans hereby approved and the specific terms of this permission/consent/approval)
  - **Reason:** In the interests of ensuring the proper planning of the locality, the protection of the amenity and the environment, securing high quality development through adherence to the terms of planning approvals and to ensure community confidence in the operation of the planning system.

It should be noted that the A3 class use includes The sale of food and drink for consumption on the premises including as a restaurant, snack bar or cafe. As such it is the understanding of the Licensing Team that the premises already has the existing right to open without the licensable activities.

It should also be noted that the licensing process cannot be used as a 'second bite of the cherry' to consider matters relevant to the planning application, but must instead concern themselves specifically with the licensable activities proposed.

5. A location map of the premises and surrounding area can be found at **Appendix D**.
6. The applicant states within section M of the application form (The Operating schedule) the additional steps they intend to take in order to promote the four licensing objectives if the proposed application is granted.
7. The Operating schedule put forward by the applicant are listed in **Appendix E**, and will form part of the conditions on the premises licence. It is the responsibility of the Licensing Authority to prepare conditions that are "consistent" with the operating schedule (s.18).
8. The Licensing Authority should not issue a licence with conditions that are illegal or that are unenforceable.

### ***Representations from Responsible Authorities***

There are no representations from the relevant Responsible Authorities.

### ***Representations have been received from local residents.***

9. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious
10. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant".
11. Three parties have made representations, these are listed in Appendix F and the representations in full can be found at Appendix G accompanied by three photographs of the location.
12. Two of the representations are from residents living in Highbury lane

The main concerns arising from the representations is the potential for noise nuisance, traffic issues and congestion including deliveries to the premises in a narrow road, an increase in noise from customers drinking outside the café, and associated increased footfall.

### ***Relevant premises operating hours***

13. The application proposes to permit:

|  |                                   |
|--|-----------------------------------|
| <b>Sale of alcohol</b>                   | Monday to Sunday<br>08:00 – 19:00 |
| <b>Hours premises open to the public</b> | Monday to Sunday<br>08:00 – 19:00 |

### ***General***

14. Members attention is drawn to the following matters:
  - All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
  - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
  - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or other party to assess whether the steps to be taken to promote licensing objectives are satisfactory.

- The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the appropriateness to impose conditions due to the representations raised. It may then only impose such conditions as are appropriate to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
- Where problems have occurred, the application for the new licence will afford an opportunity for responsible authorities and other parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
- The conditions put forward within this report are suggested on the basis of:
  - information contained within the application form;
  - interested parties representations and
  - on those measures currently in existence.
- The 2003 Act enables licensing authorities and responsible 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 and club premises certificates. 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. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity of other parties living and working in the area of a licensed premises. Public nuisance may also arise as a result of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and

leave the premises and therefore, in the immediate vicinity of the premises.

- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered appropriate following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence.
- The Guidance states “the conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.”
- It is perfectly possible that in certain cases, because the test is one of appropriateness, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

### ***Decision options***

15. The steps an authority may take are:

- a) Grant the licence subject to
  - i) Such conditions as are consistent with the operating schedule accompanying the application modified to such an extent as the authority considers necessary for the promotion of the four licensing objectives, and
  - ii) any conditions which must under section 19, 20, or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).

- b) Exclude from the scope of the licence any of the licensable activities to which the application relates.
- c) Refuse to specify the person named in the application as the Designated Premises Supervisor (DPS).
- d) Reject the application.

### **Consultation**

- 16. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

### **Implications Assessment**

- 17. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

### **Human Rights**

- 18. While all Convention Rights must be considered, those which are of particular relevance to the application are:
  - Article 8 - Right to respect for private and family life
  - Article 1 of the First Protocol - Protection of Property
  - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

### **Handling**

- 19. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

### **Conclusion**

- 20. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.



£190.  
21124

Application for a premises licence to be granted  
under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We BOTTEGA MONTALBANO LTD  
(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003

Part 1 – Premises details

|  |           |          |          |
|--|-----------|----------|----------|
| Postal address of premises or, if none, ordnance survey map reference or description |           |          |          |
| 3 Highbury Lane,<br>Tenterden<br>Kent  |           |          |          |
| Post town  | TENTERDEN | Postcode | TN30 6LE |

|   |          |
|---|----------|
| Telephone number at premises (if any)   |          |
| Non-domestic rateable value of premises | £ 11,750 |

Part 2 - Applicant details

Please state whether you are applying for a premises licence as appropriate Please tick

- a) an individual or individuals \*  please complete section (A)
- b) a person other than an individual \*
  - i as a limited company/limited liability partnership  please complete section (B)
  - ii as a partnership (other than limited liability)  please complete section (B)

- iii as an unincorporated association or  please complete section (B)
- iv other (for example a statutory corporation)  please complete section (B)
- c) a recognised club  please complete section (B)
- d) a charity  please complete section (B)
- e) the proprietor of an educational establishment  please complete section (B)
- f) a health service body  please complete section (B)
- g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales  please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England  please complete section (B)
- h) the chief officer of police of a police force in England and Wales  please complete section (B)

\* If you are applying as a person described in (a) or (b) please confirm (by ticking yes to one box below):

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or
- I am making the application pursuant to a statutory function or
- a function discharged by virtue of Her Majesty's prerogative

**(A) INDIVIDUAL APPLICANTS** (fill in as applicable)

|  |                              |  |                             |                                   |  |
|--|------------------------------|--|-----------------------------|-----------------------------------|--|
| Mr <input type="checkbox"/>                                    | Mrs <input type="checkbox"/> | Miss <input type="checkbox"/>                              | Ms <input type="checkbox"/> | Other Title<br>(for example, Rev) |  |
| <b>Surname</b>   |                              |  | <b>First names</b>          |                                   |  |
| <b>Date of birth</b><br>or over                                |                              | I am 18 years old <input type="checkbox"/> Please tick yes |                             |                                   |  |
| <b>Nationality</b>   |                              |  |                             |                                   |  |
| Current residential address if different from premises address |                              |  |                             |                                   |  |
| Post town  |                              |  |                             | Postcode                          |  |

|                                  |  |
|----------------------------------|--|
| Daytime contact telephone number |  |
| E-mail address (optional)        |  |

**SECOND INDIVIDUAL APPLICANT (if applicable)**

|   |                              |                               |                             |  |  |
|---|------------------------------|-------------------------------|-----------------------------|--|--|
| Mr <input type="checkbox"/>                               | Mrs <input type="checkbox"/> | Miss <input type="checkbox"/> | Ms <input type="checkbox"/> | Other Title (for example, Rev)           |  |
| Surname   |                              |                               | First names                 |  |  |
| Date of birth or over                                     |                              | I am 18 years old             |                             | <input type="checkbox"/> Please tick yes |  |
| Nationality   |                              |                               |                             |  |  |
| Current postal address if different from premises address |                              |                               |                             |  |  |
| Post town   |                              | Postcode                      |                             |  |  |
| Daytime contact telephone number                          |                              |                               |                             |  |  |
| E-mail address (optional)                                 |                              |                               |                             |  |  |

**(B) OTHER APPLICANTS**

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

|                                      |  |
|--------------------------------------|--|
| Name                                 | BOTTEGA MONTALBANO LTD                               |
| Address                              | 14-16 POWIS STREET<br>WOOLWICH<br>LONDON<br>SE18 6LF |
| Registered number (where applicable) | 10617304   |

|   |                                 |
|---|---------------------------------|
| Description of applicant (for example, partnership, company, unincorporated association etc.) | LIMITED COMPANY                 |
| Telephone number (if any)   | 01580 388182                    |
| E-mail address (optional)   | info@montalbanorestaurant.co.uk |

### Part 3 Operating Schedule

When do you want the premises licence to start?

|    |    |            |
|----|----|------------|
| DD | MM | YYYY       |
| 3  | 1  | 05 2 0 1 0 |

If you wish the licence to be valid only for a limited period, when do you want it to end?

|    |    |      |
|----|----|------|
| DD | MM | YYYY |
|    |    |      |

Please give a general description of the premises (please read guidance note 1)

Italian deli/ice cream parlour in small side street in the town. Area is mixed commercial/residential with a main shopping street 30 yards away. Detached property. To the front of the property a few residential houses. Public carpark for customers 20 yards away. Building comprises Ground and 1st Floors.  
 Ground floor: seating area, Kitchen, service counter, ice cream cabinet  
 First floor \* Office. Outside: Forecourt to have 4-5 small tables with chairs.  
 Food/drinks provided in internal seating area and tables on forecourt space.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

What licensable activities do you intend to carry on from the premises?

(please see sections 1 and 14 and Schedules 1 and 2 to the Licensing Act 2003)

Provision of regulated entertainment (please read guidance note 2)

Please tick all that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)

- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g)  
(if ticking yes, fill in box H)

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Supply of alcohol** (if ticking yes, fill in box J)

**In all cases complete boxes K, L and M**

- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g)  
(if ticking yes, fill in box H)

**Provision of late night refreshment** (if ticking yes, fill in box I)

**Supply of alcohol** (if ticking yes, fill in box J)

**In all cases complete boxes K, L and M**

J

| Supply of alcohol<br>Standard days and timings (please read guidance note 7) |       |        | Will the supply of alcohol be for consumption – please tick (please read guidance note 8)       | On the premises  | <input type="checkbox"/>            |
|--|-------|--------|---|--|-------------------------------------|
| Day  | Start | Finish |   | Off the premises   | <input type="checkbox"/>            |
| Mon  | 08.00 | 19.00  | <b>State any seasonal variations for the supply of alcohol</b><br>(please read guidance note 5) | Both   | <input checked="" type="checkbox"/> |
| Tue  | 08.00 | 19.00  |   |  |                                     |
| Wed  | 08.00 | 19.00  |   |  |                                     |
| Thur   | 08.00 | 19.00  |   | <b>Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list</b><br>(please read guidance note 6) |                                     |
| Fri  | 08.00 | 19.00  |   |  |                                     |
| Sat  | 08.00 | 19.00  |   |  |                                     |
| Sun  | 08.00 | 19.00  |   |  |                                     |



L

| Hours premises are open to the public<br>Standard days and timings (please read guidance note 7) |       |        | <b>State any seasonal variations</b> (please read guidance note 5) |   |
|--|-------|--------|--|---|
| Day  | Start | Finish |  |   |
| Mon  | 08.00 | 19.00  |  |   |
|  |       |        |  |   |
| Tue  | 08.00 | 19.00  |  |   |
|  |       |        |  |   |
| Wed  | 08.00 | 19.00  |  |   |
|  |       |        |  |   |
| Thur   | 08.00 | 19.00  |  | <b>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list</b> (please read guidance note 6) |
|  |       |        |  |   |
| Fri  | 08.00 | 19.00  |  |   |
|  |       |        |  |   |
| Sat  | 08.00 | 19.00  |  |   |
|  |       |        |  |   |
| Sun  | 08.00 | 19.00  |  |   |
|  |       |        |  |   |

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

**a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)**

The Designated Premises Supervisor will ensure that the premises is responsibly supervised at all times to ensure the promotion of the four licensing objectives

The Designated Premises Supervisor will ensure that all staff are trained commensurate with their work activities in order to promote the four licensing objectives.

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

The Designated Premises Supervisor and all staff will at all time be aware of their responsibility for the prevention of crime and disorder on the premises and demonstrate a responsible attitude to the marketing and sale of alcohol.

The Designated Premises Supervisor will become a member of any relevant local Crime Reduction Initiative.

The Designated Premises Supervisor will install, maintain and operate a digital CCTV system covering both the inside and outside of the premises. Recordings will be maintained for a minimum of 31 days.

**c) Public safety**

The Designated Premises Supervisor will ensure that the Fire Risk Assessment for the licensed premises is implemented and updated on a regular basis. The Fire Risk Assessment will be maintained at the licensed premises and will be available for inspection. The Designated Premises Supervisor will ensure that a Health & Safety Risk Assessment for the licensed premises is implemented and update on a regular basis. The Health & Safety Risk Assessment will be maintained at the licensed premises and will be available for inspection.

The Designated Premises Supervisor will ensure that all staff undertake training in licensing law, drugs, underage drinking and health & safety as commensurate with their work activities. The Designated Premises Supervisor will ensure that sufficient staff are employed and on duty as appropriate to ensure the safety of the premises and customers. The Designated Premises Supervisor will ensure that all appliances and systems relevant to public safety are regularly tested and covered by appropriate certification.

**d) The prevention of public nuisance**

The Designated Premises Supervisor will ensure that no external music speakers are used.

The Designated Premises Supervisor will ensure that the collection and disposal of refuse is managed to minimise any disturbance to neighbours.

The Designated Premises Supervisor will ensure that customers are requested to leave the premises quietly.

**e) The protection of children from harm**

The Designated Premises Supervisor will through the operation of a recognised "proof of age" scheme ensure that anyone who appears to be under 18 and is attempting to buy alcohol or is consuming alcohol on the premises will be asked to provide adequate and accepted proof of age.

**Checklist:**

**Please tick to indicate agreement**

- I have made or enclosed payment of the fee.
- I have enclosed the plan of the premises.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.
- I understand that I must now advertise my application.
- I understand that if I do not comply with the above requirements my application will be rejected.
- [Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom (please read note 15).

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.**

**Part 4 – Signatures** (please read guidance note 11)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (see guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

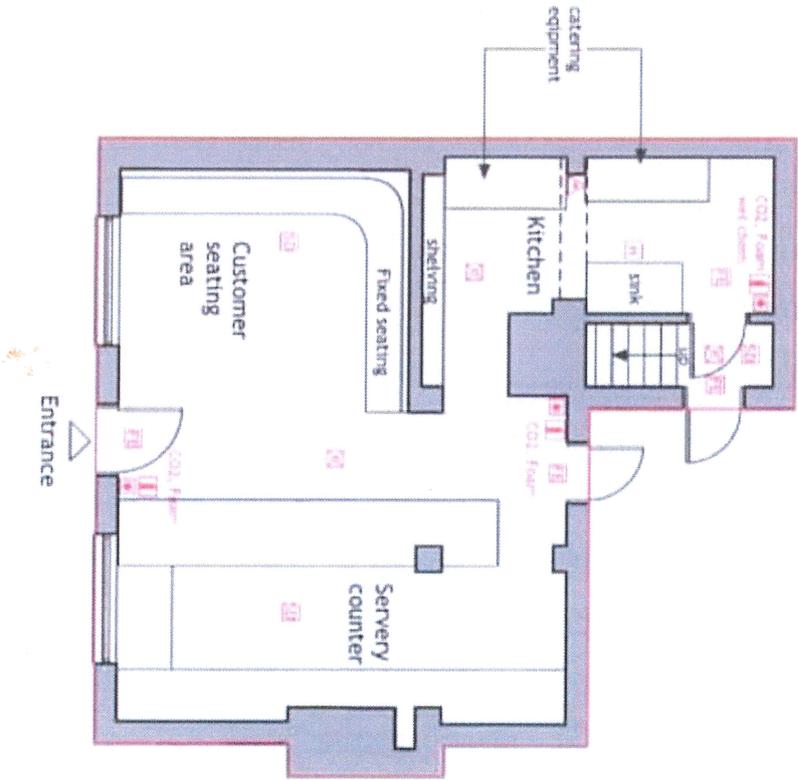
|                    |  |
|--------------------|--|
| <b>Declaration</b> | <ul style="list-style-type: none"> <li>[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15).</li> <li>The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)</li> </ul> |
| Signature          |    |
| Date               | 10 04 2018   |
| Capacity           | DIRECTOR   |

For joint applications, signature of 2<sup>nd</sup> applicant or 2<sup>nd</sup> applicant's solicitor or other authorised agent (please read guidance note 13). If signing on behalf of the applicant, please state in what capacity.

|           |  |
|-----------|--|
| Signature |  |
| Date      |  |
| Capacity  |  |

|   |  |          |  |
|---|--|----------|--|
| Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14) |  |          |  |
| Post town   |  | Postcode |  |
| Telephone number (if any)   |  |          |  |
| If you would prefer us to correspond with you by e-mail, your e-mail address (optional)   |  |          |  |

LICENSING DRAWING  
1:100 @ A4



1 Proposed Layout  
Scale: 1:100

| LEGEND |                              |
|--------|------------------------------|
|        | Emergency lighting           |
|        | Heat Detector                |
|        | Smoke Detector               |
|        | Call Point                   |
|        | Illuminated Fire Escape Sign |
|        | Fire extinguisher            |
|        | CO2, foam, wet chemical      |
|        | Fire blanket                 |



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**NOTIFICATION OF DECISION  
OF THE LOCAL PLANNING AUTHORITY**

Date of Decision

19 October 2017



**ASHFORD**  
BOROUGH COUNCIL

Civic Centre  
Tannery Lane  
Ashford  
Kent TN23 1PL  
01233 331111  
[www.ashford.gov.uk](http://www.ashford.gov.uk)

Spacely Ltd  
1 Poplar Grove  
New Malden  
Surrey  
KT3 3BY

**ACKNOWLEDGMENT OF PRIOR APPROVAL NOTIFICATION OF CHANGE OF USE:  
FROM RETAIL, BETTING OFFICE, PAY DAY LOAN SHOP OR CASINO TO RESTAURANT  
CAFE**

**Town and Country Planning Act 1990 (as amended) Town and Country Planning (General Permitted Development) Order 2015, Schedule 2 Part 3 Class C**

**APPLICATION NO:** 17/01279/AS  
**PROPOSAL:** Prior approval for the change of use of the ground floor from Retail (Class A1) to a Delicatessen (Class A3)  
**LOCATION:** 3 Highbury Lane, Tenterden, Kent, TN30 6LE  
**APPLICANT:** Montalbano 75 High Street Tenterden Kent TN3 6BB

**DECISION:** **PRIOR APPROVAL IS NOT REQUIRED**, in accordance with the details submitted in the application

1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.

**Reason:** To comply with the requirements of Class C, Part 3, Schedule 2 of the Town and Country (General Permitted Development) Order 2015.

2 The premises shall not be open to the public other than between the hours of 08:00am - 7:00pm Monday to Sunday.

**Reason:** To protect the residential amenity of the locality

3 The development approved shall be made available for inspection, at a reasonable time, by the local Planning authority to ascertain whether a breach of planning control may have occurred on the land (as a result of departure from the plans hereby approved and the specific terms of this permission/consent/approval).

**Reason:** In the interests of ensuring the proper planning of the locality, the protection of amenity and the environment, securing high quality development through adherence to the terms of planning approvals and to ensure community confidence in the operation of the planning system.

## Notes to Applicant

### Working with the Applicant

In accordance with paragraphs 186 and 187 of the NPPF Ashford Borough Council (AC) takes a positive and proactive approach to development proposals focused on solutions. AC works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- as appropriate updating applicants/agents of any issues that may arise in the processing of their application
- where possible suggesting solutions to secure a successful outcome,
- informing applicants/agents of any likely recommendation of refusal prior to a decision and,
- by adhering to the requirements of the Development Management Customer Charter.

In this instance.

- the application was acceptable as submitted and no further assistance was required.
- The application was approved without delay.

### Plans/Documents approved by this decision

Site Location Plan - Scale 1:1250

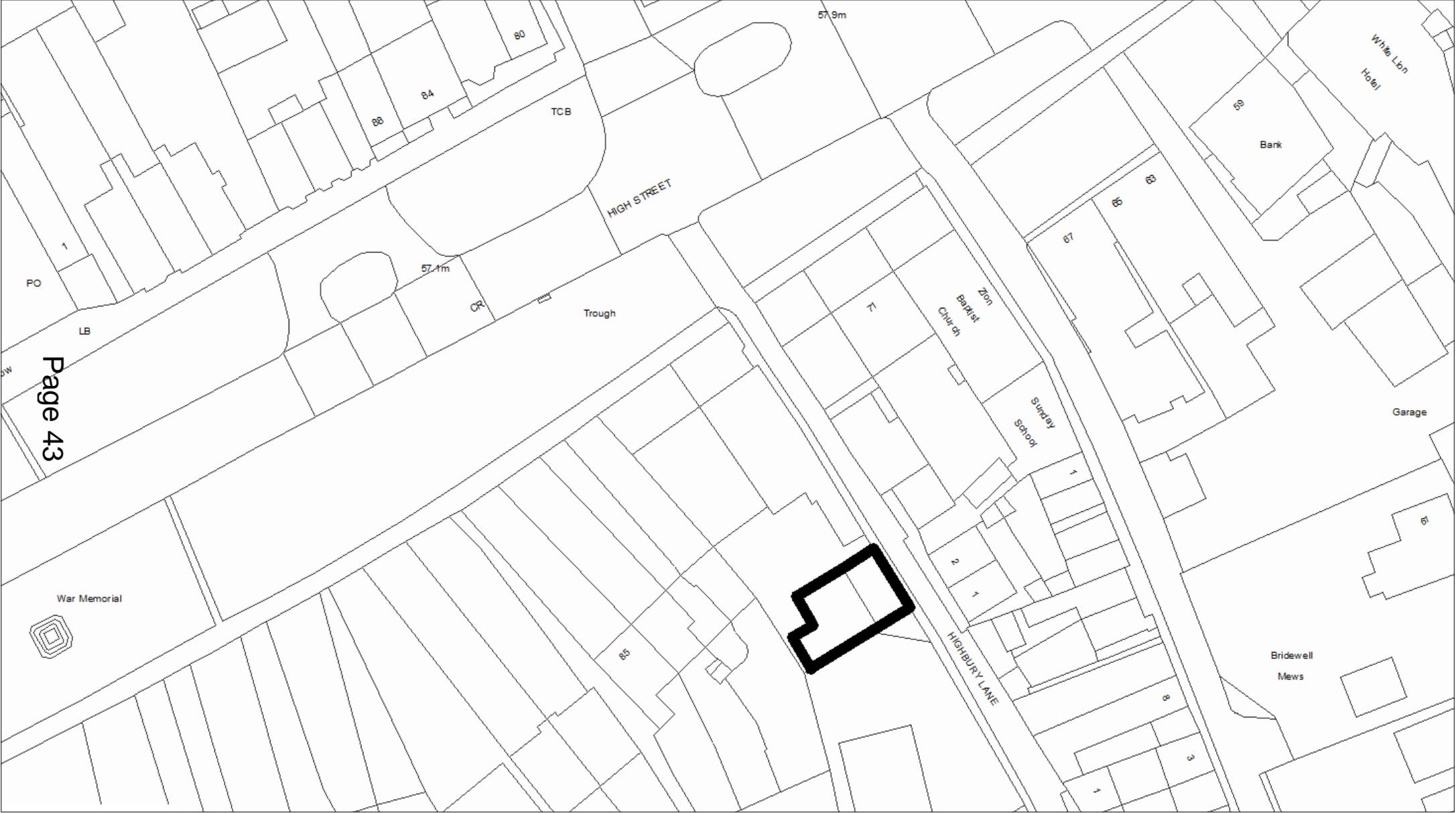
Block/Site Plan - Scale 1:500

Ground Floor Plan proposed - Scale 1:50

Email from agent confirming ground floor - 17/10/2017



Head of Development, Strategic Sites and Design



PO

LB

57.1m

CR

Trough

HIGH STREET

57.9m

TCB

88

84

80

White Lion  
Hotel

Bank

88

88

87

Garage

Zion  
Baptist  
Church

K

Supply  
Shop

7

War Memorial



85

HIGHBURY LANE

2

1

Bridewell  
Mews

8

3

1

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## **APPENDIX E**

### **CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE**

#### **General**

1. The designated premises supervisor will ensure that the premises is responsibly supervised at all times to ensure the promotion of the four licensing objectives
2. The designated premises supervisor will ensure that all staff are trained commensurate with their work activities in order to promote the four licensing objectives

#### **The Prevention of Crime and Disorder**

3. The designated premises supervisor and all staff will at all times be aware of their responsibility for the prevention of crime and disorder on the premises and demonstrate a responsible attitude to the marketing and sale of alcohol
4. The designated premises supervisor will become a member of any relevant local crime reduction initiative
5. The designated premises supervisor will install, maintain and operate a digital CCTV system covering both the inside and outside of the premises. Recordings will be maintained for a minimum of 31 days

#### **Public Safety**

6. The designated premises supervisor will ensure that the fire risk assessment for the licensed premises is implemented and updated on a regular basis. The fire risk assessment will be maintained at the licensed premises and will be available for inspection.
7. The designated premises supervisor will ensure that a health and safety risk assessment for the licensed premises is implemented and updated on a regular basis. The Health and Safety risk assessment will be maintained at the licensed premises and will be available for inspection
8. The designated premises supervisor will ensure that all staff undertake training in licensing law, drugs, underage drinking and health and safety as commensurate to their work activities
9. The designated premises supervisor will ensure that sufficient staff are employed and on duty as appropriate to ensure the safety of the premises and customers
10. The designated premises supervisor will ensure that all appliances and systems relevant to public safety are regularly tested and covered by appropriate certification

#### **The Prevention of Public Nuisance**

11. The designated premises supervisor will ensure that no external music speakers are used
12. The designated premises supervisor will ensure that the collection and disposal of refuse is managed to minimise any disturbance to neighbours

13. The designated premises supervisor will ensure that customers are requested to leave the premises quietly

#### **The Protection of Children From Harm**

14. The designated premises supervisor will through the operation of a recognised 'proof of age' scheme ensure that anyone is appears to be under 18 and is attempting to buy alcohol or is consuming alcohol on the premises will be asked to provide adequate and accepted proof of age.

## APPENDIX F

### REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES AND INTERESTED PARTIES (OBJECTIONS)

| <b>Name</b>                   | <b>Address</b>                                |
|-------------------------------|---|
| Mr Dennis Langford.           | 2 Highbury lane, Tenterden. TN30 6LE          |
| Sally Ward and Joanne Lusted. | 1 Highbury Lane, Tenterden, Kent, TN30 6LE    |
| Tenterden Town Council.       | Town Hall, 24 High Street, Tenterden TN30 6AN |



Dear Licensing Section,

RE: 3 Highbury Lane, Tenterden, TN30 6LE

I am writing to you to raise my objections to the proposed alcohol and light refreshment application at the above property, for the following reasons:

I am a resident of Highbury Lane and it is my understanding that number 3 Highbury Lane has an A1 business usage license for the ground floor of the premises, and a B1 license for the upper floor of the property. This has been in place since 2003.

As I understand it, the A1 business use license allows a shop to sell cold foods and drinks to be consumed off the site.

Furthermore, I'm aware that the nearby restaurant, Montelbano Restaurant, at 75 High St, Tenterden, TN30 6BB, currently use 3 Highbury Lane, Tenterden, as accommodation for their employees, and that they applied for a change of use licence in 2017, to turn 3 Highbury Lane into a delicatessen with pizza and ice cream making areas, and customer seating areas, but this was declined, *as the planning dept decided that prior approval was not required.*

When Montelbano's management applied to change their business usage license, they wrote, **'the premises are unsuitable in our view for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that this is not on the High St'** (appendix 1). Therefore, the same applicants of the proposed liquor license did themselves correctly identify the issues involved, and I find it surprising that those who wrote that comment have now applied for a liquor license and are in the process of changing the building into a cafe/restaurant only six months later, as nothing in the vicinity has changed.

Highbury Lane is a narrow road, with a residential area, and my home is less than 4 metres away from their land, and 6 metres from their shop door. Let me add that I was aware of the business opposite my home when I bought my property, however, the property was being used as an office and storage point, and has since been used as private accommodation for over a year, and I don't feel that the license or usage should change and I will object to any future application for the change of use.

Furthermore, as per Ashford council's licensing policy, I object to the license on the grounds that any sale of alcohol from on and off the site will, in my opinion, cause a public nuisance, and be detrimental to the public's safety, and be an infringement of my Human Rights under Article 8 – Everyone has the right to respect for his private and family life, his home and his correspondence. [6] Article 1 of the First Protocol – Every person is entitled to the peaceful enjoyment of his or her possessions. And Article 3, the right prohibits inhumane and degrading treatment.

Any alcohol license will be detrimental to the public's safety for these reasons. If people consume alcohol on or off the premises, there will be an increase in pedestrian and vehicle traffic in a road which is only which is only 3 metres 10cm wide, including the pavement (appendix 3). Highbury Lane is narrow, and there is a small pavement on one side of it. There have been regular congestion problems, due to vehicles accessing it from both ends, to reach the car park at Bridewell Lane.

Furthermore, as the pavement is narrow and can only fit one person on it, it means that pedestrians regularly have to step into the road to pass people walking in the opposite direction. Any increase in pedestrians will bring an additional danger to the public's safety.

An alcohol license will also, in my opinion, cause a public nuisance for these reasons. If clients consume alcohol or food off the premises then there are limited areas around the site to do this. There is the car park at the end of the lane, but it would be dangerous for people to drink alcohol there. And there are grass verges on Tenterden High St, but consuming alcohol there could cause a public nuisance. There may also be a litter problem. If clients consume the alcohol on the premises, then this raises problems, as there is limited space in the shop for consumers (appendix 2), and there is a small area outside the front of the shop, which is part of the site. But any attempt to allow customers to loiter and consume food and alcohol there would be a public nuisance, a public safety hazard, a breach of their current A1 license, and a breach of my human rights under article 8, article 1 of the First Protocol, and article 3, inhumane and degrading to have people loitering, picnicking, or talking only metres from my property. As Montelbano's management rightly summarised: the area is unsuitable for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that it is not on the High St.

An alcohol license will also be a breach of my human rights under Article 8 – Everyone has the right to respect for his private and family life, his home and his correspondence. [6] Article 1 of the First Protocol – Every person is entitled to the peaceful enjoyment of his or her possessions. And Article 3, we will be subjected to inhumane and degrading treatment. Unfortunately, members of Montelbano staff have caused a noise nuisance on many occasions, when loitering outside the above property, and when outside the rear kitchen entrance of the Montelbano restaurant. They have cleaned out bins at 1.30am with a jet washer, and I had to ask them to stop. They regularly empty glass bottles into the outside bins late at night, and I've requested that they stop doing this on numerous occasions, the staff have taken phone calls whilst sitting on my doorstep, and the staff loiter around both 3 Highbury Lane and the rear of the restaurant whilst chatting loudly. I object to any future public nuisance or noise. Also, any change of the front of the premises of 3 Highbury Lane, to include tables and chairs for customers will be a breach of my right to privacy and a breach of my enjoyment of my home and it will be intrusive to the point of being degrading and inhumane, given the proximity of both buildings. As Montelbano management have rightly deduced, the area is unsuitable for a restaurant/delivery operation or for a licensed premises, given the proximity to houses.

The plans for 3 Highbury Lane include the suggestion of an ice cream parlour, but I believe that placing an ice cream parlour on a side road with a limited amount of pavement will pose a danger to children (appendix 2). And please be advised that we reserve the right to disclose this objection to anyone who might sustain an injury as a result of this application being granted, or as a result of a cafe/restaurant opening without the requisite business usage.

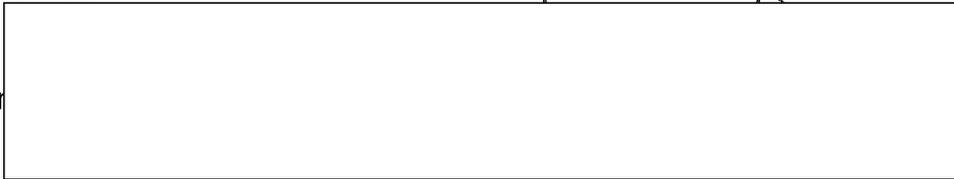
The plans for 3 Highbury Lane also include the suggestion of a pizza joint (appendix 2) However, any pizza or hot food enterprise will be in breach of their current A1

license, and any attempt to add a takeaway service to their business will cause additional traffic down a narrow lane and will be in breach of my human rights. As Montelbano management have identified the area is unsuitable for a restaurant/delivery operation.

Let me say that I support Montelbano's decision to provide cold snacks and alcohol to visitors to, and residents of, Tenterden, but I believe that there are plenty of empty properties along the High St that have the appropriate usage license and can better serve their clients. Alternatively, Montelbano's can provide the service at their restaurant, as they themselves identified, as it is on the High Street and has suitable seating areas for their clients.

Dennis Langford  
2 Highbury Lane  
Tenterden  
TN30 6LE

Signature



Date

30/4/18

Dear Licensing Section

RE: 3 Highbury Lane, Tenterden, TN30 6LE

I received your email this morning and I wish to request that my original complaint, and the points I made in my original letter, are still considered and not thrown out. Just because I gave background information about the situation, in my letter, does not invalidate it.

I wish to raise my objections to the proposed alcohol application at the above property, for the following reasons:

#### Prevention of Nuisance

I am a resident of Highbury Lane and, I object to any alcohol licence application, at the above address, as I believe that an alcohol licence, and the serving of alcohol on this premises, or on the pavement in front of this premises, will cause a noise nuisance, which will infringe on my human rights, under Article 1, protocol 1, the right to every person has the right to the peaceful enjoyment of their possessions (home). Article 3, the prohibition of inhumane or degrading treatment. Article 8, the right to respect our private and family life.

It will also cause a statutory nuisance, and will affect my, and other resident's health and well-being, and cause us a disturbance. It will affect our enjoyment of our home and property. My home is less than 4 metres away from their land, and 6 metres from their shop door. I don't feel that an alcohol license, with people consuming alcohol within a short perimeter of my land, on the pavement in front of my property, is appropriate.

#### Public safety

Highbury Lane is a narrow street, with limited pavement on one side. There have been numerous traffic problems, and people regularly walk in the road. This is a danger to the public, especially if there is an increase in pedestrians, who have consumed alcohol, and vehicle traffic in a road, which is only which is only 3 metres 10cm wide, including the pavement. There have been regular congestion problems, due to vehicles accessing it from both ends, to reach the car park at Bridewell Lane. Furthermore, the pavement is narrow and can only fit one person on it, it means that pedestrians regularly have to step into the road to pass people walking in the opposite direction. Any increase in pedestrians will bring an additional danger to the public's safety.

A further public safety issue is that if the proprietor of the proposed café does not declare that he wrote, **'the premises is unsuitable in our opinion for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that it's not on the High St'** to his public liability insurers then it will invalidate his insurance. If he does not declare that he wrote this, and the council approves the alcohol licence, in the knowledge that he wrote this, then the liability spreads to the council. He needs to declare this to all insurers to ensure that he is covered for any liability that arises from any liability that arises from this statement.

A further public safety hazard is that I have written and verbal confirmation that the proprietors of the above property intend to put chairs and tables at the front of the property in order to serve their clients. This poses a further public safety problem as the front of the

property is not level. If someone becomes injured then the issue of liability becomes a problem.

Protection of children from harm.

A further public safety hazard is that the proprietors intend to put chairs and tables and serve alcohol outside their property, which is next door to Highbury Hall, with a mothers and toddlers group, and a youth group. I believe that this poses a risk to children because it could expose children to unsavoury behaviour by people who have consumed alcohol.

Further objections

The number one reason why I believe that 3 Highbury Lane is unsuitable for a licenced premises is that the premises is totally unsuitable, given the closeness to the residential houses. As Montelbano management have rightly deduced, 'the premises is unsuitable for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that its not on the High St'.

Let me say that I believe that there are plenty of empty properties along the High St that can serve alcohol whilst protecting their clients.

I am seeking a hearing on this matter, with the licencing sub-committee, under the licensing objectives, under Article 6 of the Human Rights Act, the right to a fair hearing.

Dennis Langford  
2 Highbury Lane  
Tenterden  
TN30 6LE

Date 22/5/18

22/5/18

2 Highbury Lane  
Tenterden  
TN30 6LE

Dear Licensing Section/Julian Postlethwaite

Further to my email of objection this morning, I wish to add the following comments to my complaint.

I believe that a licenced premises, only metres from my door, will cause a statutory nuisance to my life, and Ashford Council have a duty, under the government's guidance, that directs that a nuisance **'is happening, has happened or will happen in the future'** to prevent a nuisance before it occurs.

<https://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints>

When Montelbano's management applied to change their business usage license, they wrote, 'the premises are unsuitable in our view for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that this is not on the High St'. This is an admission of liability, as it states where a liability exists, that the premises is not suitable for an alcohol licence, and why it exists, as it is not suitable for an alcohol licence because of the proximity of houses and the fact it's not on the High St. If the licensing department wish to ignore, or remove this statement from the adjudication of this matter, then any liability still exists, as you have been informed of this statement, and you have knowledge of it. You have been informed of this, and members of Ashford Council have a duty to act on this information given.

Dennis Langford

WRITTEN BY MONTALBANOS

Application to seek a permitted development certificate for 3 Highbury Lane, Tenterden TN30 6LE.

According to the page on the Ashford Council website dealing with changes of planning use, an A1 or A2 premise can be permitted to change uses to A3 subject to size and the use in force on the 5th December 2013. Here is a link to the page in question:-

[https://www.planningportal.co.uk/info/200130/common\\_projects/9/change\\_of\\_use/2](https://www.planningportal.co.uk/info/200130/common_projects/9/change_of_use/2)

We believe these premises comply with those conditions. The established use has been retail, ancillary to a high street shop since at least 1995, and the upper parts were granted a change of use from residential to ancillary office in 2003. The current proposal is to use the premises as a delicatessen, ice cream and coffee/sandwich shop on the ground floor and retaining the offices above. The space is 1012 square feet, just under 100 square metres, well within the limit set in the guidance notes.

Please note that we are requesting an A3 use, though many deli's operate with an A1 use. We are not applying for A4 or A5 uses, as the premises are unsuitable in our view for a restaurant /delivery operation or for licensed premises, given the proximity to houses and the fact that this is not on the High Street. No permission is sought either for a kitchen extract, as the limited cooking processes intended do not require one. Building work will be minor, involving fitting out the interior as food-suitable premises, and adding a painted sign and a retractable awning. The existing air-conditioning compressor at the rear is to stay, though we will consider modifying the front windows to open for natural ventilation (without changing the appearance).

Given that there is no building work to be done, there seems to be no requirement for drawings of the premises with this application, but should you wish to see the internal layout, drawings will be available shortly for discussions with the environmental health officer, and can be supplied to the planning department also if required.

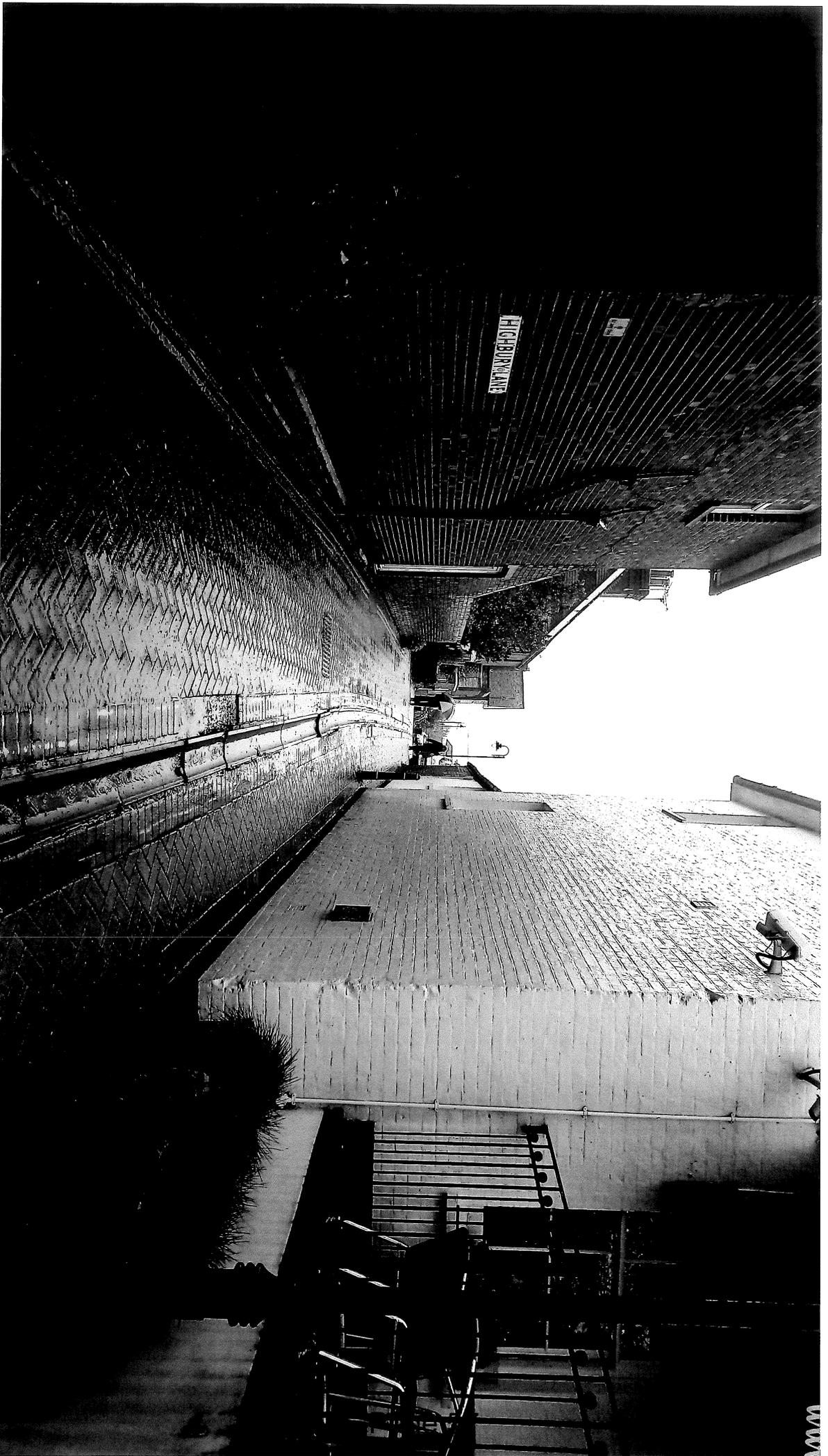
The premises will be run in conjunction with and under the same ownership as Montalbano restaurant, just next door, marked in blue on the accompanying plan.

We trust that this provides all the information necessary for you to come to a decision, but should further information be required, please let us know and we will provide it; alternatively we would be happy to discuss the proposal in person.

MS - 4 July 2017

Appendix 3 - 3 Highbury Lane from my doorstep





Appendix 3

Highbury lane



Appendix 3.

## Julian Postlethwaite

---

**From:** Town Hall <townhall@tenterdentowncouncil.gov.uk>  
**Sent:** 21 May 2018 22:28  
**To:** Licensing  
**Subject:** Premises Licence Application by Bottega Montalbano Ltd, 3 Highbury Lane

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Julian

Good Evening,

We discussed the Premises Licence application for the above premises at our Planning Committee meeting this evening and we OBJECT to the application on the following grounds.

In 2017, the application for the change of use from retail (A1) to delicatessen (A3) was supported by the Town Council and of course was approved by ABC. In the supporting document for that application, it clearly stated that "the premises are unsuitable in our view for a restaurant/delivery operation or for licensed premises, given the proximity to houses and the fact that this is not on the High Street." Our Planning Committee are concerned that approving the premises licence will affect the human rights of the neighbours (which the applicants acknowledged in the original application) and allowing the licence is inappropriate for the area.

Please do not hesitate to contact me if you require any further information.

Kind regards,

Claire

Claire Gilbert  
Deputy Town Clerk  
Tenterden Town Council  
[www.tenterdentowncouncil.gov.uk](http://www.tenterdentowncouncil.gov.uk)

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1 Highbury Lane  
Tenterden  
TN30 6LE

20 May 2018

Julian Postlethwaite

Dear Mr. Postlethwaite & Licensing Section,

We wish to raise our objections to the licence application for 3 Highbury Lane. We oppose the licence application for numerous reasons, including environmental concerns, concerns over breaches of our human rights, and public safety concerns.

Highbury Lane is a narrow street, and since work began on 3 Highbury Lane, there have been constant environmental issues, including extra noise, numerous traffic problems, a car crash, and frequent congestion in the lane outside my home. This has affected me and my partner's health and well-being and we have serious concerns about the future plans for 3 Highbury Lane.

We are now aware of the plans to introduce a pavement café to the site of 3 Highbury Lane, and we believe that if it goes ahead, the environmental issues will continue, and increase, for a sustained period of time.

There has now been such a large departure from the original planning application, from a delicatessen to an alcohol licenced premises, that this is having a profound effect on our lives.

Therefore, I oppose the licence application, at 3 Highbury Lane, for the following reasons:

The licence application is in breach of the original planning application, that was recommended by planning officials on the basis that a delicatessen was going to be situated on the site.

The staff of Montalbano's restaurant have frequently caused a noise pollution, in the daytime and late at night, and I've had to go out in my pyjamas to tell them to be quiet at 1.30 in the morning. I have even had employees sitting on my doorstep smoking. At other times, we've been unable to sleep for the noise in the vicinity of 3 Highbury Lane. This is in breach of our rights under Protocol 1, Article 1, and Article 8. We believe that further breaches will continue, and get worse with additional workers, working outside the premises.

The suggestion of a bar/cafe/restaurant on a narrow lane, with limited pavement, and with poor footing, due to broken kerbstones (as traffic regularly drive on the pavement), and pedestrians walking in the road, is a hazard enough, without extra people and vehicles. The fact that this week there has been a car crash near my home is of concern. This is an unhealthy environment to live in.

We regularly have delivery vehicles parked in the lane outside my home, which blocks the lane, and it is also an environmental matter, as some drivers leave their engines running, when making deliveries.

This is a residential area, and we have a right to privacy, and the peaceful enjoyment of our home, under Article 8 – Everyone has the right to respect for his private and family life, his home and his correspondence. Protocol 1, Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions. And Article 3, the right prohibits inhumane and degrading treatment. A pavement cafe or even an inside cafe, will prevent our homes from having the privacy that we have had for many years. We believe that an alcohol licence at this premises will increase the likelihood of people hanging around tables only yards from our front door and lounge, and will fundamentally breach our human rights.

When Montalbano's management applied to change their business usage license, they wrote, 'the premises are unsuitable in our view for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that this is not on the High St'. This is an admission of liability, as it states where a liability exists, and why it exists.

We believe that an alcohol license at these premises will be detrimental to the public's safety, as if people consume alcohol on the premises then there will be an increase in pedestrian and vehicle traffic in a lane that is only which is only 3 metres 10cm wide, including the pavement. The pavement is narrow and can only fit one person on it, it means that pedestrians regularly have to step into the road to pass people walking in the opposite direction. Any increase in pedestrians will bring an additional danger to the public's safety.

Most importantly, we do not want to live next to a pavement cafe as we believe that any noise from it will be excessive.

We repeat our original objection to a restaurant/licenced premises, and we object to a pavement café, at 3 Highbury Lane. There are plenty of empty properties along the High St. This is a breach of our human rights.

As Montalbano's management rightly summarised: the area is unsuitable for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that it is not on the High Street.

Yours sincerely,

Sally Ward  
Joanne Lusted

1 Highbury Lane  
Tenterden  
Kent  
TN30 6LE

22 May 2018

Julian Postlethwaite  
[Julian.postlethwaite@ashford.gov.uk](mailto:Julian.postlethwaite@ashford.gov.uk)

By email

Dear Julian Postlethwaite and Licensing Section,

**RE: 3 Highbury Lane, Tenterden, TN30 6LE**

I am in receipt of your email at 09:58am this morning.

My letter of 20 May 2018 detailed much of the background information in order that a fully informed decision could be made. Whilst I appreciate your comments, my objection remains valid.

I wish to raise my objections to the proposed alcohol application at the above property, for the following reasons:

**Prevention of Public Nuisance**

I am a resident of Highbury Lane and have been for 15 years and vehemently object to a licensing application being granted.

I believe that the serving of alcohol on these premises, whether limited to the inside of the building (as in the planning application) or outside on the forecourt of these premises (NOT in the original planning application) will cause extreme noise nuisance. This will breach my human rights. Protocol 1, Article 1 protects your right to enjoy your property peacefully. The premises of 3 Highbury Lane is less than 4 metres from my front door. If they will be serving alcohol from the forecourt, this is 1 metre from my front door. It is my understanding that they intend to be open 8am to 7pm, 7 days per week. How can I possibly enjoy my property peacefully? Please refer to pages 16 and 17 of Ashford Borough Council's Statement of Licensing Policy 2014-2019, approved by full Council in December 2014.

I also refer to the Human Rights Act 2003 Protocol 1, Article 3 which protects from inhumane or degrading treatment; and Article 8 which protects my rights to respect for my private and family life. For 7 days per week, during the hours of (at the very minimum) 8am and 7pm to noise and nuisance from these premises. I have already had reason to complain about the noise from their licensed premises (Montalbano, 75 High Street) as their staff continually shout and scream at the rear of these premises, right opposite my house. They sit on my doorstep smoking and cause nuisance very late at night/early hours of the morning. Should

an alcohol licence be granted this will exacerbate an already escalating problem. As I sit in my bedroom typing this letter to you with my window open, I can hear everything going on in the kitchen of Montalbano; the premises they wish to license is 3 metres closer to my home than this kitchen. How can anyone live like this?

It will also cause a statutory nuisance and will affect mine, my partner's as well as other resident's health and well-being; this will cause us disturbance. It will affect our enjoyment of our home and property. I feel that an alcohol licence, with people consuming alcohol within a short perimeter of my home and on the pavement in front of my property, is completely and utterly inappropriate.

### **Public safety**

Highbury Lane is a very narrow road with very limited safe pedestrian pavement on one side. There have been numerous traffic problems; people having to regularly walk in the road due to various obstructions. This is a very real danger to the public, especially if there is an increase in pedestrians who have consumed alcohol and increased vehicular traffic will have a negative effect on safety. This road is only 3.01 metres wide, including the pavement. There have been regular congestion problems, due to vehicles accessing it from both ends, to reach the car park at Bridewell Lane. Furthermore, the pavement is narrow and can only fit one person on it; meaning that pedestrians regularly have to step into the road to pass people walking in the opposite direction. Any increase in pedestrians will bring an additional danger to the public's safety.

A further public safety issue is that if the proprietor of the proposed café does not declare that he wrote, **“the premises is unsuitable in our opinion for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that it's not on the High St”** to his public liability insurers then it will invalidate his insurance. If he does not declare that he wrote this, and the council approves the alcohol licence, in the knowledge that he wrote this, then the liability diverts to the council. He needs to declare this to all insurers to ensure that he is covered for any liability that arises from any associated liability.

A further public safety hazard is that I have written and verbal confirmation that the proprietors of the above property intend to put chairs and tables at the front of the property in order to serve their clients. This poses a further public safety problem as the front of the property is not level. If someone becomes injured then the issue of liability becomes a problem. Montalbano's have advertised this via artist impression on their website without including this in their original application.

### **Protection of children from harm.**

A further public safety hazard is that the proprietors intend to put chairs and tables and serve alcohol outside their property which is next door to Highbury Hall. Highbury Hall is home to a pre-nursery children's group and a youth group. This poses a serious risk to children and could lead to the exposure of I believe that this poses a risk to children because it could expose children to insalubrious behaviour by adults who have consumed alcohol. It would be remiss of me to not mention that we have a duty to protect children from any kind of potential harm.

Having a licensed premises only metres from where children are and where they, and their parents, believe they are safe is a recipe for disaster. This poses a huge and serious risk.

### **Further objections**

3 Highbury Lane is completely unsuitable for a licenced premises given the close proximity to the residential houses. Montalbano management rightly deduced; “the premises are unsuitable for a restaurant/delivery operation or for a licensed premises, given the proximity to houses and the fact that it’s not on the High St.”

There are an abundance of empty commercial properties on the High Street far more suited to this type of establishment.

My partner and I chose to live at 1 Highbury Lane because it was a quiet street of the High Street and has been for over 100 years. I feel that our rights to continue to live in a quiet road is being removed without any local consideration. Granting a licence to these premises would contribute to an already growing anti-social behaviour problem in Tenterden.

I am seeking a hearing with the licencing sub-committee regarding this matter, under the licencing objectives; Article 6 of the Human Rights Act; the right to a fair hearing.

I look forward to hearing from you.

Yours sincerely,

Sally Ward ([sallylward@yahoo.com](mailto:sallylward@yahoo.com))

Joanne Lusted ([joannelusted@gmail.com](mailto:joannelusted@gmail.com))

## **APPENDIX H - HUMAN RIGHTS**

### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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