

**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:

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## 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 08:00 – 19:00
<b>Hours premises open to the public</b>	Monday to Sunday 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.

