

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in Committee Room 1, Civic Centre, Tannery Lane, Ashford on the **15th June 2018**.

Present:

Cllr. Bradford (Chairman);

Cllrs. Feacey, Krause;

Cllr. Pickering (Reserve).

Also Present:

Licensing Officer, Environmental Protection & Licensing Team Leader, Legal Advisor, Member Services and Ombudsman Complaints Officer.

Mr Thomas (Applicant's Representative)

Ms Lonel (Applicant and DPS)

Ms Seed (Neighbour Representative)

Ms Gooch (Tenterden Town Council)

48 Election of Chairman

Resolved:

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

49 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 30th April 2018 be approved and confirmed as a correct record.

50 Premises License for Bottega Montelbano, 3 Highbury Lane, Tenterden, Kent TN30 6LE

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 summarised the application as set out in the report and confirmed that it had been made correctly. He referred to the previous planning application for a change of use to sell food and drink and to the decision of the

planning department that prior approval was not required. Therefore, the premises already had permission to open as a café but not sell alcohol. It was clarified later in the meeting that the planning permission only related to the inside of the building and the applicant would have to apply for planning permission for an outside seating area. The Licensing Officer outlined that there were two representations from local residents and one from Tenterden Town Council on the following grounds: public nuisance, noise, public safety including impact of vehicles and deliveries, and protection of children from harm.

The Committee then heard from Mr Thomas on behalf of the applicant. He explained that the applicant operated as a café/deli/ice-cream parlour located behind the main restaurant on Tenterden High Street. The applicant had developed their proposals to serve alcohol as well following discussions with customers. The proposal was simply to be able to offer alcoholic drinks, such as a glass of wine or prosecco with light food or afternoon tea. The applicant anticipated no more than 30 customers at any one time, and there were no proposals for late night entertainment, serving alcohol late or live music. In response to the concerns of local residents the applicant had put forward amended conditions which were:

1. Alcohol to be consumed on the premises would only be served to persons seated at tables within the premises and the forecourt area;
2. Alcohol to be consumed beyond the forecourt area would only be sold in sealed containers;
3. Food would be available throughout the trading period.

In addition, Mr Thomas confirmed that the applicant would amend the hours of serving alcohol on site to start at 10am. However, off-site sales would remain as previously, starting at 8am.

In response to concerns about nuisance, Mr Thomas said there would be no external music speakers, although there would be internal incidental music, as was allowed. The DPS would manage the disposal and collection of refuse, deliveries from vehicles and all other operations in line with the procedures at the main Montelbano restaurant. He referred to the artist's sketches showing the proposals for the external and internal space. He emphasised that there would be a small supplemental offering of alcohol to go with meals and the premises would operate only as an Italian café.

In response to questions from Councillors, Ms Lonel confirmed that she would be part of the age verification scheme called Challenge 25 and would accept that as a condition, and that she, as DPS, was present during her working hours.

The Committee asked about the reference in the planning application to the statement that the premises were unsuitable to operate as a licenced premises. In response Ms Lonel said it was a misunderstanding with their planning consultant. It was not intended to operate as a full restaurant and the wording was how their planning consultant had represented their views. However, since then she confirmed that they had spoken to their customers and they had asked if the

business could sell alcohol with food. She confirmed again that this would be a very small part of the business. Mr Thomas said that the planning application for A3 use (food and drink) was made up front and was very clear.

The Committee then heard from Ms Jane Seed, who represented the residents of Highbury Lane. She referred to her written representations, but firstly addressed what Mr Thomas had said, as follows:

1. The premises was an ice-cream parlour wanting to sell alcohol, and this was a conflict relating to the safety of children.
2. The applicant said they had planning permission to serve alcohol on the forecourt, however they did not (this point was confirmed as set out above).
3. The condition regarding sealed containers for off-site sales did not prevent anyone from unsealing and drinking.
4. Regarding the artist's impression, the reality was completely different. The screeding at the front of the premises was not level, and was therefore dangerous. The interior of the building did not have any sound-proofing. When people drink they become louder, and therefore there would be a noise nuisance.
5. Serving alcohol would cause an extreme noise nuisance, particularly as the houses of Highbury Lane were only a very few metres away from the premises. The forecourt was only a metre from the front doors of the residents' houses and they already heard everything at the café.
6. The residents had lived there many years, and it was a residential street. They had an established human right to peace and quiet. They were already living in unacceptable circumstances and it would become worse.
7. The mixture of drinking alcohol all day and more people entering and exiting the premises would become a statutory nuisance.
8. There had been accidents caused by deliveries, including a bollard being knocked over and Ms Seed had seen two elderly people nearly run over by a reversing delivery vehicle. All this would become more dangerous with the sale of alcohol involved.

In summary, Ms Seed confirmed that the residents' main concern was noise nuisance being committed within a metre of their doorsteps and within 4 metres of their sofas in their front rooms. Alcohol made people less cautious and less aware of their impact on others.

In response to various questions from the Committee, Mr Thomas confirmed that until the planning situation was resolved the premises could not use the forecourt either for the sale of food and drink or, if the licence was granted, for the sale of alcohol.

Ms Seed confirmed that the residents had complained previously to Montelbano about noise, and about 10 days ago, had complained to Ashford Borough Council.

Mr Thomas said that they took on board the concerns about traffic and Ms Lonel could put on the website information about where people should park and could also put up signage asking people to leave quietly.

The Committee then heard from Councillor Gooch on behalf of Tenterden Town Council. Cllr Gooch said that the Council was concerned about the rights of residents. The premises was in very close proximity to the houses and serving of alcohol could have an impact on their quality of life. The Chairman expressed concern that the comments from Tenterden Town Council related mainly to the planning application.

Mr Thomas stated that concerns for what might happen in the future were not relevant to the consideration of the application. If there were a statutory nuisance the local authority would quickly intervene. He reminded the Committee that none of the statutory consultees had objected. The applicant wished to work with residents and the Committee could only impose relevant conditions.

Finally, in summing up the application, the Licensing Officer reminded the Committee that the licensing process could not be used as a 'second bite of the cherry' regarding the planning process.

The Committee retired to deliberate and make their decision. The Committee discussed the points below and, on returning, the Legal Adviser read the Reasoning Statement and the main points of discussion as follows:

1. Given the nature of the business i.e. a café/deli/ice-cream parlour, there would be no tangible difference between eating and drinking outside and drinking a small amount of alcohol outside.
2. There were lots of cafes which had sidewalk areas and caused no problems.
3. A Member did feel that if the forecourt was approved there would be some impact upon the neighbours, but this would not be materially different if alcohol was served.
4. The Committee discussed the proximity of the forecourt area to the properties. A Member said he had visited the site yesterday at about 4.30pm. He said it was not as tight a fit as had been claimed. There was some footfall to and from Tesco's and he could see that the building was suitable to operate as a café.
5. The Committee recognised that they could not assume future issues which might arise and also referred to the residents' rights to request a review of a licence, if necessary, in the future.
6. The Committee read again the submission of the applicant to the planning committee and noted the following statement: "Please note that we are

requesting an A3 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 licenced premises ...". The Committee noted that A3 use was for food and drink (ie which could include sale of alcohol, if a licence was given). A4 use was for drinking establishments and A5 use was hot food and takeaways. The Committee felt that this statement had been taken to mean they did not want to serve alcohol simply because they were not applying for A4 or A5 use. However A3 use did indicate a desire to sell drink and this could, given the right licence, include alcohol.

7. The Committee were satisfied with the conditions on the operating schedule, together with the amended conditions given in advance of the meeting and given at the meeting.

For these reasons, the Committee made the following decision:

Resolved

That the premises licence be granted subject to the following:

1. **The mandatory conditions relating to sale of alcohol.**
2. **The conditions set out on the operating schedule amended as follows:**
 - i) **Alcohol to be consumed on the premises will only be served to persons seated at tables within the premises and forecourt area;**
 - ii) **Alcohol to be consumed beyond the forecourt area will only be sold in sealed containers;**
 - iii) **Food will be available throughout the trading period;**
 - iv) **On-site sales of alcohol will only start at 10am;**
 - v) **The age verification scheme used will be Challenge 25;**
 - vi) **The applicant will put up signage to remind customers to respect the residential nature of the street and to leave quietly.**

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

LICENSING SUB-COMMITTEE
Friday 15 June 2018

**APPLICATION FOR A PREMISES LICENCE FOR BOTTEGA MONTALBANO, 3
HIGHBURY LANE, TENTERDEN, KENT TN30 6LE UNDER THE PROVISIONS OF
SECTION 182 OF THE LICENSING ACT 2003**

LICENSING SUB-COMMITTEE DECISION AND REASONINGS

LICENSING OFFICERS

Julian Postlethwaite
Trevor Ford

**REASON FOR
MEETING:**

An application was made by Bottega Montelbano Ltd for a premises license for Bottega Montelbano, 3 Highbury Lane, Tenterden, Kent TN30 6LE.

DELIBERATION:

The Licensing Officer (Mr Postlethwaite) summarised the application set out in the papers and confirmed that it was correctly made. He referred to the previous planning application for a change of use to sell food and drink and to the decision of the planning department that prior approval was not required. Therefore, the premises already has permission to open as a café but not sell alcohol. It was clarified later in the meeting that the planning permission only relates to the inside of the building and the applicants will have to apply for planning permission for an outside seating area. Mr Postlethwaite outlined that there were two representations from local residents and one from the Town Council on the following grounds: public nuisance, noise, public safety including impact of vehicles and deliveries, and protection of children from harm.

The Committee then heard from Mr Thomas on behalf of the applicant. He explained that it does operate as a café/deli/ice-cream parlour located behind the main restaurant on Tenterden High Street. They had developed their proposals to also serve alcohol following discussions with customers. The proposal is simply to be able to offer alcoholic drinks eg a glass of wine or prosecco with light food such as afternoon tea. They anticipated no more than 30 customers at any one time, there are no proposals for late night entertainment, serving alcohol late or live music. In response to concerns of local residents Ms Lonel had put forward amended conditions which are:

1. Alcohol to be consumed on the premises will only be served to persons seated at tables within the premises and the forecourt area.

2. Alcohol to be consumed beyond the forecourt area will only be sold in sealed containers.
3. Food will be available throughout the trading period.

In addition, Mr Thomas confirmed that she would amend the hours of serving alcohol on site to start at 10am. However, off-site sales would remain as previously, starting at 8am.

In response to concerns about nuisance, Mr Thomas said there would be no external music speakers, although there would be internal incidental music, as is allowed. The DPS would manage the disposal and collection of refuse, deliveries from vehicles and all other operations in line with the procedures at the main Montelbano restaurant. He referred to the artist's sketches showing the proposals for the external and internal space. He emphasised that there would be a small supplemental offering of alcohol to go with meals and the premises would operate only as an Italian café.

In response to questions from Councillors, Ms Lonel confirmed that she would be part of the age verification scheme called Challenge 25 and would accept that as a condition, and that she, as DPS, is present during her working hours.

The Committee asked about the reference in the planning application to the statement that the premises were unsuitable to operate as a licenced premises. In response Ms Lonel said it was a bit of a misunderstanding with their planning consultant, they didn't intend to operate as a restaurant and the wording was how their planning consultant had represented their views. However, since then she confirmed that they had spoken to their customers and they had asked if the business could sell alcohol with food. She confirmed again that this would be a very small part of the business. Mr Thomas confirmed that the planning application for A3 use (food and drink) was made up front and was very clear.

The Committee then heard from Ms Jane Seed, who represented the residents of Highbury Lane. She referred to her written representations, but firstly addressed what Mr Thomas had said, as follows:

1. The premises is an icecream parlour wanting to sell alcohol, and this is a conflict relating to the safety of children.
2. The applicant says they have planning permission to serve alcohol on the forecourt, however they have not (this point was confirmed as set out above.)
3. The condition regarding sealed containers for off-site sales does not prevent anyone from unsealing and drinking alcohol.

4. Regarding the artist's impression, the reality is completely different, the screeding at the front of the premises is not level, and therefore dangerous. The interior of the building does not have any sound-proofing. When people drink they become louder, and therefore there will be a noise nuisance.
5. Serving alcohol will cause an extreme noise nuisance, particularly as the houses of Highbury Lane are only a very few metres away from the premises. The forecourt is only a metre from the front doors of the residents' houses and they already hear everything at the café.
6. The residents have lived there many years, and it is a residential street. They have an established human right to peace and quiet. They are already living in unacceptable circumstances and it will become worse.
7. The mixture of drinking alcohol all day and more people entering and exiting the premises will become a statutory nuisance.
8. There had been accidents caused by deliveries, including a bollard being knocked over and Ms Seed had seen two elderly people nearly run over by a reversing delivery vehicle. All this would become more dangerous with the sale of alcohol involved.

In summary, Ms Seed confirmed that the residents' main concern is noise nuisance being committed within a metre of their doorsteps and within 4 metres of their sofas in their front rooms. Alcohol makes people less cautious and less aware of their impact on others.

In response to various questions from the Committee, Mr Thomas confirmed that until the planning situation was resolved the premises cannot use the forecourt either for the sale of food and drink or, if the licence is granted, for the sale of alcohol.

Ms Seed confirmed that the residents had complained previously to Montelbano about noise, and about 10 days ago, had complained to Ashford Borough Council.

Mr Thomas said that they took on board the concerns about traffic and Ms Lonel could put on the website information about where people should park and could also put up signage asking people to leave quietly.

The Committee then heard from Councillor Gooch on behalf of Tenterden Town Council. Cllr Gooch said that the Council is concerned about the rights of residents. The premises is in very

close proximity to the houses and serving of alcohol could have an impact on their quality of life. The Chairman expressed concern that the comments from Tenterden Town Council related mainly to the planning application.

Mr Thomas stated that concerns for what might happen in the future were not relevant to the consideration of the application. If there were a statutory nuisance the local authority would quickly intervene. He reminded the Committee that none of the statutory consultees had objected. The applicant wished to work with residents and the Committee could only impose relevant conditions.

Finally, in summing up the application, Mr Postlethwaite reminded the Committee that the licensing process cannot be used as a second bite of the cherry regarding the planning process.

The Sub-Committee then retired to deliberate and make their decision. The Committee discussed the following points:

1. Given the nature of the business ie a café/deli/ice-cream parlour, there would be no tangible difference between eating and drinking outside and drinking a small amount of alcohol outside.
2. There are lots of cafes which have sidewalk areas and cause no problems.
3. A member did feel that if the forecourt was approved there would be some impact upon the neighbours, but this would not be materially different if alcohol was served.
4. The Committee discussed the proximity of the forecourt area to the properties. A member said he had visited the site yesterday at about 4.30pm. He said it was not as tight a relationship as had been claimed. There was a bit of footfall to and from Tesco's and he could see that the building made sense to operate as a café.
5. The Committee recognised that they could not assume future issues which might arise and also referred to the residents' rights to request a review of a licence, if necessary, in the future.
6. The Committee read again the submission of the applicant to the planning committee and noted the following statement: "Please note that we are requesting an A3 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 licenced premises ...". The Committee noted that A3

use is for food and drink (ie which could include sale of alcohol, if a licence is given). A4 use is for drinking establishment and A5 use is hot food and takeaway. The Committee felt that this statement had been taken to mean they did not want to serve alcohol simply because they were not applying for A4 or A5 use, however A3 use does indicate a desire to sell drink and this could, given the right licence, include alcohol.

7. The Committee were satisfied with the conditions on the operating schedule, together with the amended conditions given in advance of the meeting and given at the meeting.

For these reasons the Sub-Committee made the following decision.

DECISION MADE:

That: The premises licence be granted subject to the following

- 1. The mandatory conditions relating to sale of alcohol**
- 2. The conditions set out on the operating schedule amended as follows:**
 - (i) Alcohol to be consumed on the premises will only be served to persons seated at table within the premises and forecourt area;**
 - (ii) Alcohol to be consumed beyond the forecourt area will only be sold in sealed containers;**
 - (iii) Food will be available throughout the trading period;**
 - (iv) On-site sales of alcohol will only start at 10am;**
 - (v) The age verification scheme used will be Challenge 25;**
 - (vi) The applicant will put up signage to remind customers to respect the residential nature of the street and to leave quietly.**

Right of Appeal

- The decision takes immediate effect.

- There is a right of appeal against this decision. An appeal must be commenced by notice of appeal given by the Appellant or anybody affected by this decision to the Magistrates Court within 21 days of the date of this notice.

Dated: 15th June 2018