

Committee	-	General Licensing Panel
Date	-	21 December 2018
Report of the	-	Executive Director
Subject	-	Application to vary a Premises Licence – WK/201810313 Crab & Lobster, Ground Floor, 13 West Street, Rye TN31 7ES

Recommendation: It be **RESOLVED:** That the application to vary a Premises Licence be determined.

Service Manager: Richard Parker-Harding

1. Introduction

13 representations have been made regarding the application to vary a premises licence; therefore it has been referred to this Panel for determination.

1.1 Applicant Details:

Name: Crab & Lobster Rye Ltd. (Reg. no. 11009230)

Address: 13 West Street, Rye, East Sussex, TN31 7ES

1.2 The Premises: Details of the premises subject of the application are as follows:-

Ground Floor, 13 West Street, Rye, East Sussex, TN31 7ES

Please see the location plan, floor plans and photographs (Appendices B, C & D).

Location:

The premises is situated on the cobbled street corner of West Street and Mermaid Street in a historical area of the ancient town of Rye. The properties in the vicinity are mainly residential with some commercial e.g. the Mermaid Inn.

Description:

The premises is currently empty. At the granting of the premises licence on 8 June 2018 the business was described as a retail shop for the sale of antiques and object d'art.

Existing Licence: LN/2000021505. Alcohol sale and supply ON the premises. Thursday to Monday 14:00-18:00. A copy of the existing premises licence is shown in Appendix H.

2. The application and opening hours

The applicant has applied for the following:

- 2.1 Sale of alcohol** - Variation to include sales **Off the premises** and variation of hours to Thursday to Monday 11:00hrs to 18:00hrs (currently 14:00hrs-18:00hrs); and add Tuesday and Wednesday 11:00hrs to 18:00hrs.

Remove the following conditions:

(8) Alcohol products shall be restricted to wine, champagne, bottled beer and cider. This was duplicated in the licence.

(13) The consumption of alcohol shall not be permitted outside the premises.

Amend condition (9) - Customers will not be permitted to take alcohol outside the premises at any time.

To – Customers will not be permitted to consume alcohol outside the premises at any time.

2.2 Opening Hours

Opening hours to be varied (note: opening hours are not a licensable activity):

From: Thursday to Monday 12:00hrs to 21:00hrs

To: Monday to Sunday 11:00hrs to 21:00hrs

3. Relevant representations of interested parties

	Relevant licensing 'objective'
13 representations	Prevention of Public Nuisance Public Safety

The representations are predominately concerned with public nuisance and public safety and are reproduced in full in Appendix E. A number of issues e.g. parking, the number of licensed premises in Rye are not valid in terms of the licensing objectives.

4. Representations of responsible authorities

Rother DC 'Licensing Authority'	None received
Rother DC Planning Authority	None received. (Comments received, see below)
Rother DC Community Protection	None received

Rother DC Health & Safety Team	None received
East Sussex Fire & Rescue Service	None received (Comments received, see below)
Sussex Police	None received
ESCC Public Health	None received
ESCC Area Child Protection Committee	None received
ESCC Trading Standards	None received
Home Office Immigration Enforcement	None received

4.1 Rother District Council Planning

The Planning department has not made a representation but it has commented on the planning situation. The memo is reproduced in full in Appendix F.

4.2 East Sussex Fire & Rescue Service (ESFRS)

ESFRS has not made a representation but it has commented in response to queries raised by a neighbour of 13 West Street, Rye. Their comments are shown in full in Appendix G.

5. Conditions offered

The applicant has described the steps the business intends to take to promote the licensing objectives. The conditions offered by the applicant are reproduced in Appendix A.

6. Licensing history

A premises licence was issued 8 June 2018. The application was determined by a General Licensing Panel. A copy of the premises licence is shown in Appendix H.

7. Summary

The representations received predominately relate to noise, nuisance, alcohol related disorder and fire safety.

With regard to the query concerning a fire risk assessment neither the local authority or East Sussex Fire & Rescue Service (ESFRS) undertake fire risk assessments.

Under the Regulatory Reform (Fire Safety) Order 2005 (RRO) this responsibility lies with the responsible person. As this building is commercial under residential properties, ESFRS take the lead for RRO failings.

Capacity will depend upon floor area in conjunction with width of exits and will form part of the fire risk assessment. If as suggested the premises has been altered internally then a further application may be necessary to vary the licence before the premises can operate.

8. Legislation

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

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

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

9. Consideration

When considering this application the following options are available to the Panel:

- a) to grant the variation subject to the conditions consistent with the operating schedule;
- b) to grant the variation subject to any modified conditions, which are considered appropriate to the promotion of the licensing objectives; or
- c) to reject the application in its entirety.

10. Conclusion

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

Malcolm Johnston
Executive Director

Risk Assessment Statement

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

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Conditions offered by the applicant

Wording reproduced from the application form.

a) General – all four licensing objectives

The sale of alcohol will be ancillary to the core business.

b) The prevention of crime and disorder

As per the existing Premises Licence – LN/000021505.

c) Public Safety

As per the existing Premises Licence – LN/000021505.

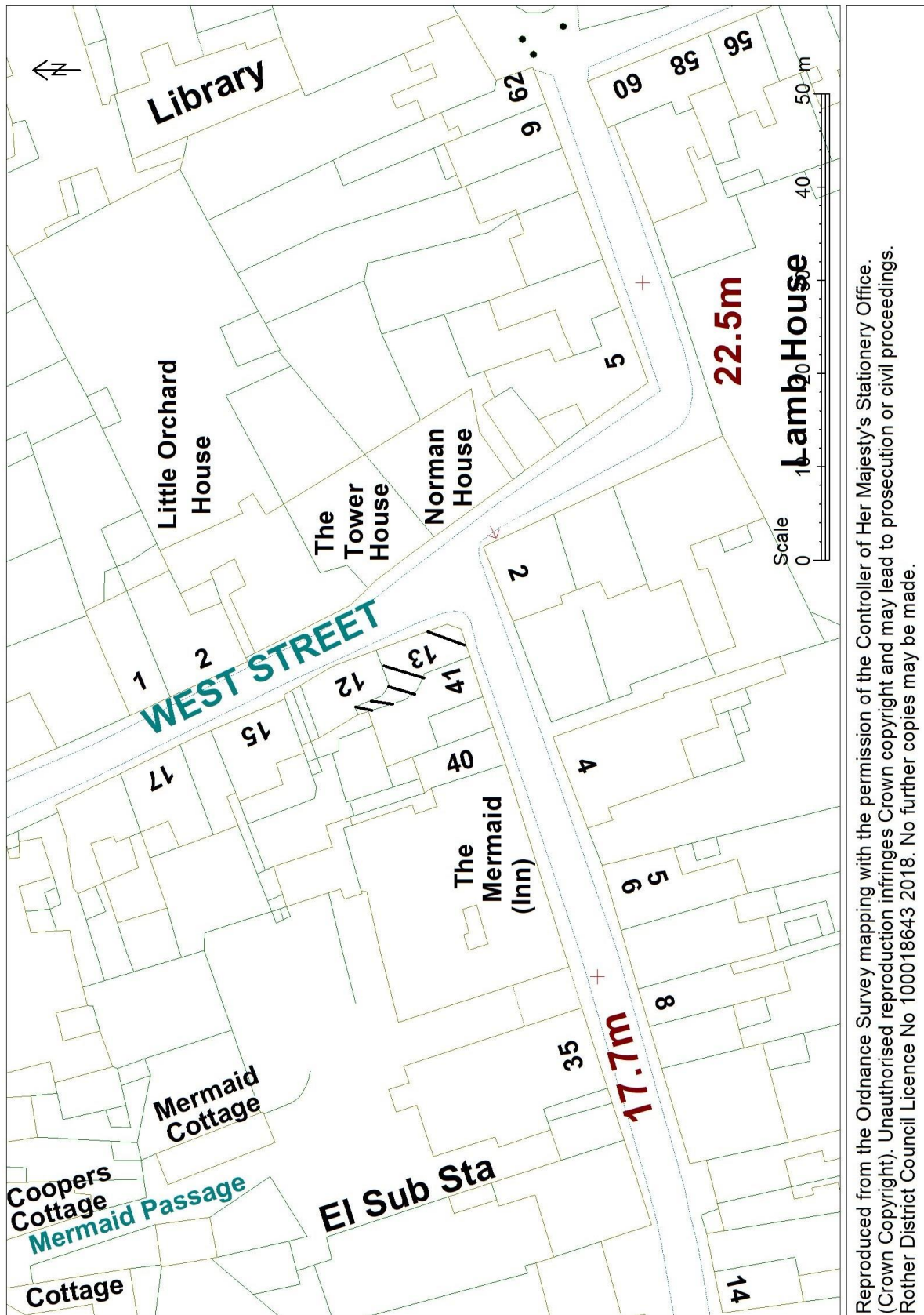
d) Prevention of public nuisance

As per the existing Premises Licence – LN/000021505 subject to amendments detailed in the application.

e) The protection of children from harm

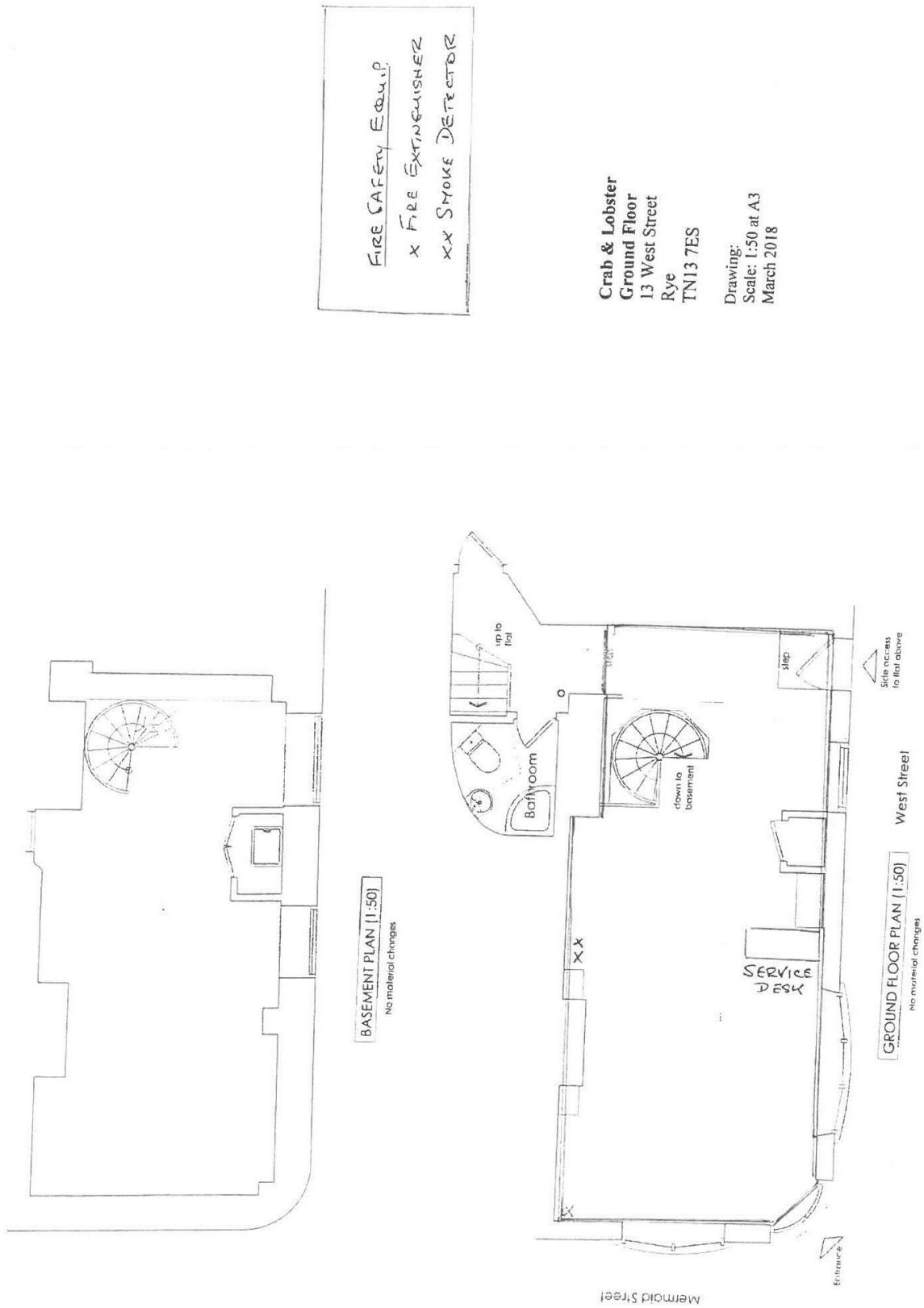
As per the existing Premises Licence – LN/000021505.

Map of the location



Floor Plan

Floor Plan (not to scale)



Photographs



Photograph 1: view of the premises, Mermaid Street is to the left and West Street to the right.



Photograph 2: view of the premises, West Street is to the right.



Photograph 3: view from West Street.



Photograph 4: view from Mermaid Street.

Comments received from the Planning Department

ROTHER DISTRICT COUNCIL

From: Head of Service – Strategy
& Planning

To: Community Environment Division

F.A.O: Richard Hoyland

Our Ref: PE/00607/2018

Date: 20 November 2018

LICENSING APPLICATION

Re: Crab and Lobster, 13 West Street, Rye

Application for a Premises Licence for supply of alcohol.

I refer to the above mentioned site and the application for licensing under the Licensing Act 2003.

The premises (13 West Street) does not benefit from planning permission to be used as a drinking establishment. This property was subject to planning application RR/2014/1820/P – change of use from art gallery/shop (A1) to wine bar (A4); however, this application was subsequently withdrawn prior to determination, as it was unlikely to have met with support. Should a new planning application (for change of use to wine bar) be submitted, it again is unlikely to be recommended for support by the local planning authority.



For Head of Service – Strategy & Planning

Comments received from East Sussex Fire & Rescue Service in response to queries raised by a neighbour of 13 West Street, Rye.

- 1) **“Permitted capacity is a limit on the number of persons who may be permitted on the premises following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005”**

Capacity is not set by the Fire Service but the RP would be expected to complete a fire risk assessment and determine capacity based on floor space factors and means of escape. It is not clear where the capacity number of 25 has come from or how this has been justified.

- 2) **East Sussex Fire and Rescue Services should be required to make a premises capacity limit recommendation for 13 West Street under the Regulatory Reform (Fire Safety) Order 2005.**

If a new capacity is set it should be retrospectively applied to the on premises licence.

The Fire Service do not set capacity limits as this should be identified within the fire risk assessment as stated above and as you know capacity is no longer applied to a premises licence.

- 3) **East Sussex Fire Service should either inspect the premises or instruct Crab & Lobster to arrange for an approved/authorised independent organisation to conduct a fire risk assessment to be sent to the Fire service for review and sign off.**

The legislation The Regulatory Reform (Fire Safety) Order 2005 is a self-regulating legislation with the duty placed on the responsible person to complete a suitable and sufficient fire risk assessment of the premises. As this is a licensed premises the fire risk assessment must be recorded.

Copy of the existing premises licence

LICENSING ACT 2003

PREMISES LICENCE**Part A**

Premises Licence No. LN/000021505

**Part 1 – Premises details**

Crab & Lobster, Ground Floor, 13 West Street, Rye, East Sussex, TN31 7ES	
Telephone number:	
Where the licence is time limited the permitted dates are: n/a	
Licensable activities:	
Alcohol Sale or Supply Shop	
Authorised times:	
Alcohol Sale or Supply	
Sunday	14:00hrs to 18:00hrs
Monday	14:00hrs to 18:00hrs
Thursday	14:00hrs to 18:00hrs
Friday	14:00hrs to 18:00hrs
Saturday	14:00hrs to 18:00hrs
The opening hours of the premises (if applicable):	
Sunday	12:00hrs to 21:00hrs
Monday	12:00hrs to 21:00hrs
Thursday	12:00hrs to 21:00hrs
Friday	12:00hrs to 21:00hrs
Saturday	12:00hrs to 21:00hrs

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies: **On the premises**

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:

Crab & Lobster Rye Ltd
13 West Street, Rye, East Sussex, TN31 7ES

Registered number of holder, for example company number, charity number (where applicable):

11009230

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:

Coral de Sherburne
13 West Street, Rye, East Sussex, TN31 7ES

Telephone number:

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:

Personal licence number: **RDC/LN/000020215**

Issuing Authority: **Rother DC**

30 November 2018

Rother District Council
Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX
Tel: 01424 787550

Annex 1 - Mandatory Conditions

1. No supply of alcohol may be made under the Premises Licence -
 - (a) at a time when there is no Designated Premises Supervisor in respect of the Premises Licence, or
 - (b) at a time when the Designated Premises Supervisor does not hold a personal licence or his/ her personal licence is suspended.
2. Every supply of alcohol under the Premises Licence must be made or authorised by a person who holds a personal licence.
3. (1) The Responsible Person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the Responsible Person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

4. The Responsible Person must ensure that free potable water is provided on request to customers where it is reasonably available.
5. The Responsible Person must ensure that:
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures:
 - (i) beer or cider: 1/2 pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml.
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.
6. (1) The Relevant Person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
 - (2) For the purposes of the condition set out in paragraph (1)
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979
 - (b) "permitted price" is the price found by applying the formula -
$$P = D + (D \times V)$$
Where
 - (i) P is the permitted price;
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol; and,
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol.

(c) "relevant person" means in relation to premises in respect of which there is in force a premises licence -

(i) The holder of the premises licence;

(ii) The designated premises supervisor (if any) in respect of such a licence; or,

(iii) The personal licence holder who makes or authorises a supply of alcohol under such a licence.

(d) 'relevant person' means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

(3) Where the permitted price given by paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

(4) (a) Sub-paragraph (2) applies where the permitted price given by paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(b) The permitted price which would apply on the first day applies to sales or supplies which take place before the expiry of the period of 14 days beginning on the second day.

7. (1) The Premises Licence holder or Club Premises Certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The Designated Premises Supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the Responsible Person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:

(a) a holographic mark, or

(b) an ultraviolet feature.

Note:

In section 153(4) of the Licensing Act 2003, "Responsible Person" means:

(a) In relation to licensed premises:

(i) the holder of a Premises Licence in respect of the premises;

(ii) the Designated Premises Supervisor (if any) under such a licence;

or,

(iii) any individual aged 18 or over who is authorised for the purposes of this section by such a holder or supervisor.

(b) In relation to premises in respect of which there is in force a Club Premises Certificate, any Member or Officer of the Club present on the premises in a capacity which enables him to prevent the supply in question.

Annex 2 - Conditions consistent with the Operating Schedule

Nil

Annex 3 – Conditions attached after a hearing by the licensing authority

1) CCTV: Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System, (PSDB publication 09/05) operated and maintained throughout the premises internally and externally to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.

The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.

CCTV footage will be stored for a minimum of 28 days.

The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.

The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.

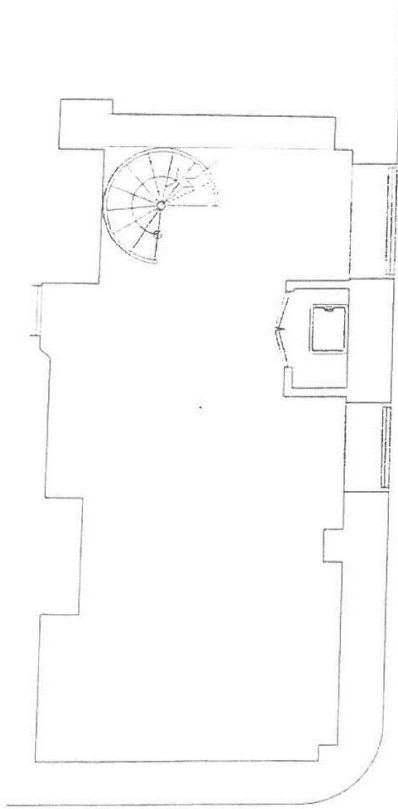
Subject to Data Protection guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk for the police without difficulty or delay and without charge to Sussex Police.

Any breakdown or system failure will be notified to the police immediately and remedied as soon as practicable.

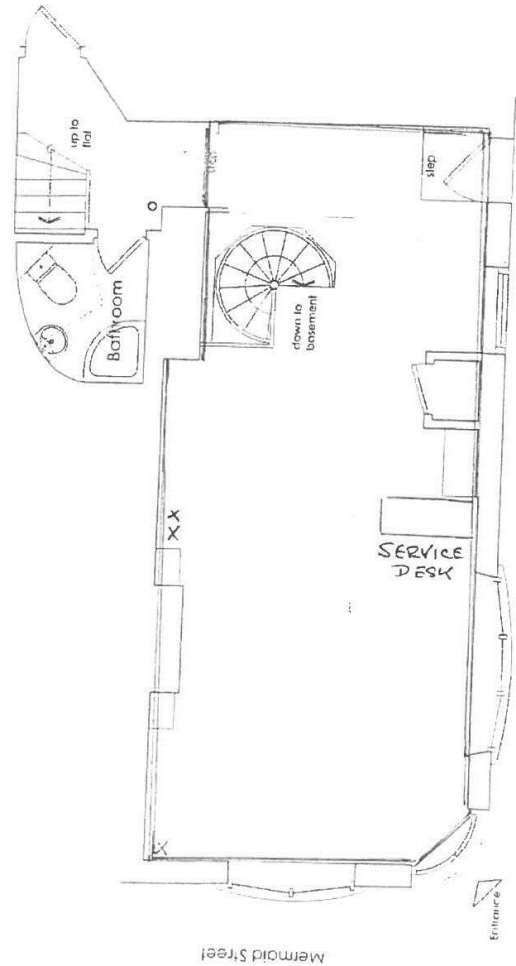
- 2) All staff will be trained in licensing law and the responsible sale of alcohol prior to commencement of selling alcohol; a staff training manual will be kept and maintained at the premises and made available for inspection by police licensing officers and local authority officers on request. Refresher training will be given to all staff at least every six months by the DPS or an accredited trainer.
- 3) An incident book will be kept and maintained at the premises and made available for inspection by police, police licensing officers and local authority officers on request. This book shall solely be used for the purpose of recording incidents.
- 4) A refusals register will be kept and maintained at the premises and made available for inspection by police, police licensing officers and local authority officers on request.
- 5) All staff shall have written authorisations from the Designated Premises Supervisor to permit them to sell alcohol.
- 6) A 'Challenge 25' policy shall be in operation at the premises and staff will be suitably trained to implement this policy. The only forms of ID that will be accepted are a passport, a photographic driving licence or a Proof of Age card bearing the 'PASS' hologram.
- 7) Alcohol products shall be restricted to wine, champagne, spirits, bottled beer and bottled cider. No draught alcohol products shall be available.
- 8) Alcohol products shall be restricted to wine, champagne, bottled beer and cider.
- 9) Customers will not be permitted to take alcohol outside the premises at any time.
- 10) Patrons will not be allowed to congregate outside the premises to smoke and vape.
- 11) Within the premises there should be appropriate signage near to the exit, warning their customers that they must leave the premises quietly and to not congregate outside.
- 12) There shall be no more than 25 customers inside the premises at any one time.
- 13) The consumption of alcohol shall not be permitted outside the premises.
- 14) No draught alcohol products shall be available.

Annex 4 – Plans

(see attached)



BASEMENT PLAN (1:50)
No material changes



GROUND FLOOR PLAN (1:50)
No material changes

FIRE SAFETY EQUIP.
X FIRE EXTINGUISHER
XX SMOKE DETECTOR

Crab & Lobster
Ground Floor
13 West Street
Rye
TN13 7ES
Drawing:
Scale: 1:50 at A3
March 2018