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**Report of 5 December 2007**


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<b>West Malling</b> West Malling And Leybourne	<b>568025 157797</b>	<b>8 November 2007</b> <b>2 July 2007</b>	<b>(A) TM/07/01879/FL</b> <b>(B) TM/07/01878/LB</b>
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Proposal: (A) Change of use of building to A3/A4 use with associated minor alterations  
(B) Listed Building Application: Change of use of building to A3/A4 (restaurant, cafe, public house)

Location: 62 High Street West Malling Kent ME19 6LU

Applicant: Public House Collection Ltd

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## 1. Description:

- 1.1 There are two elements to this proposal, the change of Use of the building (A) along with physical works which are also the subject of a Listed Building Application (B).
- 1.2 It is proposed to change the use of the building from retail (A1) to a mixed restaurant/café/drinking establishment (A3/A4). The proposed use would be restricted to the preparation and service of cold food only, negating the need for a kitchen extraction facility. Dining and bar areas are proposed on the ground and first floor levels of the building, with the kitchen and service area to be within a modern rear extension. No outdoor or pavement seating area has been proposed. An indicative layout plan shows 56 seats spread over two floors. The applicant estimates that the premises would cater for an average of 50 covers per day Sundays to Thursday, and 80 per day on Fridays and Saturdays. It is anticipated that 10 full-time and 10 part-time staff would be employed. There is no provision for off-street parking.
- 1.3 In terms of the works to the Listed Building these involve minor internal and external alterations to the building including removal of the existing advert facia, removal of internal panelling and partitioning at ground-floor level, the blocking up of an external rear door, the enclosure of an external roof void and the removal and reinstatement of internal doors and partitioning at first-floor level.
- 1.4 This proposal was called to Committee by Cllr Worrall who raised various concerns with regard to traffic, parking, noise and amenity.

## 2. The Site:

- 2.1 62 High Street is a Grade II Listed Building located in the town centre of West Malling. The relevant Proposals Map designates the site as being within a Rural Local Centre and the West Malling Conservation Area. The building occupies a prominent position in the middle of the High Street and forms a part of a terrace of commercial buildings.

- 2.2 The subject building is currently occupied at ground floor level by BG Travel, an established retail (A1) use. The building is flanked on its southern side by 'The Joiners Arms' public house and on its northern side by the retail store 'Essentials'. The rear of the building fronts onto King Street where there is a service garage and a block of residential apartments 'Downs View'. In the wider High Street area there is a mixture of retail, financial/professional services, restaurants and hot food takeaway uses.
- 2.3 The building has a mid C19 front to a C18 building with a C20 shopfront. It is comprised of two principal floors, an attic and a basement. The rear of the building has a modern flat-roof rear extension fronting onto King Street.

### 3. Planning History:

TM/00/00781/FL Grant With Conditions 21 September 2000

New shop front

TM/00/00782/LB Grant With Conditions 21 September 2000

Listed Building Application: New shopfront.

TM/52/10528/OLD grant with conditions 24 April 1952

Sanitary Accommodation.

TM/75/10503/ADV Refuse 28 October 1975

Two/Four Sheet Posters.

TM/81/10220/FUL grant with conditions 29 January 1981

Retrospective application for change of use of first and second floor to photolithographic studio.

TM/85/11175/LBC grant with conditions 19 July 1985

Fire exit including new door and window.

TM/90/10798/FUL Grant 16 October 1990

Continued use of premises for business purposes without need to comply with condition (i) of Permission TM/80/1274 (Use of restricted to photolithographic studio).

TM/98/01184/AT      Grant With Conditions      16 October 1998

Erection of fascia sign and externally illuminated projecting sign.

TM/98/01200/LB      Grant With Conditions      16 October 1998

Listed Building Application: erection of fascia sign and externally illuminated projecting sign.

#### **4. Consultees:**

- 4.1 PC: Objects: The location has restricted parking and backs onto King Street which has residential properties. The presence of existing premises nearby falling within this use class is already causing conflict with residential properties and this proposed change of use would serve to exacerbate the situation. Members wish to draw attention to the problem already experienced with large delivery lorries, refuse lorries etc which need to access these premises. Members would also like to see the restoration of the original shop front as they consider this more appropriate to its location than the existing design.
- 4.2 KCC (Highways): No Objection: There could be a theoretical increase in parking requirement, with a more intensified use of the building. However, I acknowledge the current lack of parking and town centre location of the application site. Therefore based on similar businesses and closeness to existing public parking arrangements I would on balance raise no objections.
- 4.3 DHH: No Objection: In light of the proposal to serve cold food only, the need for a risk assessment is negated as a kitchen extraction system is no longer required. Consequently as this removes the potential for odour and noise nuisance, I have no objection to this application on the basis the premises will serve cold food only.
- 4.4 TMBC Crime Reduction: Views awaited.
- 4.5 TMBC Licensing: Views awaited.
- 4.6 Private Reps (combined): (26/0X/0R/0X): No response to neighbours letters, press notice or site notice.

#### **5. Determining Issues:**

- 5.1 The principal considerations material to the proposed change of use are the impacts on the character, function, vitality and viability of the West Malling local centre, the impact on the amenity of neighbours, and the impact on the local highway network. In terms of the proposed alterations to the building, it is necessary to consider the impact upon the historic character and fabric of the listed building.

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- 5.2 Saved policy P6/20 of the Tonbridge and Malling Borough Local Plan 1998 restricts changes of use at ground floor level within a Rural Local Centre where it would fail to provide an appropriate service for the day to day needs of the local community. Policy CP22 of the Tonbridge and Malling Borough Core Strategy 2007 restricts proposals which might harm the vitality or viability of an existing centre by undermining the balance of uses. Under Planning Guidance Note 15 and policy QL8 of the Kent and Medway Structure Plan 2006 development to a Listed Building must preserve its historic character, fabric and setting.
- 5.3 The mix of uses within any town centre tends to be a finely balanced matter and the gradual and piecemeal loss of retail units could eventually impact upon the vitality and vibrancy of a town centre.
- 5.4 A brief survey of the West Malling High Street found that there are 53 units stretching from the Veterinary Practice and Five Pointed Star at the southern end to the Flooring and Copy shops at the northern end. Of these 53 units, some 12 units (23%) were occupied by cafes, restaurants, drinking establishments or hot-food takeaway uses (A3, A4 or A5). The remaining 77% is mostly made up of retail shops and financial/professional services (A1 and A2). If this proposal was to be approved, the proportion of A3, A4 and A5 uses on the High Street would increase to 25%. While every planning application must be considered on its own merits, Members should be aware that the Council has recently received an application to change the use of 67 High Street (directly opposite) to a mixed A1/A3 use.
- 5.5 I acknowledge that with 25% of the High Street units being in A3, A4 or A5 use, this may be higher than other Local Centres in the Borough. However, West Malling has an established and popular evening economy and these premises are a key element to the vitality and vibrancy of the centre. I am also mindful that West Malling has secondary frontages which have a higher concentration of A1 retail units (Swan Street and Swan Mill).
- 5.6 I acknowledge that to the south of the subject premises are two existing eating/drinking establishments (The Joiners Arms and Indian Tandoori) and this proposal would therefore result in the concentration of three non-retail units on this particular part of the High Street. In my opinion this concentration is offset by the run of six retail units to the north of the subject premises. 'The Pinch' is the next closest eating/drinking establishment in this direction.
- 5.7 Overall I consider the existing retail function of West Malling to be vibrant and healthy and this is demonstrated through the lack of vacant units and the diverse range of shops and services on offer. I do not believe there to be any evidence to suggest that the loss of a further retail unit would either individually or cumulatively result in the displacement of the established retail function of the centre. I am also mindful that the number of people visiting the premises as a restaurant/bar during normal working hours is likely to be greater than if it were to remain as a travel agency. The increase in customer visits would bring in more potential customers

to the centre who would in turn support other existing shops and services. In the evening when the shops and services are likely to be closed, restaurants and bars tend to add to the vitality of a centre.

- 5.8 Concentrations of A3, A4 and A5 uses can give rise to cumulative problems of noise, smell, litter and anti-social activities and in turn impact upon the amenity of neighbouring residents. Nevertheless, this High Street location is in the centre of West Malling and it is where one can reasonably expect bars and restaurants to be located. It is also reasonable to expect that some noise and general disturbance may occur due to the very nature of this locality and the activities that go on there. I am however satisfied that no undue or significant loss of residential amenity would occur to the occupants of Downs View which is 25m to the rear of the site. This is not only due to the 25m separation, but because the proposal does not include any rear outside seating area and has no scope to provide such an area given the site is fully occupied by buildings. I also note that the main customer entrance to the premises would front the High Street and not be to the rear in close proximity to Downs View. Furthermore, the kitchen and service area at the rear of the premises would be likely to create the least amount of noise. Nonetheless, it is recommended that conditions are attached to any planning permission to limit the opening hours of the premises to ensure the proposed use does not disturb local residents. Kent Police and the Council's Crime Reduction Officer have been asked to comment on the issue of anti-social behaviour and an update will be provided to Members by way of a Supplementary Report.
- 5.9 As this proposal involves the preparation and service of cold food only, no kitchen extraction facility has been proposed. On this basis there can be no amenity concerns in regard to noise and odour from kitchen extraction facilities. It is essential that, if Members are minded to approve this application, a restrictive cold food condition is imposed. This would ensure no primary cooking of unprepared food would be undertaken within the premises. Should at any point in the future an application is made to prepare hot food from the site, full details of the kitchen extraction unit along with a risk assessment would need to be provided. The Council would need to be satisfied the unit would not result in a loss of residential amenity or adversely impact upon the character and appearance of the Listed Building.
- 5.10 The application site does not benefit from off-street parking and it is not proposed to provide any. Customers would need to use the nearby public car park areas or use any available on-street spaces. Given the very nature of the proposed restaurant/bar use, it is reasonable to assume that a proportion of customers would be likely to seek alternative modes of travel (public transport, car pooling, walking etc). To this end, the applicant estimates that between approximately 13 and 20 vehicle trips would be attributed to the scheme per day. I acknowledge that a restaurant/bar use would be likely to attract a larger number of customer visits than the existing travel agency; however I would expect that the peak demand for a restaurant/bar use would be during the evening when more spaces

are available anyway. During normal business hours, it is a reasonable assumption that patrons would also be visiting other shops/services during their visit to West Malling. Furthermore, I am also mindful that as an A1 unit the tenancy could change without necessitating the submission of a planning application, and potentially there are a number of A1 uses that could lawfully occupy the unit which would have an even higher daytime demand for parking spaces than the proposed restaurant/bar. I note concern raised with regard to congestion caused by delivery vehicles, however I am mindful that delivery vehicles could also be required to serve an A1 use and this is not an issue exclusive to an A3/A4 use. The KCC Highways Manager has reviewed the application and has not raised any objections.

- 5.11 In terms of the physical works to the Listed Building, I consider these to be largely minor in nature and involve either modifications or removal of the more modern elements of the building. The works generally aim to improve the integrity and appearance of the building and allow for a more practical layout for its intended use as a restaurant/bar. None of the works affect any of the features included in the list description.
- 5.12 Externally, the removal of the modern advertising board and awning brackets, along with the blocking up of the westernmost rear entrance, and enclosure of an existing ground floor void would not impact upon the historic character of the building. I consider them to be minor external modifications, largely affecting the modern rear extension which has little historic interest. No details of the proposed shop front or advertisements have been provided, so these will need to be the subject of a further application.
- 5.13 Internally, the removal of the modern wood panelling, suspended ceiling and office partitioning on the ground floor level would enhance the historic character of the building. The partial removal of the wall within the modern rear extension would be acceptable. There are some minor alterations to the positioning of doors in the lobby area adjacent to the second floor level staircase, and subject to appropriate joinery, materials and workmanship, these works should not harm the character and fabric of the building.
- 5.14 In light of all of the above considerations, I am satisfied that the change of use and proposed alterations are acceptable. There is no evidence to suggest that the loss of a retail unit would jeopardise the character, function, vitality or viability of the West Malling Local Centre, nor are there grounds for refusal in terms of amenity or highway impacts. The physical works would not harm the character or fabric of the Listed Building. I therefore recommend conditional approval for both applications.

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**6. Recommendation:**

(A) TM/07/01879/FL:

6.1 **Grant Planning Permission** in accordance with the following submitted details: Letter dated 30.05.2007, Details of property dated 30.05.2007, Design and Access Statement dated 30.05.2007, Site Plan dated 30.05.2007, Floor Plan 06/1332/001 Existing dated 30.05.2007, Floor Plan 06/1332/02 Proposed dated 30.05.2007, Letter MB/CW/6268 dated 12.09.2007 subject to compliance with the following conditions:

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

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. The premises shall only be open for the preparation and sale of food and drinks between the hours of 0800 to midnight Monday to Saturday and between the hours of 1000 and 2330 on Sundays and Public and Bank Holidays.

Reason: To avoid unreasonable disturbance outside normal working hours to nearby residential properties.

3. No primary cooking of unprepared food shall be carried on within the premises. Only re-heated food that has been prepared elsewhere or cold food shall be served within the premises.

Reason: To accord with the submitted application and to safeguard the amenities of neighbouring residential properties and because the Council had particular regard to the precise nature of the proposed use in determining the application.

4. No development shall take place until details of a scheme for the handling, storage and disposal of all waste materials and refuse have been submitted to and approved in writing by the Local Planning Authority. The approved scheme, which shall show provision for the covered storage of such materials, shall be fully implemented before the use of the premises is commenced, and shall be retained and utilised at all times thereafter.

Reason: In the interests of pollution control in general and residential amenities in particular.

**Informatives**

1. This planning permission does not purport to grant permission for any alterations to the shop front other than hereby approved, or grant consent for any advertisements to be displayed on the premises for which separate applications may be required.

2. Should at any time an application be made to prepare hot food on this premises, full details of the proposed kitchen extraction facility along with a risk assessment in accordance with DEFRA guidance would be required to accompany any such application.

(B) TM/07/01878/LB:

- 6.2 **Grant Listed Building Consent** in accordance with the following submitted details: Certificate B dated 30.05.2007, Letter dated 02.07.2007, Letter dated 30.05.2007, Design and Access Statement dated 30.05.2007, Schedule of Materials dated 02.07.2007, Location Plan DHA/6268/01 dated 30.05.2007, Floor Plan 06/1332/02 dated 30.05.2007, Floor Plan 06/1332/001 dated 30.05.2007 subject to compliance with the following conditions:

1. The development and works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: In pursuance of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. No development shall take place until details of any joinery to be used have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

3. The standard of workmanship achieved in the carrying out of the development shall conform with the best building practice in accordance with the appropriate British Standard Code of Practice (or EU equivalent).

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

4. No development shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

### **Informative**

1. The developer is asked to contact the Local Planning Authority prior to removal of internal walls at first floor level so that arrangements may be made to inspect the wall bracing. Contact phone no. 01732 876265.

2. This Listed Building Consent does not purport to grant permission for any alterations to the shop front other than hereby approved, or grant consent for any advertisements to be displayed on the premises for which separate applications may be required.

Contact: Bevan Houlbrooke

## SUPPLEMENTARY REPORTS

AREA 2 PLANNING COMMITTEE

DATED 5 December 2007

**West Malling** (A) TM/07/01879/FL  
**West Malling And** (B) TM/07/01878/LB  
**Leybourne**

**(A) Change of use of building to A3/A4 use with associated minor alterations; (B) Listed Building Application: Change of use of building to A3/A4 (restaurant, café, public house) at 62 High Street West Malling Kent ME19 6LU for Public House Collection Ltd**

TMBC Crime Reduction Co-ordinator: No objection, but would like the applicant to be aware of the PubWatch scheme which operates within West Malling and would urge them (if appropriate) to join this scheme. Consultation with Kent Police is suggested.

TMBC Licensing Officer: No objection.

Kent Police: No objection (verbal communication).

KCC Highways: Estimated details of traffic figures noted.

Parish Council: Reiteration of previous objections:

- § Location of staff parking has not been addressed nor has parking for delivery vehicles been identified.
- § Unacceptable level of congestion would be caused in an already congested area.
- § The PC wants to encourage a balance of uses in the various retail premises.
- § The PC wants to resist West Malling becoming swamped by more and more food and licensed premises and is concerned about the cumulative impacts.
- § Under Policy CP22(2) "proposals which might harm the vitality or viability of an existing centre either in terms of retail impact or, in the case of smaller centres, undermining the balance of uses or harming their amenity, will not be permitted." The shopping centre currently has 6 pubs/clubs all of which serve food, 6 restaurants, 6 cafés (two licensed) in some cases combined with take away food, and 3 take away food outlets open almost exclusively in the evening. As a result there are a disproportionately high number of catering outlets within the town when considered in relation to the total retail premises; this application would introduce yet another café/take away sales outlet.
- § West Malling is popular with residents of both the town and surrounding area because the majority of services that they require may be accessed locally. With growing emphasis being placed on the sustainability of communities, including reducing the need to travel and taking account of food miles, it is important that such centres continue to provide as broad a base of the day to day requirements of local residents other than catering.

DPTL: An email on 4.12.07 from the agent confirms that the existing first floor level door to the rear elevation of the building is intended to be used in emergencies only and would not be for general public use to access the rear flat-roof of the building. An amended site plan was also received by email, the previous site plan had incorrectly

included a rear outbuilding which in fact formed part of the adjoining property 'The Joiners Arms'.

The additional representations do not raise any new issues that have not been considered within the main report.

**AMENDED RECOMMENDATION:**

**(A) Grant Planning Permission in accordance with the following submitted details: Letter dated 30.05.2007, Details of property dated 30.05.2007, Design and Access Statement dated 30.05.2007, Site Plan dated 05.12.07, Floor Plan 06/1332/001 Existing dated 30.05.2007, Floor Plan 06/1332/02 Proposed dated 30.05.2007, Letter MB/CW/6268 dated 12.09.2007 , subject to compliance with the following conditions:**

**Conditions 1-4 as in main agenda**

**Additional Condition:**

- 5. The existing first floor door to the rear (east facing) elevation serving the dining room shall be used as an emergency exit only and shall remain closed at all times unless egress is needed in an emergency.**

**Reason: To ensure the amenities of adjoining residents are not adversely affected.**

**(B) Grant Listed Building Consent in accordance with the following submitted details: Certificate B dated 30.05.2007, Letter dated 02.07.2007, Letter dated 30.05.2007, Design and Access Statement dated 30.05.2007, Schedule of Materials dated 02.07.2007, Location Plan DHA/6268/01A dated 04.12.07, Floor Plan 06/1332/02 dated 30.05.2007, Floor Plan 06/1332/001 dated 30.05.2007 subject to compliance with the following conditions:**

**Conditions 1-4 as in main agenda**