

Licensing Panel (Licensing Act 2003 Functions)

Date: **8 July 2021**

Time: **10.00am**

Venue **Virtual**

Members: **Councillors:** , Deane, Knight and Simson

Contact: **Penny Jennings**
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AGENDA

1 TO APPOINT A CHAIR FOR THE MEETING

WELCOME & INTRODUCTIONS

2 PROCEDURAL BUSINESS

(a) **Declaration of Substitutes:** Where Councillors are unable to attend a meeting, a substitute Member from the Licensing Committee may attend, speak and vote in their place for that meeting.

(b) **Declarations of Interest:**

- (a) Disclosable pecuniary interests;
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

(c) **Exclusion of Press and Public:** To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part Two of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

3 NEW PREMISES LICENCE APPLICATION, MALO,11 DUKE STREET, BRIGHTON

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Report of the Executive Director of Housing, Neighbourhoods and Communities (copy attached)

Contact Officer: Sarah Cornell

Tel: 01273 295801

Ward Affected: Regency

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FURTHER INFORMATION

For further details and general enquiries about this meeting contact Thomas Bald, (01273 291065, email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

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Subject:	Application for a New Premises Licence under the Licensing Act 2003		
Premises:	Malo 11 Duke Street Brighton BN1 1AH		
Applicant:	Malo Brighton Limited		
Date of Meeting:	8 July 2021		
Report of:	Executive Director of Housing, Neighbourhoods & Communities		
Contact Officer:	Name:	Sarah Cornell	Tel: (01273) 295801
	Email:	sarah.cornell@brighton-hove.gov.uk	
Ward(s) affected:	Regency		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To determine an application for a New Premises Licence under the Licensing Act 2003 for Malo.

2. RECOMMENDATIONS:

- 2.1 That the Panel determine an application for a New Premises Licence under the Licensing Act 2003 for Malo.

3. CONTEXT/BACKGROUND INFORMATION & CONSULTATION

- 3.1 The application is for a New Premises Licence under the Licensing Act 2003.
- 3.2 The application proposes a family run takeaway/restaurant located on Duke Street (central street in Brighton). Area is mixed retail, restaurants and pubs/bar, residential and offices.

We will be serving and preparing for delivery Argentinean food, during lunch and dinner time to residents and other members of the public who visit Brighton.

We will be also serving drinks, including alcoholic beverages such as wines, beer and cocktails, to be consumed on the premises. We will be also offering drinks, including alcoholic beverages such as wines, beer and cocktails for takeaway.

Building comprises:

- Ground floor where the food counter/bar, sitting area and a kitchen area will be located. Seating area has a capacity to seat maximum 20 people
- First floor where 1 toilet and sitting area will be located. Seating area has a capacity to seat maximum 30 people
- Second floor where 1 toilet will be located, storage area and sitting area.

The seating area has a capacity to seat maximum 15 people.

- Outside Area where sitting area will be located with 6-8 double tables

3.3 Section 18 (operating schedule) of the application is detailed at Appendix A and the plan of the premises is attached at Appendix B.

3.4 Summary table of proposed activities

	Proposed
Supply of Alcohol	Every Day 09:00 – 00:00 On & Off the premises
Hours premises are open to public	Every Day 09:00 – 00:00

3.5 Cumulative Impact. The premises falls within the Cumulative Impact Area (“The Area”) (see paragraphs 3.1 – 3.1.10).

Representations received

3.6 Details of the representations made are notified to applicants on receipt by the Licensing Authority using a pro-forma. A summary appears below:

3.7 Three representations were received. They were received from a local business, Sussex Police & The Licensing Authority.

3.8 Representations received had concerns relating to Prevention of Crime and Disorder, Cumulative Impact, Prevention of Public Nuisance & Protection of Children from Harm.

3.9 Full details of the representations are attached at Appendix C. A map detailing the location of the premises is attached at Appendix D.

4. COMMENTARY ON THE LICENSING POLICY

- 4.1 The following extracts from Brighton & Hove City Council Statement of Licensing Policy are considered relevant to this application and **are numbered as they appear in the policy**:

1 Introduction

1.1 This Statement of Licensing Policy has been prepared in accordance with the provisions of the Licensing Act 2003 (the Act) and having regard to Guidance issued by the Home Office under Section 182 of the act. This policy takes effect from the 4th February 2021. The licensing authority is Brighton & Hove City Council. The purpose of this statement is to promote the licensing objectives and set out a general approach to making licensing decisions. The discretion of the licensing authority in relation to applications under the act is only engaged if 'relevant representations' are made by other persons or responsible authorities. This policy will inform the approach to be taken when deciding applications and imposing conditions when relevant representations are received. It is also intended as a guide for applicants as to what to include in their operating schedules, always recognising that if no representations are received, the application must be granted. The licensing authority must carry out its functions with a view to promoting the licensing objectives and this policy is framed around those objectives. Each application will be given individual consideration on its merit. The scope of this policy covers the following:

- Retail sales of alcohol.
- The supply of alcohol by or on behalf of a club, or to the order of, a member of the club.
- The provision of regulated entertainment.
- The provision of late-night refreshment.

1.2 The licensing objectives are:

- (a) the prevention of crime and disorder.
- (b) public safety.
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

1.3 Scope

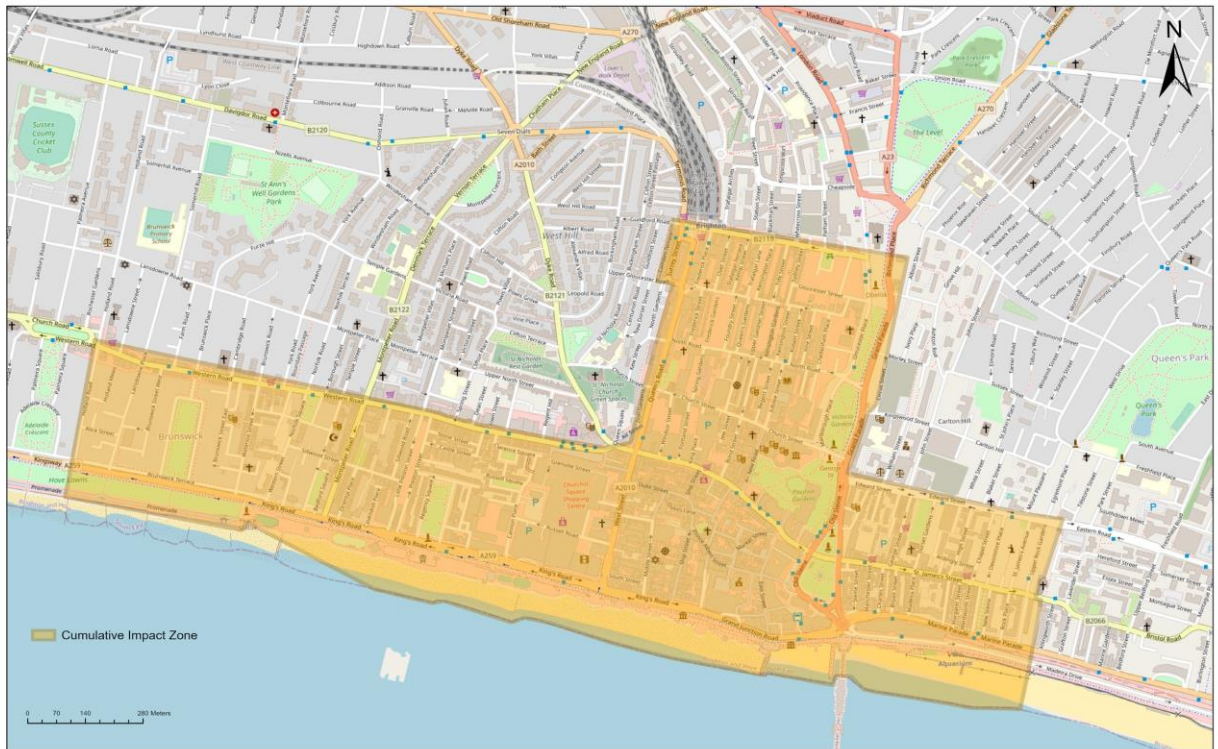
1.3.1 Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events. Any conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity. Each application will be given individual consideration on its merit. Nothing in this policy shall undermine the right of any individual to apply under the terms of the act for a variety of permissions and to have any such application considered on its individual merits. Similarly, nothing in this policy shall override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the act.

3 Special Policies and Initiatives

3.1 Cumulative impact

- 3.1.1 The licensing authority may receive representations from either a responsible authority or other persons that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. This should not, however, be confused with 'need' which relates more to the commercial demand for a particular type of premises. The issue of 'need' is therefore a matter for the market to decide and can, in some circumstances, be a matter for planning consideration; need therefore, does not form part of this licensing policy statement.
- 3.1.2 **Special Policy** - Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
- 3.1.3 The licensing authority, after careful consideration, has determined that the concentration of licensed premises in an area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to 'Cumulative Impact' is necessary as part of its statement of licensing policy. The first Special Policy incorporating a Cumulative Impact Zone (CIZ) and Special Stress Areas (SSA's) was adopted in March 2008. Since that date, the licensing authority has kept the CIZ and SSA's under review. On 15 December 2011 Full Council resolved to expand the CIZ and the special stress area, covering 1.5% of the administrative area of Brighton & Hove City Council. On 20th November 2014 Licensing Committee resolved to confirm the current CIZ and SSA as defined in the current Statement of Licensing Policy. On the 29th November 2018 Licensing Committee resolved to expand the SSA into Central Hove. It is now proposed to expand the SSA into Preston Road and Beaconsfield Road. The licensing authority has published a Cumulative Impact Assessment which can be found at Appendix E.
- 3.1.4 This special policy will refer to a Cumulative Impact Zone ("the CIZ") in the Brighton city centre, a detailed plan of which is shown below.

Cumulative Impact Zone, January 2021



Brighton & Hove Public Health Intelligence, 2021
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- 3.1.5 The Cumulative Impact Zone comprises the area bounded by and including: the north side of Western Road, Brighton from its intersection with the west side of Holland Road to the junction with the west side of Dyke Road at its eastern end; from there, north-east to the junction of the north side of Air Street with the west side of Queens Road and then northward to the north-west corner of Surrey Street junction with Queens Road; thence along the north side of Trafalgar Street eastwards to its junction with York Place and continuing south-east across to Grand Parade, then south to the junction of Edward Street; along the north side of Edward Street to the east side of its junction with Egremont Place and southward along the eastern sides of Upper Rock Gardens and Lower Rock Gardens; southward to the mean water mark and following the mean water line westward to a point due south of the west boundary of Holland Road; northward to that point and along the west side of Holland Road to its northwest boundary and then diagonally across Western Road to its intersection with the west side of Holland Road.
- 3.1.6 The special policy will only be overridden in exceptional circumstances. The effect of this special policy is that applications for new premises licences or club premises certificates within the area, or variations which are likely to add to the existing Cumulative Impact will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact.
- 3.1.7 This special policy also applies to all new premises licences and club premises certificates, for example pubs, restaurants and take-away establishments. Off licences also come within this policy as they can

contribute to problems of street drinking, proxy purchasing, dispersal issues, preloading and excessive drinking and related disorder.

- 3.1.8 The presumption of refusal does not relieve responsible authorities or other persons of the need to make a relevant representation. If there are no representations, the licensing authority must grant the application in terms consistent with the operating schedule submitted.
- 3.1.9 Furthermore, this special policy is not absolute. Upon receipt of a relevant representation, the licensing authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its special policy in the light of the individual circumstances of the case. If an application is unlikely to add to the cumulative impact of the area, it may be granted.

The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant, theatre or live music venue (where alcohol is not the primary activity) may be considered exceptional circumstances. The fact that a premises will be/is exceptionally well managed with a well-qualified applicant, or that there are no residential premises nearby, will not be considered exceptional.

- 3.1.10 If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that conditions would be ineffective in preventing the problems involved.

3.3 The Matrix Approach

The Licensing Authority will support:

- 3.3.1 Diversity of premises: ensures that there is a mix of the different types of licensed premises and attracts a more diverse range of customers from different age groups, different communities and with different attitudes to alcohol consumption. It gives potential for positively changing the ambience of the city or an area of it. This will have a positive effect in reducing people's fear of crime and in increasing the number of evening visitors to the city centre. The Community Safety Strategy recognises that too many single uses in a confined area and patrons turning out onto the streets at the same time may create opportunities for violent crime and public disorder and therefore supports mixed use venues encouraging a wider age balance.
- 3.3.2 A "matrix" approach to licensing decisions has been adopted and is set out below. It provides a framework of what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise to investor and businesses making applications.

Matrix approach for licensing decisions in a Statement of Licensing Policy (times relates to licensable activities).

	Cumulative Impact Area	Special Stress Area	Other Areas
Restaurant	Yes (midnight)	Yes (midnight)	Yes (midnight)
Café	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
Late Night Takeaways	No	Yes (midnight)	Yes (midnight)
Night Club	No	No	No
Pub	No	Yes (11pm)	Yes (midnight)
Non-alcohol lead (e.g. Theatre)	Yes (favourable)	Yes (favourable)	Yes (favourable)
Off-licence	No	No	Yes (Up to 11pm but if in densely residential area may be earlier – see note 7 below)
Members Club (club premises certificate)	Yes (<100 capacity) (11pm)	Yes (<100 capacity) (11pm)	Yes

Notes on matrix

Subject to the following notes, the policy, as represented in the matrix, will be strictly adhered to:

- 1) Each application will be considered on individual merit
- 2) Applications within the CIZ are subject to the special policy on cumulative impact at para 3.1, and those within the special stress area to the special stress policy considerations at para 3.2.
- 3) Departure from the matrix policy is expected only in exceptional circumstances
- 4) Exceptional circumstances will not include quality of management or size of venue except where explicitly stated in policy matrix.
- 5) Exceptional circumstances may include consultation with and meeting requirements of responsible authorities, an appropriate corporate social responsibility policy, community contribution to offset impact (such as financial contribution to infrastructure), community support, alcohol sale ancillary to business activity (demonstrable to responsible authorities and licensing authority, for instance by licence condition allowing authorised officers access to sales accounts).

- 6) The following licensing activities are encouraged and valued by the licensing authority: outdoor regulated entertainment, community-based street parties, members clubs, traditional pubs outside the city centre and non-alcohol led licensable activities, particularly within city centre.
- 7) Other Areas; consideration will be given to the nature of the area and location in relation to any application. In a residential area for example the concerns of local residents will be relevant when considering applications for off-licences, pubs or cafes, especially if there is evidence of anti-social behaviour, street drinking or underage drinking. Earlier closing times may be appropriate. Regard will be had to the Public Health Framework for assessing alcohol licensing on our website www.brighton-hove.gov.uk/licensingact.
- 8) In an area where there are already several existing off-licences or where the premises is situated within a parade with another off licence and where representations are received about negative cumulative impact on the licensing objectives of a further premises, the application may be refused on these grounds or restrictions placed on the terminal hour to reflect opening hours of other shops.
- 9) Outdoor events will be supported where arranged through the council's event planning process. Generally, regulated entertainment in the open-air including tents and marquees should have a maximum closure hour of 2300. Earlier hours may be imposed in sensitive open spaces or near residential areas. The licensing authority will have regard to Noise Council guidance.
- 10) Non-alcohol led category does not include "alcohol in shared workplaces". It is recommended that sale of alcohol in shared workspaces should have a terminal hour of no later than 10pm. For further advice and guidance on "alcohol in shared workplaces" please see paragraph 3.3.4-3.3.6.

3.3.3 Restaurants - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following restaurant condition.

- Intoxicating liquor shall not be supplied or sold on the premises otherwise than to persons taking table meals there and for the consumption by such a person as an ancillary to their meal. There will be no vertical drinking.
- Restaurants with outside service - the licensing authority will also consider applications from restaurants that request to serve alcohol to areas adjacent to or immediately outside their premises. In addition to the above conditions for cafes, the licensing authority will require evidence that the applicants have an agreement with the local authority to use the area as defined on a plan provided. The following condition may also apply:
- The sale and supply of alcohol for consumption off the premises shall be restricted to an area licensed by the Local Authority for use of the public highway as shown on the plan deposited and such area shall be defined by a physical barrier acceptable to the licensing authority.

4 Prevention of Crime and Disorder

The following details and measures are intended to address the need for the prevention of crime and disorder which may be associated with licensed premises and certificated club premises. Conditions attached to licences and certificates will, as far as possible, reflect local crime reduction strategies.

- 4.1.1 The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime. The authority expects that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all bar staff and door supervisors so that drug dealers and users will be deterred from using licensed premises for illegal purposes and that incidents of violence in licensed premises will be reduced. Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection. It is the duty of the designated premises supervisor (DPS) to train staff on induction concerning conditions on their premises licence.
- 4.1.2 It is expected that the DPS will spend a significant amount of time on the premises. When not on the premises it will be essential that the DPS is contactable, particularly should problems arise with the premises and that staff are authorised by the DPS.
- 4.1.3 The location of violent attacks, anti-social behaviour and hate crime or related incidents may be used to justify closing times.
- 4.1.4 Measures put in place should support the intentions of Operation Marble (police operational order), which aims to prevent incidents of crime and disorder within the night time economy, at weekends. Operation Marble operates with a view to minimising the risk to the public of being a victim of public place violent crime; to reduce incidents of violent crime and public disorder within the city centre; to deal positively with offences and offenders; to secure and preserve evidence which will assist in the prosecution of offenders and to support the night time economy and the responsibly run businesses within it.

4.2 Sussex Police

- 4.2.1 Sussex Police have a specific Operation relating to the night-time economy called Operation Marble (detailed in 3.4.1) and work closely with partners to ensure a safe and vibrant city centre. There continues to be an increasing demand for resources further into the early hours of the morning with the highest concentration of crimes occurring between 21:00 and 06:00 on a Friday into a Saturday and between 20:00 and 06:00 on a Saturday night into a Sunday. The data set used shows that up to 80% of arrests made in the timeframe 20:00 – 06:00 on these days were affected by alcohol. For full details of these statistics see the Cumulative Impact Assessment at Appendix E.

- 4.2.2 The dealing and use of drugs remains an issue across the city and Sussex Police welcome proactive policies from licensed premises. A drug safe and seizure recording initiative is in place of which further details can be obtained by contacting Brighton & Hove Police Licensing (brighton.licensing@sussex.pnn.police.uk). This initiative encourages licensed premises with Door Supervisors to search and seize drugs from persons attempting to enter their premises and ensures that once drugs are removed from persons, they can be safely collected and destroyed by Sussex Police.
- 4.2.3 Dispersal from the city centre during the late evening and early morning remains a policing challenge. Over recent years, there has been a proliferation of off-licences and late-night refreshment venues along the city's arterial routes. This has led to incident 'hot spots' where patrons from the night-time economy continue to interact, albeit away from any safety measures afforded by on-licences. As such, Sussex Police support the Council's Special Policy in offering guidance to both applicants and the Licensing Committee in relation to off-licences and late-night refreshment licences.
- 4.2.4 Sussex Police have continuing concerns that, despite staff training in age-restricted sales, under-age individuals are still being served alcohol both on and off the premises in some of the city's licensed premises. As such, regular intelligence-led 'test-purchase' operations are conducted to highlight premises where sales are taking place and ensure appropriate enforcement action is taken to prevent further sales. The introduction of identification scanning machines at premises throughout the city has proved successful in mitigating some risk, but operators must maintain vigilance regarding the fraudulent use of genuine IDs. Sussex Police continue to work alongside the Business Crime Reduction Partnership to tackle the problem of those who use false or another's identification to enter licensed premises and purchase alcohol.
- 4.2.5 Sussex Police work closely with venues and other organisations within the city to protect vulnerable people from becoming victims of crime. As well as work to prevent under-age sales, vulnerability training is offered to identify persons who may have been made vulnerable through alcohol or drugs. Sussex Police also support initiatives such as (but not limited to) safe spaces, mobile teams of volunteers actively checking people's well-being and the Beach Patrol.
- 4.2.6 Public Space Protection Orders have proved an effective tool for Sussex Police in targeting enforcement action in problem areas of the city. It 'allows Police Officers and Police Community Support Officers to remove alcohol from any person in a public place if that person is involved in anti-social behaviour (ASB) or the officer believes that by having alcohol in their possession there is an increased risk of ASB. It is an offence to refuse to hand over alcohol when required to do so.' They have been particularly effective in the daytime economy where members of the street community are causing ASB issues for members of the public and local businesses, especially during the summer months where there is a large influx of visitors to Brighton & Hove.

4.2.7 Policing the night-time economy continues to provide a challenge and in the climate of limited resources and newly emerging problems, Sussex Police support maintaining the council's Special Policy which defines cumulative impact and special stress and will continue to take enforcement action where appropriate if the actions of a Premises Licence Holder, Designated Premises Supervisor, Door Supervisors or Staff have fallen below the high standard expected across the city. Sussex Police also recognise and support businesses which are aware of their social responsibilities and as such, actively contribute towards keeping Brighton & Hove a safe and enjoyable city.

4.3 Care, control and supervision of premises

4.3.1 The Licensing authority supports the Business Crime Reduction Partnership and other approved schemes. Where appropriate, premises licence holders should be members of the BCRP for the deterrence to violent crime that such membership provides. The BCRP NightSafe radio scheme is normally expected as an operational requirement for city centre bars, clubs and pubs and is an example of good practice in achieving the aim of reducing crime and disorder and improving public safety. Well managed pub-watch schemes provide information exchange between the premises licence holders and responsible authorities that reduce and deter violent crime and disorder. The council will support a responsible licensing scheme.

4.3.2 The effective management and supervision of a venue is a key factor in reducing crime and disorder, both within it and outside. The police will consider the applicants, objecting to the application where appropriate. The police may suggest crime prevention measures in relation to, for example, the internal layout of the premises, closed-circuit television, help points, lighting and security staff. The police may ask for conditions which support such measures to be imposed when licensing applications are granted, e.g. type of licence, capacity, operating hours restrictions.

4.3.3 Following the grant of a licence, the management and supervision of the premises, in so far as it might impact on crime and disorder, will continue to be monitored. Particular attention will be paid to any licensed premises where there is evidence of criminal activity or any association with racist or homophobic crime. The licensing authority will keep itself well briefed on the nature, location and type of premises where alcohol related violence and disorder are occurring so it can take full account of the facts and avoid exacerbating problems as required by the Community Safety Strategy. Where licensed premises are found to cause nuisance or be associated with disorder or unreasonable disturbance, the review process may be invoked, and powers of revocation or the imposition of conditions may be considered. Conditions may include use of closed-circuit television, licensed door supervisors and earlier closing times. Such action to restrict the operation may be taken for trial periods to allow businesses an opportunity to remedy existing disorder, nuisance or disturbance.

6 Prevention of Public Nuisance

The following details and measures are intended to address the need for the prevention of public nuisance which may be associated with licensed premises and certificated club premises:

- 6.1.1 In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (e.g. in order to smoke).
- 6.1.5 In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.
- 6.1.6 Reasonable controls are available to all premises operators to minimise the impact of noise from customers outside. The council's Environmental Health Department has issued guidance on a number of steps that can be taken in this respect which are endorsed by this policy (see 6.2 below).

6.2 Smoking Advice

- 6.2.1 Premises licence holders will be expected to:
 - Develop a management plan on how to manage smoking on your premises and ensure that all staff are aware of the contents of this plan, and that it is effectively implemented. Noise from people smoking and talking can be intermittent, vary in character and volume and be intrusive. An effective smoking management plan will help prevent neighbours being disturbed.
 - Comply with any planning conditions restricting the use of outdoor areas.
 - Ensure that any structures used by smokers comply with the design criteria detailed in the Heath Act 2006 and that any structures, awnings, retractable canopies, etc. have the relevant planning permission.
 - Ensure any new lighting to outdoor areas must be designed so as not to cause a light nuisance to neighbours and again have the relevant planning permission and building control consent.
 - Ensure that the conditions on the premises licence are complied with. There may be conditions restricting the hours of use of gardens and outdoor areas. Having reviewed the contents of the premises licence you may find it necessary to request a variation of your licence.
 - Licence tables and chairs on the Public Highway under the provisions of the Highways Act 1980. These licences may have conditions restricting the times that the area can be used.
 - Ensure drinks, glasses and bottles are not taken onto the highway unless there is a tables and chairs licence permitting use. A system

should be adopted to prevent theft and 'spiking' of drinks and reminding customers not to leave unattended items.

- Discourage smokers remaining in gardens and outdoor areas and determine terminal hours.
- Discourage smokers remaining outside by removing/disabling tables and chairs or prohibiting their use after a certain time. Lights and heaters will also be turned off.
- Introduce a system that after a certain time the number of smokers outside are restricted to a maximum number. Staff will be needed to manage this restriction.
- Employ staff and/or SIA registered door supervisors to manage doors and control customers and smokers entering and leaving the premises. Staff positioned on the doors can help to encourage customers not to cause a noise problem. It may be that staff are required to manage doors after a certain time, particularly during the hours when neighbouring residents are trying to sleep.
- Ensure door supervisors maintain order outside venues and protect customer safety. BCRP supports the use of Night Safe. Radio net and other pager systems and pub watch schemes can be used to provide for rapid police response and alert other venues where customers and staff are endangered.
- Position signs to remind customers that the premises is in an area where people live. It is not always obvious in busy commercial streets with flats above. By changing the design and wording of signs customers do not forget. Signs can be located in and outside the premises and on tables.
- Use CCTV to manage outside areas.

6.2.2 Licensed premises should normally display prominent, legible signs at exits reminding customers to leave in a quiet, peaceful, orderly manner.

7 Protection of Children from Harm

The following details and measures are intended to address the need for the protection of children from harm; this includes emotional and physical harm which may be associated with licensed premises and certificated club premises (for example the exposure too early to strong language and sexual expletives, eg in the context of film exhibitions or where adult entertainment is provided). It is intended that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions (unless the 2003 Act itself imposes such conditions or there are good reasons to restrict entry or to exclude children completely).

7.1.1 Licensees should note the concern of the authority that drink related disorder frequently involves under 18's. To prevent illegal purchases of alcohol by such persons, all licensees should work with a suitable 'proof of age' scheme and ensure that appropriate identification is requested prior to entry and when requesting alcohol, where appropriate. Appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the Licensing Strategy Group (e.g. passport, photo driving licence or pass card).

7.1.2 It is the licensing authority's expectation that all staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises. Licensed premises staff are required to take reasonable steps to prevent under-age sales. The licensing authority will not seek to limit the access of children to any premises unless it is necessary for the prevention of emotional or psychological harm to them. Each application will be considered on its own merit but particular areas that will give rise to concern in respect of children are to be found in section 7.1.4 below.

7.1.3 To reduce alcohol-induced problematic behaviour by under 18 year olds, to enforce underage purchase and drinking laws and to assist in the protection of children from harm, the licensing authority supports the following measures: -

- a) Police should exercise powers (Confiscation of Alcohol (Young Persons) Act 1997) to remove alcohol from young people on the street
- b) Police and trading standards should implement test purchasing to reduce sales to under 18s in on and off sales licensed premises
- c) Further take-up of proof of age schemes will be promoted
- d) In-house, mystery shopper type schemes operated by local businesses will be supported
- e) Providers of events specifically catering for unaccompanied children should consider whether all staff at such events need to be DBS checked.

7.1.4 The licensing authority will not seek to require that access to any premises is given to children at all times – under normal circumstances this will be left to the discretion of the licensee. The following areas give rise to concern in respect of children, who will normally be excluded from premises:

- where there have been convictions for serving alcohol to minors or with a reputation for underage drinking.
- with a known association with drug taking or dealing.
- where there is a strong element of gambling on the premises.
- where entertainment of an adult or sexual nature is commonly provided.
- where premises are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons.

Options may include:

- limitations on the hours when children may be present.
- age limitations (below 18).
- limitations or exclusions when certain activities are taking place.
- requirements for an accompanying adult.
- full exclusion of people under 18.

- 7.1.5 Licensees of premises giving film exhibitions will be expected to include in their operating schedules arrangements for restricting children from viewing age restricted films. Such premises will be subject to a mandatory condition requiring that access will be restricted to only those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification, or in specific cases where such certificates have not been granted, the licensing authority. The licensing authority does not intend to adopt its own system of film classification. The licensing authority's procedures for dealing with unclassified films are appended at Appendix C.
- 7.1.7 Trading standards and the police undertake ongoing enforcement operations around under-age sales and test purchasing. Sussex Police and BCRP undertake work concerning proxy purchases and counterfeit ID as part of the partnership support work with Community Safety and Trading Standards.
- 7.1.8 Trading standards have a programme of business support including training for local businesses to avoid under-age sales.

8 Integration of Strategies

- 8.1.1 The licensing authority shall secure the proper integration of this policy with local crime prevention, planning policy, transport, tourism and cultural strategies by: -
- Liaising and consulting with the Sussex Police, Community Safety Forum, Sustainability Commission representatives and following the guidance in community safety and crime and disorder strategy
 - Liaising and consulting with Public and Alcohol Programme Board
 - Liaising and consulting with the East Sussex Fire & Rescue Service
 - Liaising and consulting with the Local Strategic Partnership, Safety Advisory Group (Emergency Planning) and Equalities and Social Justice Consultation Forum
 - Liaising and consulting with the Planning authority
 - Liaising and consulting with the Highways authority
 - Liaising and consulting with local business and business associations. Having regard to any future documents issued relating to the Private Security Industry Act 2001, for example liaison or information sharing protocols
 - Liaising and consulting with the Trading Standards Team, for example with regard to test purchasing codes of practice
- 8.1.2 In line with statutory requirements and the council's Inclusion Policy, the Licensing Authority shall have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and positive relations between persons of diverse backgrounds, for example communities of interest such as: lesbian, gay, bisexual and transgender people; disabled people; racial and ethnic groups; religious and faith groups.

- 8.1.3 This policy supports the aims of the tourism strategy, recognising the benefits for the tourism economy of creating a safer and more attractive city centre and improving competitiveness with other European cities. The Licensing Committee should receive any reports relevant to the needs of the local tourist economy and the cultural strategy for the area to ensure that it considers these matters.
- 8.1.4 The Licensing Committee should receive relevant information relating to the employment situation of the area and the need for new investment and employment where appropriate.
- 8.1.5 Specific conditions may be attached to premises licences to reflect local crime prevention strategies. Such conditions may include the use of closed-circuit television cameras, use of the NightSafe radio system or accredited scheme, the provision and use of shatterproof drinking receptacles, drugs and weapons search policy, the use of registered door supervisors, specialised lighting requirements, hours of opening. Certificates issued to club premises shall reflect local crime prevention strategies and may include any or all of the requirements listed above.
- 8.1.6 The licensing authority will have regard to the need to disperse people quickly and safely from the city centre to avoid concentrations which may produce disorder and disturbance.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted Michael Bentley

Date: 22/06/21

Legal Implications:

- 5.2 The licensing authority must act to promote the four licensing objectives which are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

The licensing authority must have regard to its statement of licensing policy and the guidance issued by the Secretary of State in carrying out its functions.

Lawyer Consulted: Rebecca Sidell

Date: 23/06/21

Equalities Implications:

- 5.3 Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

Sustainability Implications:

- 5.4 Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A - Section 18 (operating schedule) of the Application
2. Appendix B - Plan of Premises
3. Appendix C - Representations
4. Appendix D - Map of area

Documents in Members' Rooms

Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003, April 2018.

Public Health Framework for assessing Alcohol Licensing. Annual Report – Ward. 5th edition. Public Health Intelligence. January 2019

Background Documents

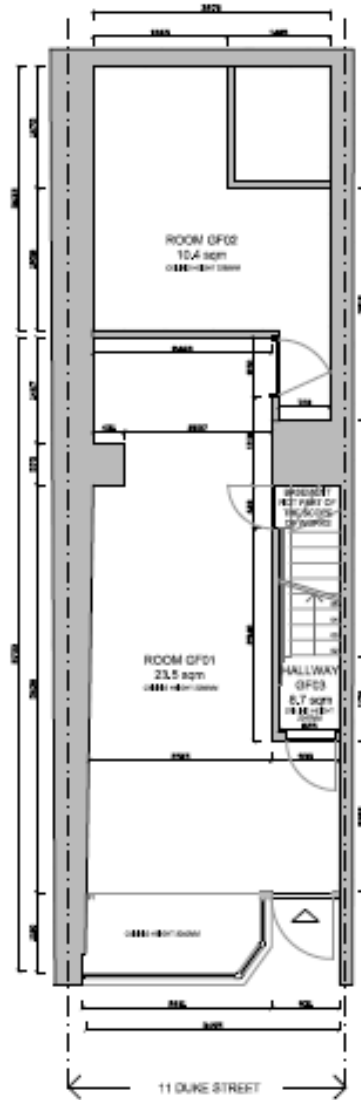
Brighton & Hove City Council, Licensing Act 2003: Statement of Licensing Policy 2021.

APPENDIX A

Section 18 of 21
LICENSING OBJECTIVES
Describe the steps you intend to take to promote the four licensing objectives: a) General – all four licensing objectives (b,c,d,e) List here steps you will take to promote all four licensing objectives together. We will endeavour to promote responsible consumption, behaviour and social standards on our premises. We would do this using appropriate signage, appropriate supervision of trained staff and appropriate policies that will protect the local residents, work with them to ensure we're aligned and protect children from harm through challenge 25 policies.
b) The prevention of crime and disorder A clear and legible notice outside the premises indicating normal opening hours for licensable activities. We will not be selling alcohol to drunk or intoxicated customers. A crime prevention policy agreed by us and must be in place.
c) Public safety Internal and external lighting fixed to promote the public safety objective. Well trained staff adherence to environment to health and safety requirements. Free drinking water must be made available at all times the premises is open to the public. Irresponsible drinks must not be permitted. The electrical system at the premises, including portable appliances must be inspected and tested annually by a competent person and a satisfactory safety report obtained. The gas system, including appliances, must be inspected annually and tested by a Gas Safe Registered engineer and a satisfactory Gas Safety Certificate must be obtained. All safety certificates and inspection reports must be kept on site and made available for inspection by officers of relevant statutory bodies. The fire safety measures provided on the premises must be maintained in good working order and appropriate supply of first aid equipment and material will be always available on the premises.
d) The prevention of public nuisance We shall not serve those who we deem to be disorderly with more drinks and will encourage a family friendly atmosphere. Delivery will not be out of hours/late evening. During opening hours, and at the close of business, arrangement must be made for litter from the business to be collected from the immediate vicinity and stored inside the premises pending collection.
e) The protection of children from harm We will adhere to the challenge 25 process and not sell to any underage persons.

APPENDIX B

PROJECT	11 DUKE ST
DATE	Existing Ground Floor Floor Plan
SCALE	1:100
BY	10/2024

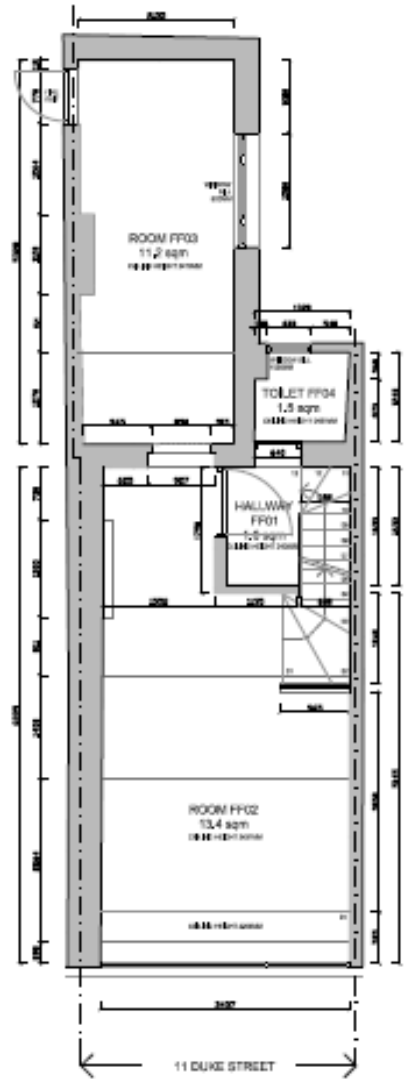


GROSS INTERNAL AREA (GIA)
GROUND FLOOR LEVEL 59.94 sqm

EXISTING GROUND FLOOR PLAN



Project	11 DUKE ST	
Drawing	Existing First Floor Floor Plan	
Scale	1/4" = 1'-0"	1/8" = 1'-0"

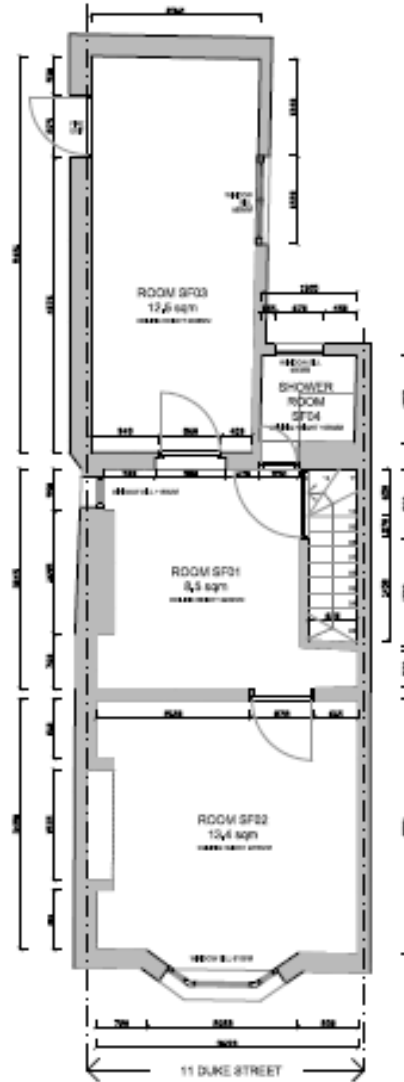


Overall Total Area (sqm)
FIRST FLOOR LEVEL: 36.5 sqm

EXISTING FIRST FLOOR PLAN



Project	11 DUKE ST
Client	Existing Second Floor Floor Plan
Scale	1/8" = 1'-0"
Date	05/12
Drawn by	12



GROSS INTERNAL AREA (GIA)
SECOND FLOOR LEVEL: 3627 sqm

EXISTING SECOND FLOOR PLAN



APPENDIX C

From: REDACTED

Sent: 27 May 2021 11:50

To: REDACTED

Subject: Re: 11 Duke Street Brighton MALO Ltd Sale of Alcohol Licence Application

SC CON ENDS 16.06.21 VALID PCD & CIZ (A)

To Whom it May Concern

Re: MALO Ltd Sale of Alcohol Licence Application

We wish to express our concern regarding the recent application for sale of alcohol on and off the above premises.

We feel there are already substantial outlets in the street selling alcohol. The property is within very close proximity of a primary school and it is not appropriate for alcohol to be sold for such long hours. It also encouraging the growing drink culture and could lead to antisocial behaviour within the vicinity.

We have traded from REDACTED property for over 30 years and the street is now full of restaurants and food and drink outlets, bringing further rubbish, takeaway traffic and food odours with them. It is changing from the high-quality destination it used to be, and for what we have over the years paid hundreds of thousands of pounds in high value business rates.

We are sure you understand why we feel let down by all of this. Perhaps if there is a continued trend towards making this area more of a 'food quarter' you could assist us by offering a grant to help us move our business to a more appropriate area within the city. Please can you let us know how we can access information on any assistance of this sort that is available to us?

We hope you very responsibly consider the application for the further selling of alcohol in this area and the negative impact it will have.

Thank you and we look forward to hearing your comments.

Kind regards

REDACTED

Licensing Authority
Brighton & Hove City Council
Bartholomew House
Bartholomew Square
Brighton
BN1 1JP

Date: 9 June 2021
Our Ref: REDACTED
Phone: REDACTED
e-mail: REDACTED

SC CON ENDS 16.06.21 VALID PCD, PPN & CIZ (B)

Dear REDACTED

Licensing Act 2003 Malo, 11 Duke Street, Brighton.

I wish to make a representation against a new application for Malo, 11 Duke Street, Brighton. The application is for a premises licence for the sale of alcohol both on and off the premises from Monday to Sunday 09:00 – 00:00. The proposal is to operate as a restaurant and take away with alcohol sales.

The grounds for the representation are that it is contrary to the Council's Statement of Licensing Policy (SoLP) as the premises falls within the cumulative impact area and may undermine the Licensing objectives of the prevention of crime and disorder and the prevention of public nuisance

The Licensing Authority's Cumulative Impact area (CIZ) was adopted to give greater power to control the number of licensed premises within the city centre. The special policy was set up because the Licensing Authority determined that the concentration of licensed premises and the subsequent numbers of people drawn into the city centre is causing exceptional problems of crime and disorder and public nuisance. The effect of this special policy is that applications for new premises licences or club premises certificates within the area, or variations which are likely to add to the existing Cumulative Impact, will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact.

The Council's SoLP includes a Matrix approach for licensing decisions with provisions for a terminal hour for all classes of licensed premises in a particular area. The Matrix Model recognises the diverse operation and different risks presented by different classes of licensed premises. It provides a vision of what the Licensing Authority would like to see within its area and gives an indication of likelihood of success or otherwise to investors and local businesses making applications.

The Matrix Model, states that in the cumulative impact area, restaurants are considered favourably until midnight and this application falls within this, however the applicant also wants to provide off sales and a delivery service which includes alcohol and the matrix does not support takeaways in the CIZ.

The policy does state that each application is still considered on its individual merit and there is discretion to depart from the policy where justified. However, departure from the Matrix Model is only expected in exceptional circumstances.

The applicant has not referred to the cumulative impact area in the application however they have proposed conditions to uphold the Licensing Objectives by operating Challenge 25 and staff training. Their operating schedule does not include any Restaurant or Café conditions as per our SoLP.

When considering whether representations should be submitted, the Licensing Team have regard to the 'Public Health Framework for assessing Alcohol Licensing' – January 2019 document. The premises sits within the Regency electoral ward

The document states that Regency ward is recorded as the worst ward out of 21 for All violence against the person and All injury violence. Second worst for Police recorded alcohol related incidents, Alcohol suspected ambulance call outs and A&E attendances with a record of alcohol.

The Licensing Team therefore makes this representation to uphold the council's Statement of Licensing Policy, which we believe this application contradicts and we wish to bring the application to the attention of the panel so that they can decide whether this application constitutes exceptional circumstances to depart from the policy.

Yours sincerely,

REDACTED

RESPONSE BY APPLICANT

10th June 2021.

To whom it may concern,

My name is REDACTED and I am writing this letter as REDACTED Malo Brighton LTD in relation to the Representation made by Emma Grant on the 9th June 2021.

Whilst I fully understand the reasons and concerns behind REDACTED Representation and the positive effects of having a Cumulative Impact Policy in Place, in this letter I would like to inform you of all the steps we are willing to take so that the Premises Licence we are applying to for 11 Duke Street in Brighton will have no negative Cumulative Impact.

Firstly, I want to point out that Malo is a small venue where the selling of alcohol is not the primary activity. The focus is on the selling of Empanadas, a traditional handmade Argentinian delicatessen. As a family of Argentinians, by the opening of Malo, we want to give people the chance to discover and learn more about the gastronomy of our country. I believe my business can add to the cultural aspect of Brighton and attract a diverse range of customers from different communities given that our products are not available in any other premises located in the area.

The intended supply of alcohol carried out at Malo, involves the selling of high-quality authentic Argentinian alcoholic beverages that are imported directly to Malo from leading brands. At Malo we also intend to organise high-end wine tasting with premium Argentinian wineries such as Catena Winery, Rutini Winery and Bianchi Winery. By doing so, Brighton residents and visitors will be given the possibility to try high quality beverages that are unique and hard to find as these are not sold anywhere else in the City.

Given how important it is for Malo to ensure the prevention of crime, disorder and public nuisance, should the application be granted, Malo commits to, in addition to the already established points in the original application, to implement the following conditions:

- Alcoholic beverages for consumption off premises and for delivery, will only be supplied when purchased together with food. The delivery will only be made by a reputable courier with a robust "Challenge 25" policy.
- All staff (who consist of REDACTED) will be regularly trained and refreshed in the relevant requirements of the Licensing Act before the sell or supply of alcohol. Records of this training shall be kept and made available immediately under request.
- Malo ensures that no alcohol will be sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- The premises will install and maintain a comprehensive CCTV system in line with Sussex Police approved standards that will record all entrances and exits to the premises at all times the premises are open for licensable activities. Viewing of recordings will be made available immediately upon the request.
- Prominent, clear and legible notices will be displayed at exits requesting the public to respect the needs of nearby residents and to leave the premises and the area quietly.
- As the selling and consumption of alcohol is not Malo's primary activity, no display containing alcoholic beverages that could encourage customers to enter the premises just to consume or purchase alcohol, will be located at the window display and entrance/exit point.

- In order to fit into the SoLP conditions for restaurant or café, I am willing to modify the premises operating schedule as the Council suggest is best to further help the prevention of crime, disorder and public nuisance.

I would like to reassure you that all these changes will be implemented just as I have responsibly implemented all the necessary measures in my other business REDACTED – a highly rated steakhouse which attracts people in to the City looking for good quality Argentinian gastronomy - which is also located within the Cumulative Impact Zone area at REDACTED in Brighton, and where we have never had any problems or received any complaints regarding noises, disturbances or issues related to the selling and consumption of alcohol.

I hope that these additional measures ease your concerns. Should you have any queries in respect of the above, please do not hesitate to contact me on REDACTED

Kind regards,

REDACTED

15th June 2021

The Licensing Technical Support Officers
Environmental Health, Brighton & Hove City Council
Bartholomew House, Bartholomew Square
Brighton, East Sussex
BN1 1JP

SC CON ENDS 16.06.21 VALID PCD, PPN, PCH & CIZ (C)

Dear REDACTED,

**RE: APPLICATION FOR A NEW PREMISES LICENCE FOR MALO, 11 DUKE STREET,
BRIGHTON, EAST SUSSEX, BN1 1AH UNDER THE LICENSING ACT 2003.
1445/3/2021/01490/LAPREN.**

I write on behalf of the Chief Officer of Police for Sussex to raise a representation against the grant of the above application on the grounds that it will undermine the Licensing Objectives of the prevention of crime and disorder, the protection of children from harm and public nuisance. We also make reference to the Brighton & Hove City Council (BHCC) Statement of Licensing Policy (revised January 2021) and the Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018).

This is a proposed new licence application in an area of the City which is subject to a Special Policy adopted by Brighton & Hove City Council. The premises lies in the Cumulative Impact Zone (CIZ) (as defined in the BHCC Statement of Licensing Policy) and seeks the following hours and licensable activities:

Sale by Retail of Alcohol (On and Off the premises)

Everyday: 09:00 – 00:00

Late Night Refreshment

Not applied for within the application – but description on application states they are to be a ‘takeaway/restaurant....serving and preparing for delivery Argentinean Food’

Opening hours

Everyday: 09:00 – 00:00

Paragraph 3.1.3 of the Brighton and Hove City Council 2021 Statement of Licensing Policy states that:

‘The licensing authority, after careful consideration, has determined that the concentration of licensed premises in an area of the city centre is causing problems of crime and disorder and public nuisance, and that therefore an approach to ‘Cumulative Impact’ is necessary as part of its statement of licensing policy.’

This premises lies within Regency Ward which, as evidenced by the Brighton & Hove Public Health Framework for Assessing Alcohol Licensing (published January 2019), is ranked number 1 for All violence against the person, All injury violence, Non-injury and Sexual offences. This ward is also ranked number 2 for Police recorded alcohol related incidents and number 3 for Criminal damage, demonstrating the higher risk to the Licensing Objective of the Prevention of Crime and Disorder in this area.

The licensing decision matrix on page 16 of the Council Statement of Licensing Policy (SoLP) suggests that new premises or premises licence variations asking for the off sale of alcohol and with no offered conditions to define them as a 'restaurant' are a 'No' in the Duke Street area.

The 'Cumulative Impact Zone' is covered by special policy and paragraph 3.1.6 provides that:

'The special policy will only be overridden in exceptional circumstances. The effect of this special policy is that applications for new premises licences or club premises certificates within the area, or variations which are likely to add to the existing Cumulative Impact, will be refused following relevant representations. This presumption can be rebutted by the applicant if they can show that their application will have no negative Cumulative Impact.'

There is also confusion around the business model of this premises as Late Night refreshment has not been applied for despite the applicant describing the premises as a 'restaurant/takeaway'. At present they are proposing to serve alcohol until 00:00 both on and off the premises but cannot provide any accompanying food between 23:00 and 00:00.

Paragraph 14.40 of the Secretary of State's Guidance to the Licensing Act 2003 (April 2018) provides:



'In publishing a CIA a licensing authority is setting down a strong statement of intent about its approach to considering applications for the grant or variation of premises licences or club premises certificates in the area described... Applications in areas covered by a CIA should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives.'

The applicant did not pre consult with Sussex Police and has not addressed any of the local concerns or offered particular reasoning as to why their application would be an exception to policy or why the SoLP matrix should be departed from. The limited information under Section 18 of their application offers minimal workable conditions and Sussex Police do not believe these go far enough to help mitigate any potential risk in this area of the City. The conditions offered fall far short of the current city wide expected standard and there is no mention of any crime prevention measures such as CCTV provision, regular staff training around the sale of alcohol or any measures restricting the sale of alcohol to be ancillary to a table meal e.g. a restaurant set up. There are also concerns around delivery of alcohol within the CIZ and beyond as no conditions have been offered around preventing the sale of alcohol to children or refusing delivery of alcohol to public spaces.

Sussex Police do not believe the application in its current form addresses the concerns raised and therefore is at risk of undermining the prevention of crime & disorder, the protection of children from harm and public nuisance Licensing Objectives. Sussex Police additionally contend that the carrying on of additional licensable activity and the hours applied for at these premises will add to the existing negative cumulative effect in an area already saturated with licensed premises.

Therefore, Sussex Police invite the Licensing Authority to seriously consider refusing this application.

Yours sincerely,

REDACTED

APPENDIX D

