

APPENDIX C

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

Date: 17 December 2021
Our Ref: 2021/02785/LICREP/EH
Phone: 01273 292494

e-mail: donna.lynsdale@brighton-hove.gov.uk

SC CON ENDS 13.01.22 VALID PCD, PPN & CIZ (A)

Dear Ms Cornell

**Licensing Act 2003
Representation to the application for a new Premises Licence -
2021/04240/LAPREN
Flower Burger, 62 North Street, Brighton BN1 1RH**

I write to make a representation on behalf of the Council's Licensing Team, in their capacity as a responsible authority, in relation to the above application for a new Premises Licence submitted by Gerry's Offshore Incorporations Limited.

This representation is made as the Licensing Team have concerns that the application could have a negative impact on the licensing objectives of prevention of crime and disorder and public nuisance. I also refer to the Special Policy on Cumulative Impact (SPCI) contained within the Council's Statement of Licensing Policy (SoLP).

On 14 December 2021, Police Licensing visited the premises following intel they were selling alcohol. At the time of this visit they noted that the premises were displaying and selling alcohol without a premises license. On 16 December 2021, following this visit I wrote to the premises issuing them with a warning or carrying out unauthorized licensable activities. A copy of this warning can be seen attached as Appendix A.

This premises falls within the Licensing Authority's Cumulative Impact Area (CIZ), which was adopted to give greater power to control the number of licensed premises within the city's centre. The SPCI was introduced 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 the SPCI is that applications for new premises licences, which are likely to add to the existing Cumulative Impact, will be refused following relevant representations. The applicant can rebut this presumption of refusal if they can show that their application will have no negative cumulative impact on licensing objectives, including prevention of crime and disorder and public nuisance.

Guidance issued under S182 of the Licensing Act 2003 (April 2018) states in paragraph 8.41 that in completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. The guidance goes on to say in paragraph 8.43 that

applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, Cumulative Impact Zone (CIZ)), applicants are also expected to demonstrate an understanding of how the policy impacts on their application, any measures they will take to mitigate the impact, and why they consider the application should be an exception to the policy.

On looking at the application form, particularly section 16 (licensing objectives), the applicant has not addressed the premise's location within the CIZ. They also have not demonstrated exceptional circumstances to depart from our policy or how they will not add to the existing cumulative impact of the area.

The Licensing Authority will always consider the circumstances of each case and whether there are exceptional circumstances to justify departing from its SPCI in the light of the individual circumstances of the case.

The Council's Statement of Licensing Policy also 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.

In regard to the Matrix policy, I can again not see any offered exceptional circumstances for departing from the Matrix policy, where it clearly indicates that 'off-sales' in the CIZ should not be granted within the Cumulative Impact Area. The Licensing Team contend that the Matrix policy relates to both new and variation applications. Again, the Matrix policy can be departed from where exceptional circumstances are demonstrated, but the applicant has failed to address this.

As well as being located in the CIZ, the premises is situated in the electoral ward of Regency, which according to our Public Health Framework for Assessing Alcohol Licensing 2019 also includes 'crime and disorder data', within this ward. Regency is ranked (out of 21 wards) worst for 'all violence against the person', 'all injury violence', 'non-injury assault', 'sexual offences', and second worst 'police recorded alcohol related incidents'.

The Licensing Team make this representation to uphold our Statement of Licensing Policy. The SPCI is predicated on too much alcohol being available and, as previously stated, applications for new premises licences will be refused unless the applicant can demonstrate exceptional circumstances. The onus is on the applicant to demonstrate this and we would invite them to explain their exceptional circumstance to the Panel, so that the Panel can decide whether they are satisfied that this application will not impact negatively on the CIZ.

Yours sincerely

REDACTED TEXT
Donna Lynsdale
Licensing Officer
Licensing Team

Appendix A – Copy of email sent 17 December 2021

From: Donna Lynsdale
Sent: 17 December 2021 09:53
To: REDACTED TEXT
Cc: Brighton.Licensing@sussex.pnn.police.uk
Subject: Flower Burger, 62 North Street, Brighton BNI IRH - 2021/02785/LICREP/EH
Importance: High

Dear **REDACTED TEXT**

**Licensing Act 2003 - Unauthorised Licensable Activities
Flower Burger, 62 North Street, Brighton BNI IRH**

I am writing to you following a visit by Police Licensing on 14 December 2021 to the above premises. They have advised that at the time of their visit the premises were displaying and selling alcohol without a premises license.

It is an offence under the Licensing Act 2003, S136(1) and (4) to carry on unauthorised licensable activities. The legislation states that: -

- (1) A Person commits an offence if –
 - (a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or
 - (b) he knowingly allows a licensable activity to be carried on.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.

Please note this Authority and Sussex Police have officers monitoring the City both day and night and we will be monitoring the premises. If it is witnessed that your premises is carrying out further unauthorised licensable activities then enforcement action will be taken.

A copy of this email has also been sent to Police Licensing.

If you have any queries regarding the contents of this letter, please do not hesitate to contact me to discuss.

Yours sincerely

Donna Lynsdale | Fair Trading Officer & Licensing Officer (Trading Standards & Licensing),
Safer Communities
Brighton & Hove City Council, 2nd Floor, Barts House, Barts Square, BNI 1JP
T 01273 292494 | M 07717 303114 | donna.lynsdale@brighton-hove.gov.uk

Police Station
John Street
Brighton
BN2 0LA

Tel: 101 ext 550809

Email:
brighton.licensing@sussex.pnn.polic
e.uk

6th January 2022

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

Dear Sarah Cornell,

SC CON ENDS 13.01.22 VALID PCD, PCH & CIZ (B)

**RE: APPLICATION FOR A NEW PREMISES LICENCE FOR FLOWER
BURGER, 62 NORTH STREET, BRIGHTON, BN1 1RH UNDER THEW
LICENSING ACT 2003.**

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 and protection of children from Harm. We also make reference to the Public Health Framework report for Assessing Alcohol Licensing 2019 edition.

This is an application for a new premises licence located at 62 North Street and seeks the following licensable activities and timings:

In accordance with the Brighton and Hove Statement of Licensing policy this premises is in the Cumulative Impact Area.

Supply of Alcohol (Both On and Off the Premises)

Every Day: 11:00 – 22:30

Within the 2021 Brighton & Hove City Council (BHCC) Statement of Licensing Policy, North Street is within the Cumulative Impact Area (CIA). This recognises that the location has a significant number of licensed premises concentrated in one area, including drinking establishments, off licences, restaurants and cafes. Applications for new premises licenses within this area which are likely to add to existing cumulative impact will be refused

following relevant representations. This can be rebutted by the applicant if they can show that their application will have no negative cumulative impact. We are unsure if the applicant had reviewed this document prior to submitting the application however, on reading the application we do not feel anything has been offered to depart from the policy and no mention has been made regarding the CIA.

Sussex Police are concerned about the impact that granting this application could have on the area. Although the highest risk would be early evening, we believe that daytime trading with chilled off sales could also impact the area by increasing the risk of alcohol being consumed within public spaces. There is a number of outlets within the area that suffer from a high number of daytime shoplifting of specifically alcohol. This could increase Anti Social Behaviour already experienced in this area as it is then often consumed by already intoxicated persons. The addition of chilled off sales products will also increase risk of under 18's being able to drink via proxy sales.

The applicant's application has offered minimal conditions, stating in the "general situation – section 5" of the application that this premises will operate as a restaurant however no restaurant conditions were offered in section 18 of the application.

The applicant has mentioned CCTV however no other conditions have been offered to mitigate any risk such as Refusal logs, training, challenge 25 and signage. The sub section e, in section 18 of the application "The protection of children from harm" has no conditions offered at all.

Furthermore, Sussex Police have concerns over the delivery of alcohol especially when it comes to ensuring that Challenge 25 checks are being conducted and that no alcohol is being made available to already intoxicated persons as no delivery conditions have been offered as part of this application.

Lastly, it was reported to Police Licensing that 3 females were witnessed to be consuming alcohol in this premises on the 13th December. On the 14th December Police Licensing visited the premises where alcohol was seen in the chiller cabinet and a member of staff confirmed sales of alcohol had taken place as recent as that morning.

A breach letter was sent, please find attached with this letter of representation and photos. The concern regarding selling without a licence, highlights the applicant has limited understanding of the Licensing Act 2003. Should the licence be granted Sussex Police feel this is likely to cause issues in the future and there would be concerns as to whether they could be entrusted to adhere to any conditions attached to a premises licence.

Reviewing the Public Health Framework report for assessing alcohol licensing 2019 edition, the Regency ward, of which this location is within, is ranked 2nd worse out of 21 wards for police recorded alcohol related incidents. Then worst for for 'all violence against the person', 'all injury violence', 'non-injury assault', 'sexual offences' Granting an additional alcohol premises licence we believe will add further to issues currently experienced within the city and so have a negative impact on the surrounding area.

Taking into account our comments on crime and disorder within the area, the lack of information and conditions offered within this application, further fuelled by the concern

that they have sold Alcohol without a licence, Sussex Police are unable to support such an application and would ask for it to be heard before a licensing panel to be refused.

Yours sincerely,

REDACTED TEXT

Inspector Michelle Palmer-Harris
Licensing – Brighton & Hove Division
Sussex Police

Please address all future correspondence to Brighton & Hove Licensing Unit, Police Station,
John Street, Brighton, BN2 0LA.

Police Station
John Street
Brighton
BN2 0LA

Tel: 01273 404535 ext. 550808

Email:
brighton.licensing@sussex.pnn.polic
e.uk

Date: 14th December 2021

REDACTED TEXT

Flower Burger
62 North Street
Brighton
BNI IRH

Dear **REDACTED TEXT**,

**Re: Flower Burger, 62 North Street, Brighton, BNI IRH - Licensing Act 2003 –
Unauthorised licensable activities.**

We are writing to you in your role of premises manager at the above location.

On 13th December 2021 at around 16:30hrs an off-duty Police Licensing Officer was passing your premises and noticed three females seating within the window area consuming a Peroni and what looked like prosecco or a similar fizzy wine product.

Aware that 62 North Street, Brighton does not currently have a premises licence a visit was made this afternoon at approximately 14:50hrs, 14th December by Police Licensing. Within your premises you had Peroni and Prosecco in the chiller cabinet and advertised prices on the menu for beers. Prior to visiting, a check on Deliveroo also showed you offering beer as part of a meal deal package for home delivery. An employee confirmed to us that alcohol is available for sale and that sales had been made as recent as today.

We are aware that you currently have a premises licence application going through however, you are still within the consultation period and no licence has yet to be granted.

It is an offence under the Licensing Act 2003, S136(1) and (4) to carry on unauthorised licensable activities. The legislations states that:-

(1) A Person commits an offence if –

(a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be carried on.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.

Considering the above information, I am issuing you with a **Warning** and further inspections will be made to ensure compliance. Any continuation of trading without a premises licence will result in further enforcement action being taken.

If there are any matters within this letter that you wish to discuss then please do not hesitate to contact us via the email address above.

Yours sincerely,

Mark Thorogood

Sussex Police Licensing

Brighton & Hove Division

Sussex Police

c.c Brighton & Hove City Council Licensing Team – via email.

Alcohol seen at the premises on the 14th December 2021.



Deliveroo screen shots from the 14th December 2021.

Flower Burger - Brighton deliver: x

Search Flower Burger - Brighton

Sign up or log in

Menu

Flower Burger - Brighton

25 - 45 min · Vegan · American · Burgers

★ 4.2 Very good (3.4) · 2.10 miles away · £3.99 delivery · Closes at 22:45

Info

30% off entire menu - For orders over £20. T&Cs apply

Deliver in 25 - 45 min Change

Start group order

Meal Deals

Our meal deal consisting of a Burger and includes a side, if you would like an additional side then select an option under additional sides.

Flower Burger Meal Deal (VG) Flower Burger + side + drink £10.12 £14.45 · Popular		Cherry Bomb Burger Meal Deal (VG) Cherry Bomb + side + drink £9.77 £13.95 · Popular		Classic Chickpea Burger Meal Deal (VG) Classic Chickpea + side + drink £8.02 £11.45	
Spicy Chickpea Burger Meal Deal (VG) Spicy Chickpea + side + drink		Tangy Chickpea Burger Meal Deal (VG) Tangy Chickpea + side + drink		Jungle Burger Meal Deal (VG) Jungle Burger + side + drink £9.77 £13.95	

Your order

Beer Party (Meal Deal)
 Cherry Bomb, Flower Burger, Jungle Burger, Menabrea Blonde, Potato Wedges

1 **£44.90**

Add order notes

Subtotal 30% off (-£13.47) **£31.43**

Delivery fee **£3.99**

Service fee **£2.00**

Beer Party (Meal Deal)

3 Meals with Beer (Jungle Burger, Cherry Bomb, Flower Burger)
 Contains mustard, nuts, sesame, soybeans, sulphur dioxide/sulphites.

Select your Burger - Beer Party (Meal Deal)
 Contains mustard, sesame, soybeans, sulphur dioxide/sulphites.
 Required

- Cherry Bomb
- Flower Burger
- Jungle Burger

Select your side - Beer Party (Meal Deal)
 Contains soybeans.
 Required

- Potato Wedges
- Edamame

Select your Beer - Beer Party (Meal Deal)
 No known allergens.
 Required

- Menabrea Blonde
- Menabrea Amber

1

Add for **£31.43** ~~£44.90~~

Your order

Beer Party (Meal Deal)
 Cherry Bomb, Flower Burger, Jungle Burger, Menabrea Blonde, Potato Wedges

Add order notes

Subtotal 30% off (-£13.47) **£31.43**

Delivery fee **£3.99**

Service fee **£2.00**

Total

You got 30% off

Take Deliveroo with you

Download on the App Store

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