

# Licensing Panel (Licensing Act 2003 Functions)

Date: **12 March 2021**

Time: **10.00am**

Venue **Virtual via Microsoft Teams**

Members: **Councillors:**, Deane, Appich and Ebel

Contact: **Penny Jennings**  
Democratic Services Officer  
01273 291065  
penny.jennings@brighton-hove.gov.uk

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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.

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(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 APPLICATION FOR A NEW PREMISES LICENCE, MR TIPSY ICE CREAM, 46 GEORGE STREET, BRIGHTON

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

Contact Officer: Sarah Cornell

Tel: 01273 295801

*Ward Affected: Queen's Park*

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For further details and general enquiries about this meeting contact Penny Jennings (01273 291065, email [penny.jennings@brighton-hove.gov.uk](mailto:penny.jennings@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk)

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# Licensing Panel (Licensing Act 2003 Functions)

Brighton & Hove City Council

<b>Subject:</b>	<b>Application for a New Premises Licence under the Licensing Act 2003</b>		
<b>Premises:</b>	<b>Mr Topsy Ice Cream 46 George Street Brighton BN2 1RJ</b>		
<b>Applicant:</b>	<b>Mr Tom Gathercole</b>		
<b>Date of Meeting:</b>	<b>12 March 2021</b>		
<b>Report of:</b>	<b>Executive Director of Housing, Neighbourhoods &amp; Communities</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Sarah Cornell</b>	<b>Tel: (01273) 295801</b>
	<b>Email:</b>	<b>sarah.cornell@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>Queen's Park</b>		

## 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 Mr Topsy Ice Cream.

### 2. RECOMMENDATIONS:

- 2.1 That the Panel determine an application for a New Premises Licence under the Licensing Act 2003 for Mr Topsy Ice Cream.

### 3. CONTEXT/BACKGROUND INFORMATION & CONSULTATION

- 3.1 The application is for a New Premises Licence under the Licensing Act 2003. The application proposes that 46 George Street is a retail shopfront premises of approximately 53m<sup>2</sup>. It is situated in a street of mixed retail outlets, cafes, restaurants and pubs. The layout of the premises is a rectangle which will be split into a commercial kitchen at the rear (to manufacture artisan alcoholic ice cream using local ingredients as far as possible) and a retail outlet with approximately 30 covers to the front for people to a) take away tubs of ice cream for home or takeaway for immediate consumption and b) to eat in. The off-supplies will therefore be only of alcoholic ice cream (nil to 10% ABV). In the seated part of the ice cream parlour ice cream (nil to 10% ABV) will be supplied to customers in the form of ice cream in tubs, as sundaes and a few ice cream cocktails and in hot drinks.
- 3.2 Section 18 (operating schedule) of the application is detailed at Appendix A and the plan of the premises is attached at Appendix B

### 3.3 Summary table of proposed activities:

	<b>Proposed</b>
<b>Supply of Alcohol</b>	Sundays to Thursdays 12:00 to 22:00 Fridays and Saturdays 12:00 to 23:00 on and off the premises
<b>Hours premises are open to public</b>	Sundays to Thursdays 12:00 to 22:00 Fridays and Saturdays 12:00 to 23:00

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

#### **Representations received**

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

3.6 Two representations were received. They were received from Sussex Police and The Licensing Authority.

3.7 Representations received had concerns relating to Prevention of Crime and Disorder, Cumulative Impact and Prevention of Public Nuisance.

3.8 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) Prevention of crime and disorder;
- (b) Public safety;
- (c) Prevention of public nuisance;
- (d) 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.

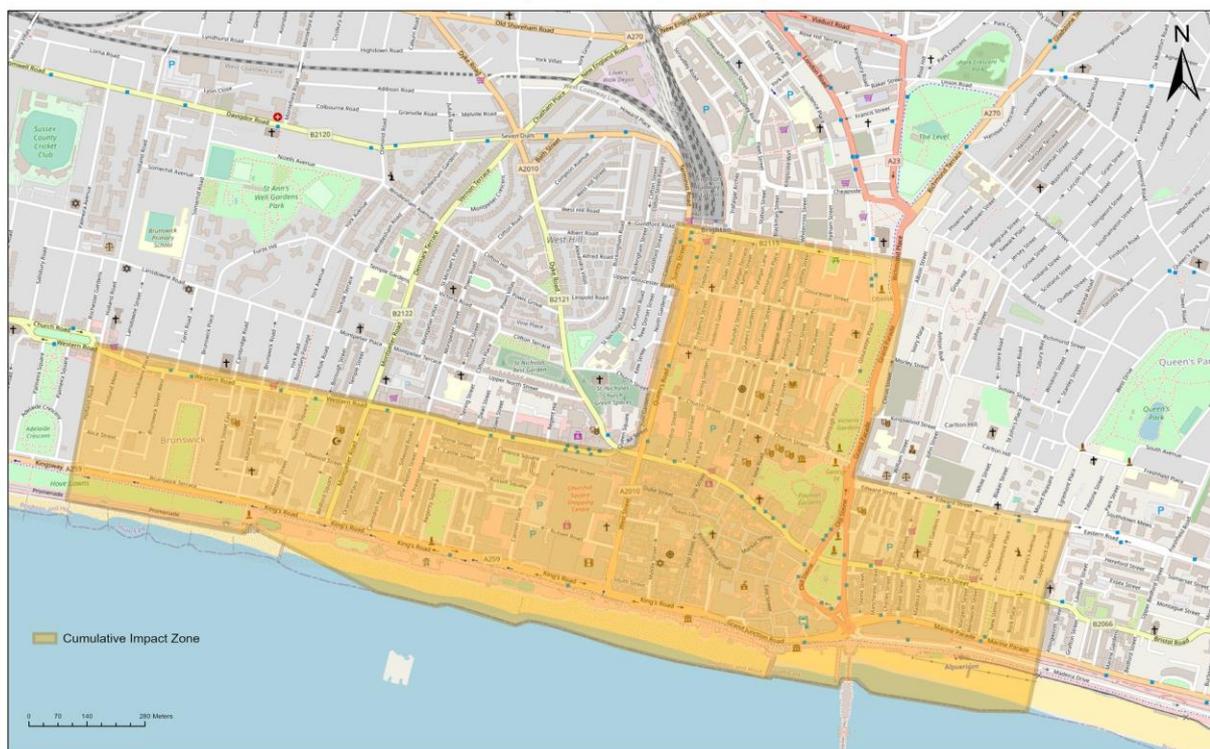
3.1.2 **Special Policy** - Cumulative Impact is defined as the potential impact upon the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

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 20<sup>th</sup> November 2014 Licensing Committee resolved to confirm the current CIZ and SSA as defined in the current Statement of Licensing Policy. On the 29<sup>th</sup> 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 Area 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 Ayr 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 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)

	<b>Cumulative Impact Area</b>	<b>Special Stress Area</b>	<b>Other Areas</b>
<b>Restaurant</b>	Yes (midnight)	Yes (midnight)	Yes (midnight)
<b>Café</b>	Yes (10 pm)	Yes (10 pm)	Yes (10 pm)
<b>Late Night Takeaways</b>	No	Yes (midnight)	Yes (midnight)
<b>Night Club</b>	No	No	No
<b>Pub</b>	No	Yes (11pm)	Yes (midnight)
<b>Non-alcohol lead (e.g. Theatre)</b>	Yes (favourable)	Yes (favourable)	Yes (favourable)
<b>Off-licence</b>	No	No	Yes (Up to 11pm but if in densely residential area may be earlier – see note 7 below)
<b>Members Club (club premises certificate)</b>	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 off set 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, member's 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 cafés, 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 and the Street Community and Drug Activity Profile. These documents are available on the following page of our website [www.brighton-hove.gov.uk/licensingact](http://www.brighton-hove.gov.uk/licensingact).
- 8) In an area where there are already several existing off-licences 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.
- 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 Cafés** - the licensing authority may be prepared to look favourably upon an application for the grant of a licence, subject to the following conditions that will prevent the premises becoming a public house.

- The sale of intoxicating liquor and other beverages shall be waiter/waitress service for consumption by persons seated at tables.
- Substantial food shall be available at all times. The licensing authority shall judge each case on its own merits but as a general rule, a bowl of crisps, nuts, or olives does not constitute substantial food.

**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](mailto: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 day time 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, eg 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.
- 4.3.4 This policy recognises the use of registered Door Supervisors All Door Supervisors will be licensed by the Security Industries Authority. Mobile security units and similar systems are in use by some premises operators as a means of providing security cover at very short notice at premises which may not normally require a permanent security presence. The Licensing Strategy Group has sought to define the standards and operating guidance for such mobile units, which will be in need of regular review. This policy endorses the use of units following such guidance and standards in appropriate circumstances. A copy can be found on the licensing pages of the council's website.

4.3.5 The development of codes of practice and general operating standards for security companies is encouraged for local businesses; premises operators are urged to ensure that security services, when engaged, are provided by suitably qualified businesses operating to recognised standards and who should be working towards SIA accreditation.

## **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).
- 6.1.2 Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence. Noise emanating from within licensed premises should not normally be audible outside.
- 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.

## **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: 25/02/21*

### 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: 04/03/21*

### 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 and supporting statement
2. Appendix B – Plan of Premises
3. Appendix C – Representations
5. 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. 5<sup>th</sup> 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.

Thorough staff training, review of policies at least annually, staff manual, thorough induction, of staff, checks to ensure policy compliance, monthly staff meeting to ensure compliance, staff training reviews, Management daily checklists to ensure all 4 objectives met.

##### **b) The prevention of crime and disorder**

Staff training- We will regularly train staff on checking id and to operate a check 25 policy.

All occurrences of crime and disorder will be reported to the police and a record filed for our own records.

There is CCTV installed to deter thieves/other crimes to take place.

All staff will be on alert to any threats to customers/other staff members.

The premise is open plan, small, and well lit throughout.

Any lost property on the premise will be recorded and locked in a safe space.

Signs notifying people of CCTV to warn thieves off.

Staff will be trained to be vigilant to look for illicit drug use and dealing, regular management patrols and CCTV.

We have a zero tolerance policy on drugs. If drugs are found on premises, a staff member would give them to management who would remove them from circulation and inform the police.

In the event something is stolen on our property we offer support to the victim and offer as much help as we can. We limit glass use as far as possible, (the majority of all sales will be ice cream served in paper recyclable cups). We also discourage glass being removed from the premises by only having one door and keeping the majority of glasses behind the bar.

We have registered taxi services numbers behind the bar in case a customer requests a taxi.

The majority of our sales will be scoops of ice cream. You would need to have a substantial amount of ice cream to get drunk on just the scoops. On normal circumstances people will

only be having one ice cream therefore limiting the chances of people getting drunk. Due to the fact that ice cream is a food it means it is harder to get drunk off the ice cream (compared to a regular cocktail) but still a possibility if overindulged.

We operate a challenge 25 policy at all times.

Thorough staff induction before working and prior to an event.

All staff are trained to recognise drunkenness and to respond appropriately according to our policy.

Fully trained staff will know what to do with customers who are in distress due to alcohol or drugs.

Staff are trained to offer free water/soft drink to anyone who looks like they have overindulged or worse for wear and is asking for alcohol. If they refuse they will be calmly pass the case over to a manager.

Staff are allowed to refuse to serve a customer who seems intoxicated.

We have a zero policy for any aggression shown towards our staff members by anyone under the influence of drugs and alcohol.

Management are trained to refuse entry to anyone who seems clearly worse for wear due to alcohol.

Tap water is available to everyone free of charge.

Our pricing structure will discourage binge drinking

Non alcoholic ice creams and other soft drinks available to once again offer an alternative option to alcoholic ice creams.

Our core business is ice cream and we see our offering as more as a dessert bar, offering sundaes etc rather than a 'bar' where people come to drink.

We will operate from 12 to 10pm weekdays and 12 to 11pm friday and saturday. Offering alcoholic and non alcoholic hot chocolates, sundaes and our boozy ice cream throughout these hours.

We offer an effective queuing system, clearly signed to deal with the busier summer months.

All staff to be checked for right to work in the UK and compliant with current legislation.

Prior to customer entry, our customers will be aware of our policies which will be on our website.

### **c) Public safety**

Risk of fire is very low and the exits are sufficient for speedy exit.

Premises is open plan, apart from a separate kitchen. Smoke and heat detectors installed in kitchen area.

Fire extinguishers on site and fire training provided for all staff.

Building structurally safe and on ground floor.

Fire exit from kitchen area and one clear exit for customers.

Free drinking water for all customers and staff.

At all times a qualified first aider will be present on site and a fully stocked first aid kit available.

All staff will be fire marshals and will receive emergency fire evacuation training on a weekly basis.

Managers will check before every shift for any hazardous materials ( broken furniture, trip hazards etc.) Any broken furniture will be removed/repaired.

Any customers in distress will be given appropriate treatment by first aiders or in an event of an emergency call 999.

Current up to date certification on all electrical appliances, fire alarm systems, gas, boilers, first aid kits etc.

### **d) The prevention of public nuisance**

All waste will be collected daily and recycled by our contracted supplier.

All waste is stored in sealed containers and collected 7 days a week.

Any cooking odours ( which are very limited) will be kept in the kitchen and confined by adequate ventilation.

Noise is kept to minimum, with no live music and only background music played quietly. I must stress this is not going to be like standard bar and we see ourselves more as a dessert bar after a meal rather than a pub/party type area. Keeping noise pollution to a minimum.

50% of premise will be commercial kitchen and all we be made in only during working hours.

As a startup we are hoping to be open to 10pm most nights and 11pm in weekends however this all depends how busy we will be and we may reduce these hours to 9pm.

We have a ground floor premise and there is residential flats above. Once again we are planning to act as a dessert bar not a cocktail bar as such reducing noise pollution and only planning to be open to 10pm.

We plan to constantly monitor any queues we have in the summer months and provide bins outside for people to put their rubbish in, if they are just having takeaway ice cream.

We do not condone the use of illegal fly posting.

Staff will regularly be cleaning the entrance regularly and keeping an eye for litter outside and inside the premise.

No outside lighting from store.

#### **e) The protection of children from harm**

We will adopt the challenge 25 policy and photographic ID is required for all customer who appear to be underage.

Only accepting drivers license, passports and proof of age scheme card, which carry the PASS holographic logo.

Staff trained in underage policy.

We do recommend that under 18s do not come into the premises and have clear signage on the doors saying 18 plus only.

The shop is designed for individuals 18 plus and staff will be trained to deal with that appropriately.

Procedure in place for finding of lost and found children, however we do not expect any unaccompanied children in the premise.

## **CIZ supporting statement**

To whom it may concern,

I have attempted below to address concerns about having my business in the cumulative impact zone and to add some further clarification of my business to reassure you that my alcoholic desserts would not add to any alcohol related problems within the area.

Aside from both alcohol and non-alcoholic ice cream sales, the shop would offer a variety of cakes, cookies as well as soft drinks, coffees and hot chocolates. The business would, therefore, be first and foremost a dessert business rather than a primary alcohol led business. Consequentially, alcohol- containing ice cream would only make up some 40% of sales.

The off sales list would specifically consist of coffees, ice cream tubs etc and which would be mostly sold to pedestrians passing by and for pedestrian shoppers to take home for their freezers. Deliveries, if required, would be made by bike, using either my tricycle (see images attached), which I currently use for markets and deliveries, or possibly the Deliveroo bike delivery service. This removes the need for delivery by vehicles (also, being eco-conscious, I am intending to travel to work by bicycle once in Brighton). In summary, apart from ingredient deliveries (which I buy in bulk), the business will not be adding to current road congestion problems. This should be a considerable improvement over the bike shop which was the previous business on the same site, which required truck deliveries of new bikes and frequent car transportation of purchased bikes as well as those for repair and servicing. I do very much understand a major concern would be about sales to under 18 by proxy. Given that ice cream needs to be consumed almost immediately, we plan to train our staff to look out for under 18's loitering near the shop which would alert them to the possibility of sales by proxy. It is noteworthy to state that I started this business 14 months ago and currently sell on-line, at markets and at events (private and public) and, to date, have not had any reports of issues regarding intoxication or improper consumption by under 18's. Strategically, this business will not work without being able to offer off sales but I do very much feel that with vigilance and proper staff training that the potential issues of sales by proxy can be overcome.

The proposed business would be a 100% ice cream business and in no way a "bar-type operation". I cannot stress enough that my business is primarily one of selling alcohol-containing desserts, akin to sherry trifle or tiramisu where the alcohol is there to improve taste, as opposed to selling "booze".

As regards to yet another alcohol establishment opening in Brighton, the proposed business in question is not a typical bar/pub and may actually reduce the alcohol problem in the city for the following reasons:

- The ice cream will have a low alcohol content
- Ice cream, and therefore the alcohol contained in it, is consumed at a much slower rate compared to standard liquid cocktail drinks
- Alcohol is absorbed at a much slower rate from an "ice cream meal" compared to an alcoholic drink
- Ice cream is more likely to produce a feeling of satiation reducing further alcoholic ice cream intake

I do appreciate that the alcoholic cocktail ice cream bar is a unique concept but feel that this is a way of letting people enjoy the tastes of cocktail infusions without the accompanying intoxication and I would like to think that this may go some way to reducing alcohol related problems in Brighton.

I do feel that my business would not have any cumulative impact on the area –As a non alcohol led licensable activity, it is most unlikely to create any problems in relation to street drinkers on benches or any anti social behaviour. In actual fact, alcohol within ice cream as a substitute for an alcoholic drink would be substantially less intoxicating and, in that way, may well have a positive impact on the area.

I understand that prior to the corona virus pandemic the cumulative impact area was considered to be saturated with a significant number of licensed premises concentrated in one area including 4 pubs on George Street. I understand that a number of these premises will now be permanently closed due to economic problems caused by the lockdown closures and that as an alternative to a late night drinking and entertainment venue, where the sole objective of the customers is frequently to become intoxicated, a license to a 'dessert' establishment may prove beneficial to issues in the area. In summary, whilst my ice cream is alcoholic, as this is its unique selling point, alcohol is not the primary activity and, therefore, I would hope to qualify as exceptional circumstances.

I am adding to the diversity of licensed premises and will attract a different range of customers with different attitudes to alcohol consumption and, therefore, I feel that my business has the potential for positively increasing the ambiance of the area. This, I hope will have a positive effect in reducing people's fear of crime and help to increase the number of evening visitors to the city centre. Due to my earlier closing hours than other licensed premises my customers will not be adding to any street violence or public disorder. My business experience to date has suggested that the ice cream attracts customers with a wide range of ages and gender and therefore I expect that my business will bring a wider age balance to the area.

I am a young entrepreneur starting on my first business venture and hope to be able to teach some local unemployed youths the artisan craft of ice cream making from the commercial kitchen within the establishment. I would like to be able to inspire other young people and to work with other local businesses, using local ingredients where possible, so as to add to the community of Brighton. I would be happy to regularly consult with and meet the requirements of an appropriate responsible authority if appropriate.

I hope this goes some way to allaying your concerns about the impact my business would have on the area and it is my intention to work hard to ensure that I can make a positive impact.

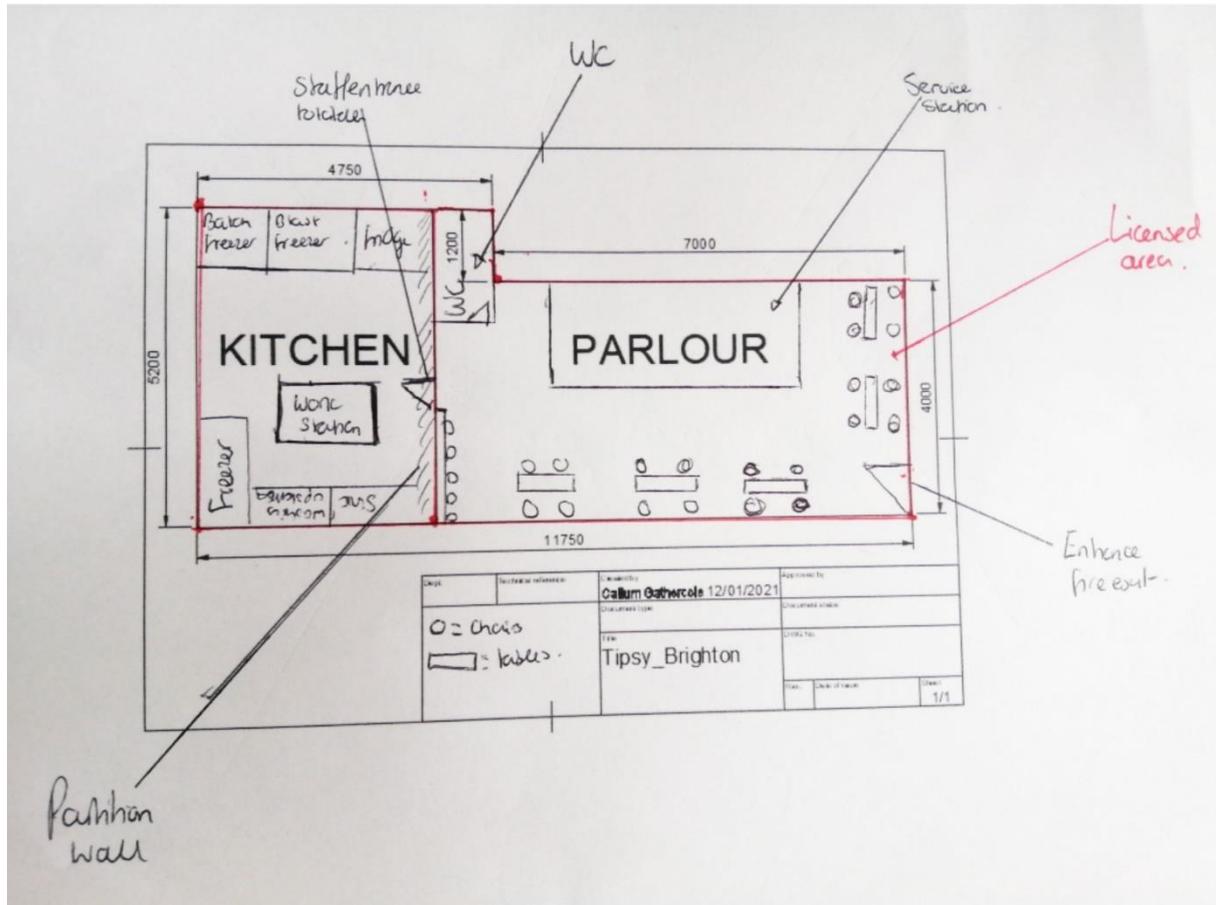
Thanks you for your time,

Tom





**APPENDIX B**





**ANNEX C**

Police Station  
John Street  
Brighton  
BN2 0LA

Tel: **REDACTED TEXT**

Email: **REDACTED TEXT**

Date: 02<sup>nd</sup> February 2021

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

**SC CON ENDS 16.02.21 VALID PCD, PPN & CIZ (A)**

Dear Sarah Cornell,

**RE: PREMISES LICENCE APPLICATION FOR MR TIPSY ICE CREAMS, 46 GEORGE STREET, BRIGHTON, EAST SUSSEX, BN2 1RJ\* UNDER THE LICENSING ACT 2003. 1445/3/2021/00110/LAPREN.**

**\*Application form states the postcode as being BN2 1RR but on checking the Post Office database, they have it listed as BN2 1RJ**

I write on behalf of the Chief Officer of Police for Sussex to raise a representation against the licence application for the above premises on the grounds of the prevention of crime and disorder and public nuisance. We also make reference to the Brighton & Hove City Council Statement of Licensing Policy and the Brighton & Hove Public Health Framework for Assessing Alcohol Licensing.

This is an application a new premises licence located at 46 George Street, Brighton. The surrounding area is a mix of retail shops, pubs as well as late night drinking venues, restaurants including fast food style outlets and a high number of residential properties. Within a stone's throw of the proposed location, there are at least 25 premises licenses all permitting alcohol provision as well as other licensable activities. George Street, Brighton sits within the Cumulative Impact Area as defined in the Brighton & Hove City Council Statement of Licensing Policy and forms part of the Queens Park ward. On reviewing both the Statement of Licensing policy and the Public Health Framework:

- The Statement of Licensing policy is put together following consultation with various organisations including Sussex Police and much of it is based on crime data and concerns raised by us.
- Applications for the style of operation as being requested in this application is not supported within the Statement of Licensing policy. The policy recognise that due to the concentration of licensed premises in an area of the city center is causing problems of crime and disorder and public nuisance. Such areas fall within the “Cumulative Impact Zone”
- The Statement of Licensing policy will only be overridden in exceptional circumstances. Following valid representations against an application, it is presumed that the application will be refused unless the applicant can show that their application will have no negative impact on the surrounding area.
- The Public Health Framework ranks Queens Park ward 3<sup>rd</sup> highest out of 21 wards for police recorded alcohol related incidents. The 1<sup>st</sup> and 2<sup>nd</sup> ranking are neighboring wards of St Peters & North Laine and Regency wards.

The application seeks the following licensable activities:

Supply of alcohol – both on and off sales and provision of recorded music:

Sunday – Thursday: 12:00-22:00

Friday – Saturday: 12:00-23:00

The opening and closing hours are the same as above.

The applicant did pre consult with Police prior to submitting and has continued to have open discussions with us. Through these communications we’ve had, we feel the application does not reflect fully what the proposal is for this site and although we can support some of it, we have concerns over the provision of alcoholic products over and above ice cream especially due to the location. The locality suffers from well publicised anti-social behavior, crime and disorder and general public nuisance. Alcohol plays a large part in many of the incidents that occur within the area. During the day we see a number of alcohol related shop lifting offenses. In the evenings incidents are often linked to persons that have consumed alcohol. These are a mix of people having committed crime while intoxicated but also affecting people that have become a victim due to their own intoxication and being seen as easy pickings by offenders. The area is very busy especially within the night time economy. For this reason it falls within our Operation Marble area. For this we have dedicated officers on duty at the weekend and other notable dates throughout the year, policing the night time economy area.

We asked a number of questions which has raised our concerns over the granting of this licence and how much of an alcoholic led business it would be. When asked what percentage of ice cream will be alcoholic and non-alcoholic, we were advised that all except one would have some form of alcohol in it – it has since been agreed that they would offer 40% of the ice cream products as ones with alcohol in them. We also asked about the alcoholic drinks part of the application which stated they wish to offer scoops of sorbet in glasses of fizz (prosecco) and coffee liquors. Further probing it’s also been confirmed they would like to offer cocktails and beers. Although they state all of these will be low ABV, no condition or set maximum ABV has been offered.

Sussex Police has proposed a number of conditions of which we attach. We feel by limiting the alcoholic offerings for both on and off sales to just ice cream, there are exceptional circumstances to go against policy as the risk would be very low. Unfortunately the applicant has confirmed they would not be able to operate their business model in this way and would be relying on other alcoholic products to survive, especially during the winter months. Apart from ice creams and other desert products, the food offerings are limited to items such as cakes and cookies. Under the statement of licensing policy, this would not put the premises under a café category as the conditions would not be able to be adhered to.

Due to the risks associated with alcohol, the City has a number of initiatives that support Police and other emergency services in safeguarding the general public. These include Beach Patrol, Safe Space, Good Night Owls and Street Pastors. The majority of these organisations and persons involved with them are volunteers and operate in their spare time. The fact these services exist goes some way to prove the negative impact alcohol has. By granting additional licences we are not only increasing the possibility of emergency services being called upon but also these volunteer organisations. All of which are already stretched and will add additional strain.

Taking in to account our comments above, the Statement of Licensing policy and the Public Health framework report, Sussex Police are only able to support such an application if the attached conditions are applied to it. Without these conditions we feel the premises could operate as an alcohol led business and bring with it a negative impact to an area that already suffers from a number of alcohol related issues. Without these conditions, we would kindly ask the Licensing Authority to refuse granting this licence application in full.

Yours sincerely,

## **REDACTED TEXT**

Licensing Inspector

Sussex Police

### Proposed Conditions – Mr Topsy George Street Brighton

#### General

1. Should the premises licence holder, Tom Gathercole cease trading at 46 George Street, Brighton, BN2 1RR then the licence will be surrendered and any new occupants will need to apply for a new premises licence.
2. The only permissions permitted under this licence for both on and off sales of alcohol is by way of ice cream where alcohol forms part of the ingredients. No other form of alcohol is permitted to be sold for consumption on or off the premises.
3. No deliveries will be permitted to open spaces.

4. Alcoholic ice cream offerings will be no more than 40% of the total ice creams on offer meaning that at least 60% will be non-alcoholic.
5. Alcoholic and non-alcoholic ice cream will be on display separately within the display units.
6. Authorised staff employed by Sussex Police in the role of licensing officer shall have the right of access to the licensed premises during hours of operation for the purpose of inspection of the premises and premises records in order to ensure the promotion of the licensing objectives.

Additional conditions as stated in original application or agreed with another Agency.

Prevention of crime & disorder

7. (a) Digital CCTV and appropriate recording equipment to be installed in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operated and maintained throughout the premises internally and to cover all public areas, including the entrance to the premises. The system shall be on and recording at all times the premises licence is in operation.  
(b) The CCTV cameras and recording equipment must be of sufficient quality to work in all lighting levels inside the premises at all times.  
(c) CCTV footage will be stored for a minimum of 31 days  
(d) The management will give full and immediate cooperation and technical assistance to the Police in the event that CCTV footage is required for the prevention and detection of suspected or alleged crime.  
(e) The CCTV images will record and display dates and times, and these times will be checked regularly to ensure their accuracy.  
(f) Subject to GDPR guidance and legislation, the management of the premises will ensure that key staff are fully trained in the operation of the CCTV, and will be able to download selected footage onto a disk (or other electronic portable device acceptable to Sussex Police) for the police without difficulty or delay and without charge to Sussex Police.  
(g) Any breakdown or system failure will be notified to the police immediately & remedied as soon as practicable.  
(h) In the event of the CCTV system hard drive being seized as evidence as part of a criminal investigation by Sussex Police or for any other reason, the premises will be expected to install a replacement hard drive or a temporary replacement drive as soon as practicable.
8. (a) An incident log will be maintained by the premises showing a detailed note of incidents that occur in the premises. The log will be inspected and signed off by the DPS (or a person with delegated authority) at least once a week.  
(b) The log book should be kept on the premises and be available for inspection at all times the premises are open by authorised officers of the Licensing Authority or the

police. An incident will be defined as being one which involves an allegation of a criminal offence.

(c) Any refusals made for alcohol service e.g. underage, will also be recorded (either in electronic or written form) and feedback given to staff as relevant. The log will be kept for a minimum of twenty four (24) months.

Additional conditions as stated in original application or agreed with another Agency.

#### Public safety

Additional conditions as stated in original application or agreed with another Agency.

#### Prevention of public nuisance

9. Deliveries will only be conducted by persons on a bicycle or via the premises tricycle – i.e. no deliveries by motorbikes, mopeds, cars or similar. This is to assist with reducing congestion on George Street.

10. Any form of music played within the premises is to be set at a noise level that would be considered by any reasonable person to be background music.

Additional conditions as stated in original application or agreed with another Agency.

#### Protection of children from harm

11. The premises will operate a "Challenge 25" policy whereby any person attempting to buy alcoholic products who appears to be under 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, official Photographic Identity Cards issued by EU states bearing a hologram or ultraviolet feature, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram. The list of recommended forms of ID may be amended or revised with the prior written agreement of Sussex Police, the Licensing Authority and Trading Standards without the need to amend the licence or conditions attaching to it.

12. Signage advertising the "Challenge 25" policy will be displayed in prominent locations in the premises.

13. In regards to delivery - Challenge 25 policy will be in operation and all forms of advertising and promotional literature detailing the delivery service (including internet sites and flyers/leaflets) will clearly and prominently state that ice cream containing alcohol will only be delivered to the person named on the payment card used for payment, and that upon arrival at the address if the person named appears to be under the age of 25, they will be required to show an approved form of ID prior to the item being handed over. Failure to show the required form of ID will result in non-delivery of the item. This includes click & collect. The advertising will clearly and prominently state the forms of ID that will be accepted and are as stated in condition 9 within Annex 2.

14. (a) The Premises Licence Holder shall ensure that all staff members engaged or to be engaged, in selling alcohol at the premises shall receive the following induction training. This training will take place prior to the selling of such products:

\*The lawful selling of age restricted products

\*Refusing the sale of alcohol to a person who is drunk

\*Refusing the sale of alcohol for consumption off the premises to people who may have alcohol dependency issues

(b) Further verbal reinforcement/refresher training covering the above will be carried out thereafter at intervals not to exceed 8 weeks, with the date and time of the verbal reinforcement/refresher training documented.

(c) All such training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Sussex Police, officers of the local authority and officers from the Trading Standards team upon request.

Additional conditions as stated in original application or agreed with another Agency.

Miss Sarah Cornell

Date: 2<sup>nd</sup> February 2021

Licensing Authority

Our Ref: 2021/20667/LICREP/EH

Brighton & Hove City Council

Phone: 01273 292143

Bartholomew House

e-mail: **REDACTED TEXT**

Bartholomew Square

Brighton

BNI IJP

**SC CON ENDS 16.02.21 VALID PCD, PPN & CIZ (B)**

Dear Miss Sarah Cornell,

**Licensing Act 2003 – Licensing Authority representation against the application for a Premises Licence (Ref: 2021/00110/LAPREN)**

**Re: Mr Topsy Ice Cream, 46 George Street, Brighton, BN2 1RJ**

I refer to the application made by Mr Tom Gathercole for a Premises Licence for Mr Topsy Ice Cream, 46 George Street, Brighton.

The application states; 46 George Street is a retail shop front premises of approximately 53m<sup>2</sup>. It is situated in a street of mixed retail outlets, cafes, restaurants and pubs. The layout of the premises is a rectangle which will be split into a commercial kitchen at the rear (to manufacture artisan alcoholic ice cream using local ingredients as far as possible) and a retail outlet with approximately 30 covers to the front for people to a) take away tubs of ice cream for home or takeaway for immediate consumption and b) to eat in. The off-supplies will therefore be only of alcoholic ice cream (nil to 10% ABV). In the seated part of the ice cream parlour ice cream (nil to 10% ABV) will be supplied to customers in the form of ice cream in tubs, as sundaes and a few ice cream cocktails and in hot drinks.

The application seeks the licensable activity of the Sale of Alcohol both On and Off the Premises from 12 noon until 10pm Sunday to Thursday and from 12 noon to 11pm Friday and Saturdays, with the same opening hours.

I have concerns about this application and make a representation on the grounds of the Prevention of Crime and Disorder and Prevention of Public Nuisance and that this application falls within our Cumulative Impact Area.

The Council introduced a special policy to address cumulative impact on the 13<sup>th</sup> March 2008 and following further consultation the cumulative impact area (CIA) was expanded in December 2011. 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 special policy is reviewed annually and a cumulative impact assessment has been completed as part of the forthcoming mandatory review of the statement of licensing policy. The special policy will only be overridden in exceptional circumstances. New applications and variations to existing licences should normally be refused following relevant representations. This presumption of refusal can be rebutted by the applicant if they can show that their application will have no negative cumulative impact on licensing objectives including the Prevention of Crime and Disorder and Public Nuisance. 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.

The Council's Statement of Licensing Policy 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. This application seeks both On and Off sales of alcohol, every day. The matrix says 'No' to both pubs and Off licences in the Cumulative Impact Area. Each application is still considered on its individual merit and there is discretion to depart from the Matrix approach policy in exceptional circumstances.

Although some conditions are offered in section 16 of this application, none relate to how alcohol will be sold 'On' the premises such as via café or restaurant conditions as detailed at 3.3.3 and 3.3.4 on page 19 of our Statement of Licensing Policy. There are also no conditions restricting how alcohol will be sold 'Off' the premises. The application appears contradictory, the form states '*The off-supplies will therefore be only of alcoholic ice cream (nil to 10% ABV)*' but the supporting statement says '*The off sales list would specifically consist of coffees, ice cream tubs etc.*'

Guidance issued under S182 of the Licensing Act 2003 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, a cumulative impact policy), 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.

There is no mention of the Statement of Licensing Policy or the Cumulative Impact Area on the application form. The applicant has not demonstrated exceptional circumstances to depart from our policy or how they will not add to the existing cumulative impact of the area.

After the application was submitted a statement was provided by Mr Gathercole to further support his application, the contents of which raised additional concerns.

In the third paragraph of the supporting statement the applicant states; *The off sales list would specifically consist of coffees, ice cream tubs etc and which would be mostly sold to pedestrians passing by and for pedestrian shoppers to take home for their freezers. Deliveries, if required, would be made by bike, using either my tricycle (see images attached), which I currently use for markets and deliveries, or possibly the Deliveroo bike delivery service. This removes the need for delivery by vehicles (also, being eco-conscious, I am intending to travel to work by bicycle once in Brighton).*

In the fourth paragraph of the supporting statement the applicant says; *It is noteworthy to state that I started this business 14 months ago and currently sell on-line, at markets and at events (private and public) and, to date, have not had any reports of issues regarding intoxication or improper consumption by under 18's.*

The website for this business ([Heres the scoop \(mrtipsyicecream.co.uk\)](https://mrtipsyicecream.co.uk)) states that the tricycle proposed to be used for delivery of Off sales within Brighton and Hove, is adapted with a prosecco tap. A moveable structure cannot be licensed itself under the Licensing Act 2003 when moving to multiple different locations.

I contacted Guildford Licensing team to ask if Mr Gathercole held a Premises Licence with their authority as his statement asserts, he started his business 14 months ago and currently sells on-line, at markets and at events (private and public). I was advised by the Licensing Team leader on 1<sup>st</sup> February 2021, that Mr Topsy Ice Cream was registered with their Authority as a food business and Mr Gathercole holds a Personal Licence issued by Guildford Borough Council. I was advised Mr Gathercole had enquired in the past about

what is entailed and had been advised by Guildford Licensing team that the sale of alcoholic ice cream requires an authorisation under the Licensing Act.

However, their records show he does **not** hold a Premises Licence with their Authority and they have no records of Temporary Event Notices being submitted recently. Therefore, it would appear the applicant may have been trading without the correct authorisation for the last 14 months selling alcohol.

The premises is in the Cumulative Impact Area and is located in the electoral ward of Queen's Park, which according to our Public Health Framework for Assessing Alcohol Licensing (5th edition- January 2019) is ranked the second worst out of 21 wards under Crime and Disorder data for Criminal damage and third worst for All violence against the person, All injury violence, Non-injury assault, Sexual offences and Police recorded alcohol related incidents.

Under the Health data Queen's Park ward ranks worst for A&E attendances with a record of alcohol and second worst for Increasing risk or high risk drinking and Clients in Alcohol treatment and third worst for Alcohol suspected ambulance call outs.

I am making this representation as a guardian of our policy which this application is contrary to. I do not believe that the applicant has demonstrated that there are exceptional circumstances to justify departing from the Policy.

Yours sincerely

**REDACTED TEXT**

Licensing Officer, Licensing Team, Environmental Health and Licensing, Regulatory Services.



**APPENDIX D**

