

**LICENSING STATEMENT  
 ON BEHALF OF NEW WORLD TRADING COMPANY (UK) LIMITED  
 DATED 10 JANUARY 2023**

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## **INTRODUCTION**

1. Kuit Steinart Levy LLP is instructed to act on behalf of the Applicant, New World Trading Company (UK) Limited ("NWTC") in relation to the application dated 10 January 2023 for a new premises licence for The Botanist, MSU7-3, Churchill Square Shopping Centre, Brighton BN1 2TE (hereafter "the Application")<sup>1</sup>.
2. NWTC acknowledges that the proposed premises falls within the cumulative impact area identified in Brighton and Hove City Council's (hereafter "BHCC") Statement of Licensing Policy (hereafter the "Licensing Policy"). It is therefore subject to its Cumulative Impact Policy (hereafter the "CIA Policy"), which is a 'Special Policy' within the Licensing Policy.
3. This statement is submitted to support the Application and - should the matter proceed to a hearing - to assist the Licensing Panel (hereafter "the Panel") with relevant considerations.
4. This statement (i) sets out the nature of the application (ii) explains how the licensing objectives will be promoted, (iii) explains how the application is within the Licensing Policy and/or may be granted as an exception to the Policy.

## **THE LICENSING FRAMEWORK**

### **The Policy and Upholding the Licensing Objectives**

5. As with all licensing policies, the Licensing Policy sets out in detail the measures intended to address a range of extant issues identified by the licensing authority in order to promote the licensing objectives.
6. This includes a discussion of various measures that applicants may take/conditions that may be included in operating schedules to ensure that the licensing objectives will be upheld.
7. Of course, demonstrating this is the first key task of any applicant seeking to be granted a premises licence under any licensing policy.

### **The CIA Policy**

8. However, here, the Licensing Policy also operates the CIA Policy as a Special Policy, on the basis that "...it continues to consider that the number of licensed premises in the CIZ is such that it is likely that granting further licences would be inconsistent with the authority's duty to promote the licensing objectives" (pg 63).
9. The "... effect of the policy is that...applications for new premises licences...within the area...which are likely to add to the existing cumulative impact.....will be refused following relevant representations" (para 3.1.6). This creates a rebuttable presumption against the grant of new licences in the CIA which are likely to add to the existing cumulative impact.

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<sup>1</sup> Whilst NWTC is the Applicant and would be the premises licence holder, the proposed site is being developed by ABRDN, who are the developers and landlord of the site.

**Rebutting the Presumption Against Grant – No Negative Cumulative Impact**

10. The CIA Policy goes on to state that “...This presumption can be rebutted by the applicant if they can show that their application will have no negative cumulative impact / will not add to it.” (page 64, see also paragraph 3.1.6)).
11. This is moderated somewhat by para 3.1.9 which states “.... If an application is **unlikely** to add to the cumulative impact of the area, it may be granted.”
12. The Licensing Policy also sets out a matrix approach to the various types of licensing decisions it typically has to make. The matrix indicates “...what the licensing authority would like to see within its area and gives an indication of the likelihood of success or otherwise” (paragraph 3.3.2), that is, the likelihood of success to those making applications, thereby indicating what the authority considers to be less likely to add to the problems of cumulative impact in the area (paragraph 3.3.2).
13. Within the matrix, the most relevant types of premises to the current application are as follows:

	<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 (10pm)	Yes (10pm)	Yes (10pm)
<b>Late Night Takeaway</b>	No	Yes (midnight)	Yes (midnight)
<b>Pub</b>	No	Yes 11pm	Yes (midnight)

14. In relation to restaurants, the CIA Policy further confirms that:

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

*Intoxicating liquor shall not be supplied or sold on the premises otherwise than to persons taking table meals there and for the consumption by such a person as an ancillary to their meal. There will be no vertical drinking.”*

15. In relation to Cafes, the CIA Policy confirms that:

*“3.3.3 Cafes – 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.”*

16. Applications for new bars (pubs), off licences and nightclubs within the CIA are not looked upon favourably at all. The CIA Policy does not offer any conditions (including hours) under which applications may be looked upon favourably.
17. The CIA Policy also confirms that, in addition to the matrix’s considerations, the licensing authority may also look favourably upon other types of applications that purport to enhance

diversity, as this can positively change the ambience of an area; reduce fear of crime; and increase visitors to the city centre (paragraph 3.3.1).

18. It also confirms that it supports mixed use venues encouraging a wider age balance (rather than too many single uses within a confined area).
19. This provides further indication of the sort of applications and premises that the CIA Policy considers less likely to add to negative cumulative impact.

**Rebutting the Presumption Against Grant/Departing from the Matrix - Exceptional Circumstances**

20. The CIA Policy also confirms that “...*Departure from the matrix policy is expected only in exceptional circumstances*” (paragraph 3.3.2 no. 3; see also paragraph 3.1.6). As such, it appears that the presumption against grant is harder to rebut where an application seeks permissions that fall outside the matrix. The suggestion appears to be that applications within the matrix are less likely to add to negative cumulative impact, and therefore applications outside of the matrix must be exceptional.
21. The CIA Policy sets out what else may be considered ‘exceptional circumstances’ (see Licensing Policy paragraphs 3.3.2 no. 5). These factors are:
  - 21.1. Consultation with and meeting requirements of responsible authorities
  - 21.2. An appropriate corporate social responsibility policy
  - 21.3. Community contribution to offset impact
  - 21.4. Community support
  - 21.5. Alcohol sale ancillary to business activity
22. These examples fall outside the remit of ‘not adding to negative cumulative impact’, described above. This leaves a degree of flexibility in the test to be applied. The CIA Policy confirms that providing evidence that the premises will not add to negative cumulative impact may rebut the presumption. However, it is unclear from the CIA Policy whether evidence of negative cumulative impact is separate from the exceptional circumstances referred to within the CIA Policy.
23. Therefore, it may be that demonstrating that there will be no negative cumulative impact is a preliminary requirement to rebut the presumption, but that further ‘exceptional circumstances’ must be demonstrated to grant applications that go beyond the matrix.
24. However, it may also be that where the extent of the evidence of lack of negative cumulative impact is sufficiently strong, this may also amount to exceptional circumstances in itself, which would rebut the presumption and allow departure from the policy. In fact, this appears to be the case upon review of the Panel’s previous determinations (see paragraphs 261 - 300, below).
25. Indeed, the list of examples of what are exceptional circumstances is non-exhaustive, and it is therefore open to the Applicant to make their case that the Application is exceptional on a wide variety of grounds.
26. The CIA Policy does go on to detail what will not be considered exceptional, including “...*the fact that premises will be / is exceptionally well managed with a well-qualified applicant, or that there are no residential premises nearby*” (paragraph 3.1.9). Similarly, “*Exceptional circumstances will not include quality of management or size of venue except where explicit stated in the policy matrix.*” (paragraph 3.3.2, no. 5)

27. Nevertheless, the CIA Policy also confirms that the impact [of a premises] can be expected to be different for premises with different styles and characteristics (para 3.1.9, and pg 64). Therefore, again, the list of what may be considered exceptional circumstances is not exhaustive (paragraph 3.2.2, no. 5). We would further argue that what may not be considered 'exceptional circumstances' can also vary depending on the type of the Application.
28. As such, it was felt that a greater understanding of what the Panel may consider to be 'exceptional circumstances' and how they might arise within the context of the actual operation of a premises was required in order to support this Application. In particular, further understanding was required of what the Panel may consider to be 'exceptional circumstances' *particularly* for those premises wishing to operate beyond the matrix hours.
29. With this in mind a review of its determinations from 2019 – 2022 was undertaken. The review adopted the following criteria:
- 29.1. The applications were for premises within the CIA or the SSA
  - 29.2. The hours applied for extended **beyond** matrix hours
  - 29.3. The matter was determined at a hearing and minutes are available
30. Whilst each matter was considered on its individual facts and merits, and the final licence granted was subject to heavy conditioning, a limited number of 'exceptional circumstances' could be identified.
31. The review also considered the determinations of the Panel where either the application was refused or where hours within the matrix were granted. The result of this part of the review also revealed several issues pertinent to the concept of 'exceptional circumstances' as applied by the Panel.
32. We set out below the 'exceptional circumstances' delineated by the review, which were found in relation to a range of factors:
- 32.1. Evidence of operating without adding to the negative cumulative impact
  - 32.2. Type of clientele
  - 32.3. Not replicating issues associated with crowded bars / wet led premises
  - 32.4. Type of operator
  - 32.5. Direct and relevant experience of operating in the area
  - 32.6. Offsetting impact
  - 32.7. Credible third-party support
  - 32.8. Regeneration
33. As expected, the findings of the review confirm the criteria set out in the CIA Policy. It is also indicates that 'not adding to negative cumulative impact' can also reach the criteria of an 'exceptional circumstance' in its own right.

### **General Principles of Decision Making**

34. Whilst the Panel must be guided by the CIA Policy, as noted above each application will be considered on its own individual merits (para 3.3.2, no. 1):

*"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.” (para 3.1.9, own emphasis added; see paragraph 3.3.2 also)*

35. Finally, and in relation to refusal of an application, the Licensing Policy confirms that:

35.1. *“If the licensing authority decides that an application should be refused, it will still need to show that the grant of an application would undermine the promotion of one of the licensing objects and that conditions would be ineffective in preventing the problems involved” (para 3.1.10).*

## **HOW THE FRAMEWORK APPLIES TO THIS APPLICATION**

### **The Test To Be Met**

36. This is the policy context within which the Panel may be required to determine this application.

37. In this context, we would argue the following in respect of this Application:

37.1. The Application generally upholds the aims of the Licensing Policy in terms of promoting the licensing objectives; and

37.2. In relation to the CIA Policy:

37.2.1. The Botanist in Brighton will not add to any negative cumulative impact;

37.2.2. Further, the evidence confirming a lack of negative cumulative impact reaches the standard of demonstrating exceptional circumstances. In addition, or any event, the Application demonstrates that a further and separate range of exceptional circumstances apply.

37.3. The Panel would also be justified in using its discretion to depart entirely from CIA Policy based on the long-term contribution that The Botanist will make to the economy and the broader long-term consequences of not granting the application.

38. The Panel would be entirely justified in granting the Application on any of the above bases if it so wished.

39. Indeed, we argue on behalf of the Applicant that there is sufficient evidence to show that there will be no negative cumulative impact AND that the Application is exceptional, thereby allowing the rebuttal of the presumption by any interpretation of the CIA Policy.

40. The evidence to demonstrate these assertions in respect of the Application is detailed below. However, to provide context it is useful to first briefly confirm the specific details of the Application itself.

### **The Application**

#### **Licensable Activities and Hours**

41. The Botanist is seeking the following authorisations for licensable activities (for both internal and external spaces):

41.1. Alcohol and regulated music – 9am until 1am Sunday to Wednesday; 9am until 2am Thursday to Saturday.

- 41.2. Late night refreshment - 11pm until 1:00am Sunday to Wednesday; 11pm and 2:00am Thursday to Saturday.
- 41.3. Opening - 9am until 1:30am Sunday to Wednesday; 9am until 2:30am Thursday to Saturday.
- 41.4. The external terrace area will close to customers from 12 midnight onwards, save for smokers frequenting the designated external smoking area.
- 41.5. A provision for regulated music (live or recorded) in the external terrace area is not being sought. Any music played in the external terrace area after 11pm will be background only.
- 41.6. Off sales are also required (to enable customers to take home an unfinished drinks order, such as a bottle of wine)
- 41.7. The Botanist wishes to provide a bar that patrons can attend for a drink only (without an ancillary condition that food must also be purchased).
42. The authorisations sought are supported by a detailed operating schedule in addition to the standard mandatory conditions of operation.

### Layout

43. The proposed layout for The Botanist is at "**Appendix 04**". The internal area is complemented by an external roof terraced area, both on the first-floor level of the shopping centre. The external terraced deck area will be located to the rear of the unit at roof level. "**Appendix 09**" provides further information as to how the premises is located within the shopping centre itself, confirming that the terrace will face inwards towards the Mall Food Court, but within the landlord's further event space.
44. The premises will be accessed solely from Western Road / Churchill Square. "**Appendix 03**" sets out the shop front proposal. Customers will access The Botanist via a 60sqm entrance lobby from street level (upper mall level). A semi-open courtyard is proposed, and which will provide an interesting and welcoming entrance to the unit. The premises will have a double-height semi-external courtyard entrance. The courtyard would contain a number of trees and shrub planting, together with a water feature and would be secured from the public along the street frontage by powder coated mild steel gates. This courtyard area is designed to represent an internal garden, in keeping with The Botanist's vision of creating a 'secret garden' feel, that ties into the interior design within the premises. It is anticipated that this design will create a distinctive and welcoming entrance for visitors,
45. The courtyard leads onto an enclosed lobby area, containing a staircase and accessible lift to the main restaurant / bar space at first floor level (see "**Appendix 03**").
46. Once within the premises, patrons will be able to choose between being seated at tables or at the bar.
47. The division of space allocated to seated and unseated patrons is indicated within the premises' plan. The furniture is fixed and will remain as depicted in the plan (see "**Appendix 04**").
48. The premises are predominantly seated and divided into various different types of seating areas. The internal area will seat 168 covers, whilst the bar area will accommodate 96 covers. The external area will seat 102 covers, whilst the external bar / chill will accommodate 112 covers (noting that the roof terrace bar will be for service only i.e. patrons will not be able to sit around the bar).
49. Customers who wish to smoke may do so on the roof terrace within a designated area.



## **APPLYING THE POLICY TO THE APPLICATION - THE LICENSING OBJECTIVES AND THE GENERAL POLICY REQUIREMENTS**

### **Introduction**

50. To support the unique operation of the premises within Brighton's CIA, a comprehensive operating schedule has been developed in line with the nature of the premises and an understanding of its environs (including the challenges it poses) taking account of the pool of model conditions contained in the Policy and previous conditions suggested during previous discussions with the police and licensing authority.
51. We hope this demonstrates NWTC's commitment to upholding the licensing objectives and, as will be detailed further below, trading without a negative impact.
52. We also submit that the review of The Botanist's operation against the requirements of the Licensing Policy confirms that the nature of the premises and its proposed operation (including the conditions and restrictions proposed in the operating schedule) will uphold the licensing objectives.
53. The conditions within the operating schedule accompanying this Application include:
  - 53.1. Admissions conditions including criteria for refusing entry (intoxication being one), maintaining a log of entry refusals and sharing information locally regarding those barred from premises
  - 53.2. Comprehensive CCTV and door supervisor conditions (including SIA registered door supervisors)
  - 53.3. Controls on the external area (rooftop and area external to the entrance of the premises)
  - 53.4. 70% of the public trading area will be given to seating (inclusive of persons dining and those purchasing drinks only).
  - 53.5. Requirements for a full meals menu (save for kitchen wind down period) and waiter/waitress service shall be available throughout the premises at all times the premises offers licensable activities.
  - 53.6. A dispersal policy
  - 53.7. Taxi and transport arrangements
  - 53.8. A smoking policy
  - 53.9. A search policy (and seizure of items)
  - 53.10. Challenge 25 policy
  - 53.11. Comprehensive training of staff in the requirements of the Licensing Act 2003 and their other duties in relation to providing services in licensed premises.
  - 53.12. DPS supervision and availability to ensure appropriate operation of the premises
  - 53.13. Participation with crime reduction initiatives and information sharing in the area
54. The relevant issues from the Licensing Policy will be summarised under each heading (each licensing objective) followed by an explanation of how the premises intends to deal with each one (i.e. meet the licensing objectives in the first instance).

### **Crime and Disorder (section 4)**

55. *The Policy states that good training and management play an important role in preventing drug and alcohol related crime (para 4.1). It further indicates that it expects the following:*
  - 55.1. *Licensees of on-licensed premises to attend training programmes that will raise their awareness of drink/drug related violence issues in licensed premises*

- 55.2. Suitable training to be extended to all bar staff and door supervisors so that dealers and users will be deterred from using the premises for such purposes.**
- 55.3. Licensees to attend training to help identify children at risk and basic child protection issues.**
- 55.4. The DPS is expected to train all staff on induction concerning the conditions attached to the licence.**
- 55.5. The DPS is expected to spend a significant amount of time at the premises, and if not there, ensure they are contactable (particularly if issues arise at the premises)**
56. In relation to the above, the following is confirmed:
- 56.1. NWTC staff are trained comprehensively, and according to stringent internal requirements, and this is documented and recorded diligently. The premises will liaise with the police in relation to any specific training in relation to Brighton.
- 56.2. The Botanist has dedicated openings teams who spend several weeks on every new opening, taking all new staff through a thorough and bespoke training programme covering all aspects of customer service and licensing, and all managers undergo personal licence training. The company also employs a Learning & Development Manager who has overall responsibility for the delivery of training.
- 56.3. The Botanist's operating model complies with the Licensing Policy's requirements regarding the role of the DPS.
- 56.4. The fact that NWTC's estate trades without impact upon the licensing objectives and in several areas subject to a CIA policy is testament to the standards of management that are maintained.
- 56.5. The operating schedule contains detailed provisions in relation to the training of licensees, bar staff and door supervisors. The operating schedule submitted with the application is also testament to their standards of management and their commitment to excellence. Careful consideration has been given to any and all measures that can be put in place to reassure to the licensing authority that this premises will not be problematic. NWTC is well used to implementing these sorts of measures and have an excellent operations and management team who ensure that compliance with each and every one of them is delivered.
- 57. The Policy also expects measures should be put in place to support Operation Marble (para 4.2). This aims to reduce the incidents of crime and disorder in the night-time economy and at weekends. This includes reducing the risk of becoming a victim of crime; reducing incidents of violent crime and public disorder; and to secure evidence to assist with the identification and prosecution of offenders. It is recognised that working in partnership the Police and other premises is central to running a licensed business in a challenging (but manageable) environment such as Brighton. In relation to the Business Crime Reduction Partner (BCRP), the Policy confirms:**
- 57.1. Police attend a weekly Friday night doorstaff briefing at Pryzm regarding persons and premises of concern (para 3.4.2).**
- 57.2. Where appropriate, the premises licence holders should be members of the BCRP (para 4.3.1)**
- 57.3. BCRP NightSafe radio scheme is expected for city centre bars and restaurants (para 4.3.1)**
58. In relation to the above, we can confirm that:
- 58.1. The nature and ethos of the premises, its style of operation (including its offering and attitude to alcohol consumption) and the attention to detail in its operating schedule (and associated policies) confirms the premises' commitment to working with the police and other premises to reduce the incidents of crime and disorder, particularly at night.
- 58.2. The Botanist will be pleased to draw upon Churchill Square's existing relationship with local police including BCRP.

- 58.3. The Botanist will play an active part in the best practice schemes supported by the licensing authority and the police. Included within its operating schedule are conditions pertaining to the participation in local crime reduction and information sharing initiatives, including the Business Crime Reduction Partnership, PubWatch and using the NightSafe radio system.
- 58.4. Strict conditions in relation to entering the premises and removal from / dispersal from the premises are included in the operating schedule.
- 58.5. NTWC prides itself on its staff training and development. This is reflected in the operating schedule. Staff will be well trained in relation to the refusal of alcohol service to intoxicated persons and identifying the signs of drug intoxication. All door supervisors will also be suitably trained and will be expected to uphold the licensing conditions and behave in a way that reduces the likelihood of offences or antisocial behaviour being associated with the premises.
- 58.6. The appropriate records will be kept to assist the police with their investigation of offences associated with licensed premises. Detailed conditions are included in relation to CCTV usage and door supervision. The premises has a zero-tolerance policy in relation to drugs and weapons. The detailed search and seize policy (in relation to drugs and weapons), will act as a deterrent to those seeking to deal and use drugs on the premises or engage in violent acts.
- 59. *The Policy expects premises to implement a proactive policy to address dealing and use of drugs at the premises, including a drug safe and seizure recording initiative (whereby patrons are searched for drugs, and it retrieved can be safely collected and destroyed by the police) (para 4.2.2).***
60. In relation to this, we can confirm:
- 60.1. The premises has developed a detailed search and seize policy in relation to drugs and weapons, which will be strictly enforced by staff and door supervisors to reinforce The Botanist's reputation is that such conduct will not be tolerated at all and it will fully co-operate with the police in relation to any such instances. In any event, experience tells us that The Botanist does not attract that type of patron.
- 61. *In relation to dispersal from the premises and city centre, the Policy seeks confirmation as to how the premises will encourage patrons to leave the vicinity quickly and quietly. (para 4.2.3)***
62. In relation to this, we can confirm:
- 62.1. The premises has developed a separate detailed policy in relation to dispersal that includes directing patrons to the nearest relevant transport links.
- 62.2. The courtyard entrance is an important feature in terms of the management of the premises and would assist in controlling the impact of customers entering and leaving the premises. The courtyard invites customers into the building and then serves an important role in minimising customers having to wait outside on the square itself (when either arriving or departing the premises). This will have significant benefits in regulating both the directed dispersal of customers and any conduct issues should they arise within the immediate area of the entrance.
- 63. *The Policy states the premises also needs to explain the steps taken to reduce under-age sales (both on and off premises).***
64. In relation to this, we can confirm:
- 64.1. The operating schedule confirms that whilst children are permitted on the premises, they must be accompanied by adults. The Challenge 25 policy is in place and staff will be trained

in relation to refusals, proxy sales and how such matters should be recorded and shared with other premises. Bar staff and door supervisors will act in accordance with strict conditions regarding what is acceptable ID when exercising the Challenge 25 policy.

64.2. The premises will not be operating any kind of 'Deliveroo' type service. The provision for off-sales would permit customers to take home unfinished beverages, such as a bottle of wine.

**65. *Effective 'on the spot' management and supervision of venue is a key factor in reducing crime and disorder (both inside and out) (para 4.3.12).***

66. In relation to this, we can confirm that the premises will benefit from and work in conjunction with the additional on-site security management at the Churchill Square Centre. The Policy confirms that the following will also be considered in relation to crime prevention such as:

- 66.1. Internal layout of the premises
- 66.2. CCTV
- 66.3. Help points
- 66.4. Lighting
- 66.5. Capacity
- 66.6. Security staff
- 66.7. Operating hours

67. The premises appreciates the concerns of the police regarding criminality depicted in the maps 5 and 6 in the CIA Policy. It is our view that the proposed operating schedule means that it will not contribute to the fuelling of such behaviour. Stringent conditions are provided in relation to:

- 67.1. Admission, including refusals of persons under the influence, and search and seizure of property (as well as record keeping, retaining evidence and assistance to the police, and information sharing in relation to the same)
- 67.2. Service of customers and monitoring levels of drunkenness
- 67.3. Monitoring of drug use and premises checks
- 67.4. A policy for the dispersal of customers leaving the premises, including directions to public transport links away from the premises.
- 67.5. The monitoring of behaviours via CCTV, staff and the presence of door supervision staff

**68. *The licensing authority recognises the use of registered door supervisors. All door supervisors will be licensed by the Security Industry Authority (SIA) (para 4.3.4). 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 (para 4.3.5).***

69. The premises shares this view and its operating schedule contains detailed provisions regarding the employment of SIA registered door supervisors, their presence and risk assessing the numbers required on any given occasions.

70. The premises will also benefit from the centre-wide security systems, an overview of which is provided below:

- 70.1. 24 hour manned site, with both physical and digital security management provided by ABM;
- 70.2. Supported by Crime Intelligence via the 'National Incident Communication Centre', which operates 24/7 and provides bespoke intelligence and risk analysis;
- 70.3. Security team comprising 28 members of staff – circa. 15 on duty during trading hours and 3 on site out of hours;

- 70.4. Physical patrols (approximately every 10 minutes on the piazza during opening hours), with regular contact via the BCRP town centre radio system;
- 70.5. 24/7 CCTV coverage;
- 70.6. Active members of BCRP, City Centre Management and local police across various projects; and
- 70.7. Police Accredited Secured Environmental Award and Safe Car Park Mark Award.
71. The Centre Management Team work closely with its occupiers to ensure Churchill Square as a whole operates to significantly high standards and to ensure that the Centre is a welcome environment for the community. Churchill Square is award winning for the services it delivers, which together with bespoke operator security measures, will ensure that high standards of safety and security are maintained for all at the centre.
72. *The licensing authority and Police have, in consultation prior to the submission of this Application expressed concern that the proposed operating hours will negatively impact on the prevention of crime and disorder licensing objective by, for example:*
- 72.1. *Extending the hours of alcohol consumption and so increase the risk that it will become excessive.*
- 72.2. *Patrons will be leaving the premises during times identified by the Police as being associated with higher rates of serious violent crime.*
- 72.3. *A new premises will cause issues associated with migration to the premises by persons who have consumed excessive alcohol in search of prolonged drinking hours.*
73. It is suggested that there will be no such impact and a premises with The Botanist's approach to socialising may even reduce cumulative impact even with extended hours. The key reasons for this are detailed below in the discussion of The Botanist's style of operation and operating history.

#### *General Comment*

74. With the implementation of security measures by both The Botanist and Churchill Square Shopping Centre, it is considered that the proposed use would be exceptionally well managed, with the resultant risk of potential for negative impacts in terms of crime and anti-social behaviour (and public nuisance), arising from the proposed premises considered to be low. The potential for further cumulative impacts in this regard is also, therefore, considered to be low.

#### **Public safety (section 5)**

75. The licensing policy sets out various measures intended to address the need for the protection of public safety.
76. *The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. The policy also notes the provisions for self-assessment of risk regarding capacity (under s117 Licensing Act 2003) (para 5.1.1).*
77. In relation to this, we can confirm that:
- 77.1. A maximum capacity of 478 is anticipated;
- 77.2. The plan of the premises (see "**Appendix 04**") demonstrates how the premises will be laid out.
- 77.3. A detailed fire risk assessment will be undertaken before the premises opens for licensable activities.

78. *An expectation that premises in the city centre will use polycarbonate or toughened / shatterproof glass* (para 5.1.2).

79. In relation to this:

79.1. The Botanist will use toughened glass where it can do so. However, the requirement to use polycarbonate would put the premises in conflict with its sale of certain products, for example, some drinks are served in alternative formats such as earthenware, china and so on.

79.2. Glassware of any kind would not be taken off the premises, save for where licensed off-sales take place.

80. *Suitable conditions as per the operating schedule may be imposed to protect public safety including where justified* (para 5.1.3).

80.1. *provision of closed-circuit television and panic buttons.*

80.2. *use of shatterproof drinking vessels; bottles requiring use of toughened glass or plastic should normally be required unless applicants can show exceptional reasons*

80.3. *use of door supervisors, licensed by the Security Industry Authority.*

80.4. *requirement of a minimum of a licensed door supervisor for every 100 customers in nightclubs and large city centre pubs or as indicated by risk assessment.*

80.5. *occupant capacity conditions will be applied where appropriate.*

80.6. *the provision of designated and suitably trained first aiders.*

81. In relation to this, we can confirm that:

81.1. The Botanist has considered very carefully how it manages its space and ensures its patrons have an enjoyable and safe experience. "**Appendix 04**" confirms a maximum occupancy of 478 patrons, a large proportion of which will be seated.

81.2. The operating schedule addresses the use of CCTV and engagement of SIA trained door supervisors. in detail. Whilst we note the CIA seeks a licensed door supervisor per 100 patrons in relation to nightclubs and large city pubs, The Botanist is neither and certainly does not provide the offering or attract the type of patrons associated with the issues that this requirement is intended to address. The door supervisor arrangements at The Botanist are therefore appropriate for its operation.

81.3. All staff are trained in customer care and how to identify those who require assistance.

81.4. Secondary level of security provided on-site by centre management at Churchill Square - differentiates premises from other city centre locations (see above at paragraph 73).

82. *In relation to drunkenness and vulnerability, licensed premises to develop staff policy and training on recognising the signs of drunkenness and vulnerability, for example, offering drinking water and tips for refusing customers who appear drunk* (para 3.9.2).

82.1. NWTC has an extensive company training programme, covering not only industry matters but also the Licensing Act 2003. The Botanist's staff are therefore highly trained by the time they work independently within a premises.

82.2. The programme includes WAVE training.

83. *Company policies that promote bonuses and sales incentives for selling alcohol are also discouraged. The licensing authority will expect necessary precautionary processes to restrict drunkenness, e.g. Licensing Guidance states happy hours should not be designed to encourage individuals to drink excessively or rapidly.*

83.1. We refer to the statistics in relation to consumption of alcohol and overall consumption patterns regarding food and drink (see **Appendix 01**), which confirm that – in line with the ethos of The Botanist – the operation of the brand does not encourage excessive consumption of alcohol.

83.2. Staff incentives are multi-factorial and therefore do not pertain to alcohol solely.

#### *Night-time Economy Safeguarding Initiatives*

84. *The Licensing Policy refers to various organisations within the context of the licensing authority working in partnership with them to promote the licensing objectives (para 3.4)*

85. We note that vulnerability training delivered by Sussex police to those working in night-time economy to ensure they understand and can identify vulnerability and identify their duty of care and responsibilities to those frequenting their premises. Such training will also include ‘Ask for Angela’ (to allow persons to be extricated from unsafe situations) and Operation Bobcat (to identify sexual predators) (para 3.4.3).

86. As with all NWTC premises, The Botanist would operate ‘Ask for Angela’, which enables guests to ask staff discretely for help. Staff are also trained on how to deal with such sensitive situations, including assisting the person leave the premises safely and removing persons causing distress from the premises.

87. The Botanist will be pleased to contact Sussex police in order to arrange any other such training as would be appropriate for the premises.

#### *General comment*

88. The Centre Management Team work closely with its occupiers to ensure Churchill Square as a whole operates to significantly high standards and to ensure that the Centre is a welcome environment for the community. Churchill Square is award-winning for the services it delivers, which, together with bespoke operator security measures, will ensure that high standards of safety and security are maintained for all at the centre.

89. A high-end premises, with its door supervision and its patrons, promotes a positive impact on public safety in an area previously not subject to close supervision (and, therefore, provides a safe environment in which offending behaviour may occur).

90. The proposed site for The Botanist in Churchill Shopping Centre would also generate greater activity during the daytime, evening and night-time, creating a greater level of natural surveillance and sense of security.

#### **Prevention of public nuisance (section 6)**

##### *NWTC’s approach to protection of amenity*

91. ‘Nuisance’ includes noise emanating from within the premises and noise emanating from those leaving the premises. It also pertains to litter and noise associated with refuse collection (particularly in the context of premises situated close to residential properties).

92. NWTC is a well-established and reputable operator, which has demonstrated its ability to operate in a responsible manner, with great respect to neighbouring occupiers.
93. Whilst planning and licensing applications and grants will almost always require NWTC to consider acoustic impact, sound management is something that NWTC focuses on in any event as an integral part of its operational approach - its sites are long term investments, and it needs to operate in harmony with its neighbours and authorities. NWTC (or relevant partners) always commission acoustic reports as an integral part of developing a new premises.
94. Therefore, as part of its due diligence for new sites, NWTC carefully considers the acoustic impact of its use both internally and externally. NWTC is familiar with its acoustic trading levels which vary depending on the part of the trading day. However, and in addition, each new site will have its own unique complexities and sensitivities. NWTC trades in a variety of environments where the acoustic considerations are different. It is our view that NWTC is more 'alive' to sound issues and how best to address them than many other premises and operators. It is NWTC's approach to actively anticipate and deal with such issues, not only to protect itself and its premises but also to ensure it operates comfortably alongside its various neighbours.
95. Operating in a city centre also means that many premises operate close to multiple-residence buildings. It also increases the range of neighbours and considerations. For example, the Oast House in Manchester city centre has an enclosed bar surrounded by a large external area (and for which it is particularly well known) that regularly plays live music. The space is surrounded by a community of corporate neighbours (many of whom work unconventional hours) as well as the law courts. The Oast House also operates an Event Management Plan for its large events, which is shared with the local authorities and landlords.
96. NWTC also has premises that operate below cinemas (where undisturbed viewing is required) and hotels. For example, NWTC has recently acquired a site in Sunderland, below a Holiday Inn. Neither the planning nor the licensing regulatory bodies have imposed any acoustic requirements, NWTC is nevertheless going above and beyond to protect the hotel from any possible nuisance caused by noise transfer. The methods used include a substantial acoustic ceiling, lining of the walls and encasing the columns. Other premises have installed noise limiters (to monitor and limit decibel levels) and lobbied entrances to prevent noise breakout.
97. These are only the physical protections that are put in place at a premises. Managing sound at a premises also involves site-level actions being taken by staff, who are also trained in NWTC's expectations regarding sound management. Such actions are supported by the development of (at the application phase) and compliance with operating conditions, including the implementation of policies. For example, the Canal House in Birmingham is next to a community of canal boat residents. All guests are moved inside and outside speakers are turned off after 11pm to ensure the community isn't disturbed. A number of sites are conditioned to ensure doors and windows are closed after a set time to prevent noise from inside the premises causes a disturbance to residents and businesses. Sites with external areas are conditioned in relation to their monitoring and earlier closing time (save for use by smokers) to respect the needs of neighbours. The development of sound issues after a premises has opened is extremely rare. On the one occasion this has arisen (in relation to the acoustics of an outside area), the premises immediately engaged sound engineers to assess and address the sound level, and monitor the efficacy of the steps taken over several weeks. This led to the successful resolution of the issue to the satisfaction of the resident concerned.
98. Conscious that sound can move with patrons and arise from supporting services, all NWTC premises operate customer dispersal policies borne from years of experience operating



in sensitive locations. In particularly noise sensitive areas, such as Knutsford, the premises meets with residents every six months to establish and maintain good neighbourly communications.

99. This clearly demonstrates NWTC's responsibility and approach to its operation, whether it is in relation to a large-scale event in its external areas or the general day to day running of a premises. Each are approached with the same degree of concern and consideration. NWTC operates in an informed and sensitive manner, across many different locations where residents, workers and patrons do not wish to be disturbed by sound generated by a premises.
100. Many NWTC sites operate external areas, including Cardiff, Exeter and Newcastle that operate roof terraces in particular. All external sites have areas of cover for patrons (and can include retractable covers where necessary) and are subject to routine management by staff.

### *Compliance with policy*

101. The CIA Policy indicates that the premises is situated within an orange zone in terms of noise complaints.
102. NWTC will engage with the Environment Health team at the Council as is necessary in relation to noise and nuisance.
103. The Licensing Policy notes the following details and measures that will be considered in how a premises prevents public nuisance in its operation.
- 104. *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 (eg in order to smoke) (para 6.1.1).***
105. In relation to the above, a range of structural and operational measures will be implemented to minimise the escape of noise and nuisance from the premises.
106. In relation to the Licensing Policy, we can confirm the following regarding the structural protections against nuisance
- 106.1. The building – and The Botanist's proposed site in particular - will be subject to a multi-million-pound refurbishment programme.
- 106.2. The same care NWTC has taken in relation to its other sites is being applied to the site in Brighton (which is being developed by ABRDN).
- 106.3. NWTC fully supports ABRDN's commissioning of an independent acoustics assessment of the site (by Hepworth Acoustics).
- 106.4. This is an ongoing appraisal process (to be revisited at various points of the site development) and involves (amongst other steps) site inspections, sound measurements and an appraisal of acoustics implications for the Botanist including identifying where sound insulation enhancements may be required (within the structure of the building itself) and what they might be in order to mitigate the potential impact of different types of sound at different times of the day.

107. In relation to the Licensing Policy, we can confirm the following regarding the location of the premises:

- 107.1. As confirmed at paragraphs 171 – 184 (below), the premises is in a unit within a much larger commercial property (complex) with no sensitive noise receptors in the immediate vicinity.
- 107.2. The premises is within a unit in a commercial property centre that NWTC can control and contain.
- 107.3. Persons wishing to visit the premises first enter an enclosed courtyard area. This area is accessed via steps down into this area and is set back from the main pedestrianised area. They will be assisted with a timely entry to and departure from the premises. Upon leaving the premises, customers can wait in the courtyard area (for e.g. taxi) before being assisted with timely onward travel.
- 107.4. The external terrace does not face onto the main street but is located within (and is sheltered by) the landlord's event space (which itself abuts the Food Hall and inner part of the shopping centre - see **Appendix 09**). The external terrace area will also be sheltered by the proposed 'living wall', which will absorb sound (see **Appendix 10**) as well as the use of any overhead external furniture e.g. shades.
- 107.5. The external terrace is subject to a 'Smoking and Al Fresco Dining Policy'. This area will be monitored by staff. It will close at 12 midnight, save for smokers who wish to access the designated smoking area. The designated smoking area can be monitored by staff and accessed / egressed quickly by customers.

**108. Premises should not seek authorisation for live or amplified music if they 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 (para 6.1.2)**

- 108.1. The Botanist is not within or abutting premises containing residential accommodation. It is in a building abutted by other commercial premises within the shopping centre complex. The nearest residential property is a couple of minutes' walk away.
- 108.2. NWTC (ABRDN) are engaging with acoustic experts in relation to the structure of the building and recommendations regarding sound escape management. .
- 108.3. The Botanist seeks authorisation for recorded and live music until 1am (Sunday to Wednesday) and 2am (Thursday to Saturday) in relation to the internal area only. Regulated music (live and recorded) is not sought in relation to the external terrace area, which will close at 12 midnight (and play only background music after 11pm).
- 108.4. There is a piano at every site, to support acoustic sets and singers. Live acts range from acoustic and DJs to live saxophonists. The music is upbeat and presented in a relaxed and low-key manner to encourage people to settle in. The Botanist's customers are able to converse yet enjoy the performance without it dominating their visit. The music supports the relaxed and convivial atmosphere for which The Botanist is well-known.
- 108.5. As set out above, music noise will not present an issue, and prevention of nuisance conditions are proposed to ensure that this is the case. The operating schedule contains provisions that it will not cause noise nuisance (or vibrations) to occupants of nearby premises. Doors and windows will remain closed after 23:00hrs.

**109. Installation of sound limiting equipment and sound insulation may be required to minimise disturbance to the amenity of nearby residents by reason of noise from the licensed premises (para 6.1.3).**

110. In relation to this, we can advise that:

- 110.1. The Botanist's construction is informed by the recommendations of acoustic experts.

- 110.2. The Botanist would not use noise-limiters at the premises as it is not required by the nature or location of its premises, or its music offering.
- 110.3. NWTC would, in any event, engage with the council's Environment Health Officer prior to its opening in relation to managing the escape of noise from the premises.

**111. 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 (para 6.1.4)**

- 111.1. The premises will have an outdoor terrace. However, NWTC is conscious that the escape of music that is played above a certain level may not only cause a nuisance to residents but also encourage the wrong type of clientele to the premises. We refer to the above paragraph 107 (above) in relation to the playing of music in this external area and how this will be managed in accordance with the CIA Policy. In particular, regulated music is not sought in relation to this area (regulated music is sought only in relation to the internal area). The external terrace will close at 12 midnight, save for access to the designated smoking area by smokers (and any music in the external terrace area after 11pm will be background only).
- 111.2. Protection from internal regulated entertainment will be further supported by the closing of doors and windows to the premises after 23:00hrs save for access and egress.

**112. 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 (para 6.1.5)**

- 112.1. As detailed above, the premises has excellent access to public transport links (including taxis, buses and trains). The premises also benefits from excellent local parking facilities.
- 112.2. Customers arriving and departing the premises will be well managed, both by The Botanist staff and by the wider Churchill Square Centre Management Team.
- 112.3. The premises has a detailed dispersal policy in place, including ensuring staff helping patrons leave are informed of the local transport links and can assist patrons find their way safely and quickly.

**113. 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 and which are endorsed by this policy (in relation to smoking at the premises and leaving the premises) (para 6.1.6)**

- 113.1. Bearing in mind the premises is in a commercial (and not residential) area, the management of customer sound from the external terrace would be managed as follows (and as is appropriate given the location of the external terrace):
- 113.1.1. The area will have sheltering which will attenuate customer sound;
- 113.1.2. Through the appropriate signage and staff monitoring;
- 113.1.3. The terrace would operate in compliance with a designated policy regarding its use;
- 113.1.4. The terrace would close at midnight save for its use by those wishing to smoke
- 113.1.5. There will be no regulated music in the external area (and which may otherwise have an impact on customer noise levels).
- 113.2. The courtyard entrance (which is enclosed and set back from the main pedestrianised area) is an important feature in terms of the management of the premises and would assist in controlling the impact of customers entering and leaving the premises. The courtyard invites customers into the building and then serves an important role in minimising

customers having to wait outside on the square itself (when either arriving or departing the premises). They will be assisted with a timely entry and timely departure. Upon leaving the premises, customers can wait in the courtyard area (for e.g. taxi) before onward travel, and they will be actively assisted and directed towards their onward transport links (see Dispersal Policy). This will minimise the potential for disturbance to local residents and will have significant amenity benefits.

113.3. In order to assist with the control of customers, and to minimise the potential for noise arising from crowds arriving / departing the premises, The Botanist proposes to implement a timely entry policy with door staff in place at the appropriate times, together with a Dispersal Policy for customers leaving the premises. Such measures will help to ensure that there is no disturbance to local residents and will form part of a management plan.

113.4. In addition to the informed and standard sound management measures that NWTC would take in any event, it will engage with the Environment Health Officer in relation to assessing and managing sound at the premises.

**114. In relation to leaving the premises, the Policy confirms that licensed premises should normally display prominent, legible signs at exits reminding customers to leave in a quiet, peaceful, orderly manner (para 6.2.2).**

114.1. In terms of noise from patrons, The Botanist has stringent dispersal policies and procedures in place, which they are experienced at executing throughout the country. A comprehensive dispersal policy has been attached to this application. There are also provisions in the operating schedule, e.g. in relation to taxi services, which ensure that customers will disperse safely from the area.

114.2. Signage will be visibly displayed around the premises at the appropriate locations near to exits. Patrons on the roof terrace will also be encouraged by staff to keep the noise to acceptable levels. Staff will monitor such noise levels actively.

**115. The Policy also recognises the potential for nuisance arising from those smoking outside the premises. In order to curb this, the Policy sets out a substantial list of requirements in order to deal effectively with the range of issues associated with outdoor smoking (para 6.2.1).**

116. Save for the ground floor entrance, The Botanist will be comprised of an internal first floor area and an external terrace bar. No licensable activities are taking place on the ground floor either indoors or outdoors. It is important to note that The Botanist provides a smoking area within the roof terrace and not on the highway. Therefore, in relation to the various points raised in the Policy, we can confirm the following:

116.1. The Botanist has a "Smoking and Al Fresco Dining Policy" which takes into account the need for noise to be monitored and reduced when appropriate. This is in consideration of not only any residents but also to manage the reputation and presentation of the premises;

116.2. As the smoking area is in the roof terrace, persons are most unlikely to congregate on the highway for that purpose (thereby minimising the risks associated with noise, litter and glassware on the highway). The risks of spiking and theft of drinks left by smokers is also minimised as they will be able to take these with them to the roof garden.

116.3. As the roof garden is an integral part of the premises, it will be subject to a limit on numbers in any event as per its plan ("**Appendix 04**"). Smokers will naturally be keener to use this facility than make their way to the ground floor and exit the premises. In this way, the smoking area in the roof garden represents a superior arrangement for smokers compared to directing them to the highway and where numbers can be less easily

managed. In any event, door supervisors will be present as per the operating schedule to maintain order and protect customer safety if a person is smoking on the highway. The appropriate reminders regarding the need to limit noise will be applied to the external ground floor of the premises.

- 116.4. The roof garden will remain open until 12 midnight. The roof terrace is sheltered and only accessible via the internal premises (and not, for example, via the shopping centre food hall or landlord's event space). The roof terrace will also accommodate a designated smoking area. On this basis, the removal of furniture / disabling tables and chairs, switching off lights etc, at a certain time (as per the Policy) is not necessitate or practicable. However, the roof terrace will be suitably managed by staff and the appropriate signage will be displayed in relation to keeping noise to a minimum for all patrons. This will work in unison with the operating schedule's provisions for the use of CCTV at the premises and the use of signage to remind customers to minimise noise and that
- 116.5. All planning conditions regarding the use of outdoor space and statutory design criteria will be met. The appropriate planning permission and building control consents in relation to lighting will be obtained. All licensing conditions will be complied with.

***117. In relation to promoters and drinks promotions (para 3.9.1) the Policy also notes that many premises now have an agreement with their promoter for acceptable promotions and behaviour which includes the signing of a written contract of expectations. This shows premises evidencing their due diligence and ensures that promotion companies know what is expected of them. The contract could include, obligations to pick up self-generated litter, verification of ages of their customers and users of their social media, promoters being over the age of 18 and responsible advertising on social media.***

118. In relation to this, we can advise that:

- 118.1. The Botanist would not engage in drinks promotions or use external promoters that engage this part of the CIA policy.
- 118.2. The Botanist provides a premium offering to its customers and therefore tends to avoid discounting (although this does not preclude certain promotions, in keeping with the brand, during the year).

***119. In relation to street drinking, The CIA policy states that licensing authority will have regard to such areas, in relation to street drinking and anti-social behaviour (para 3.6)***

- 119.1. The Botanist will ensure that it is not associated with 'street drinking'. It is quite simply not part of its image and certainly not conduct experienced elsewhere or anticipated here from its patrons.
- 119.2. Alcohol will be restricted to consumption in the premises' delineated internal and external areas only (i.e the roof terrace).
- 119.3. The Botanist employs high numbers of staff on each shift to ensure that all customers are adequately supervised including in the event that they leave to stand outside the premises;
- 119.4. To leave the premises, a patron must descend and exit through a ground floor door. Glasses are not permitted to be taken off the premises. Patrons may not take alcohol off the premises, save for the provisions in relation to off-sales. Signage will be in place to remind patrons that glassware cannot be removed and staff and door supervisors will check and address those patrons who attempt to do so.
- 119.5. Furthermore, The Botanist staff are trained extensively on the sale of alcohol to persons who are intoxicated, and as such its customers will not be entering or leaving the premises intoxicated.

**120. The Policy recognises that student and organised pub crawls (para 3.8) are a popular feature of entertainments for students and younger clientele.**

120.1. The Botanist will not take part in this as they promote excessive drinking to the extent that the licensing policy refers to conditions pertaining to the presence of on-site medics and water angels.

120.2. The Botanist is a destination premises, it is not a 'stepping stone' premises. It is not attractive to those taking part in 'pub crawls' given the nature of its offering.

121. In the light of the above, the application will be compliant with the Policy and will not undermine the licensing objectives.

**General comment**

122. We would also like to bring to the Panel's attention how certain aspects of the Application further also serve to dissipate concerns regarding the potential for negative cumulative impact:

122.1. The nature of the premises and the later licensing hours sought, will effectively serve to encourage patrons to remain on the premises in order to consume alcohol in an environment where excessive consumption is not promoted;

122.2. The roof top garden will also reduce the risk that persons will be tempted to try to drink in the street (and which will not be permitted), as well as reduce the temptation of patrons to smoke or litter in the street.

122.3. Therefore, by drawing a significant number of patrons into a carefully managed premises where excessive drinking is not encouraged, The Botanist is effectively removing those persons from circulation between other licensed premises where excessive alcohol consumption is encouraged. This will have a positive impact on noise and the types of concerns that have led to the CIA being introduced as well as e.g. littering around premises;

122.4. When considered in conjunction with the ethos of The Botanist and the nature of its patrons, the later licensing hours will encourage The Botanist's patrons to leave in a more graded manner.

123. Whilst the Licensing Policy sets out the matters to be taken into account when considering the impact a premises will have on sensitive noise receptors, it is also important to take into account the demonstrable commitment of the premises licence holder to a high standard of management as well as the types of customers.

124. The Botanist is a well-managed and responsible operator, with existing premises in multiple locations across the country. The Botanist recognises the importance of respecting neighbours and are able to demonstrate measures that have been implemented elsewhere to ensure that acceptable relationships are achieved. With the above measures in place, it is highly probable that the proposed premises will not result in detrimental impacts in terms of amenity and / or public nuisance, either in isolation or cumulatively.

**Protection of children from harm (section 7)**

125. The Policy also addresses the need for the protection of children from harm. This includes emotional and physical harm which may be associated with licensed premises and certificated club premises (for example the exposure too early to strong language and sexual expletives, eg in the context of film exhibitions or where adult entertainment is provided). It also includes the under-age purchase of alcohol, aside from the risks to health this poses, it should also be recognised that drink-related disorder frequently involves under 18s.

126. In the light of this, the Policy suggests the following:

*127. Premises to operate a suitable proof of age scheme, including measures that request the appropriate identification prior to entry and when requesting alcohol (para 7.1.1)*

*128. We note that appropriate forms of identification are currently considered to be those recommended by police, trading standards officers and their partners in the Licensing Strategy Group (eg passport, photo driving licence or pass card) (para 7.1.1)*

*129. All staff responsible for the sale of intoxicating liquor receive information and advice on the licensing laws relating to children and young persons in licensed premises (para 7.1.2)*

*130. Licensed premises staff are required to take reasonable steps to prevent underage sales (para 7.1.2)*

131. The premises takes very seriously its responsibilities in relation to underage sales. Staff are trained in the law and harms of selling alcohol to children, including proxy sales to an underage person.

132. The premises operates a Challenge 25 scheme supported by stringent ID checks where there is reasonable doubt regarding a person's age. The premises accepts specific types of established ID (that typically requires an application and / or verification process). Notices on the premises serve to reinforce this requirement in staff and to patrons.

133. The premises will also keep a book of refusals and share such information with other premises through the appropriate channels.

*134. It is noted that the Policy (para 7.1.4) also states that attention will be given to those premises that are used primarily or exclusively for the sale and consumption of alcohol and there is little or no seating for patrons. Whilst we would dispute that this describes The Botanist, we note that the options to address the issues associated with children at such premises include:*

*134.1. Limitations on the hours when children may be present;*

*134.2. Age limitations (below 18);*

*134.3. Limitations or exclusions when certain activities are taking place;*

*134.4. Requirements for an accompanying adult;*

*134.5. Full exclusion of people under 18.*

135. The admission of children will be strictly managed in accordance with the conditions set out in the operating schedule, again ensuring that The Botanist complies with the Policy. These conditions include:

135.1. The operation of a Challenge 25 policy (as is the Council's expectation set out in on page 39 of the Policy) and restrictions on the times at which children can be on the premises.

135.2. Children under the age of 18 must be accompanied by an adult.

135.3. The support of such measures via stringent ID checks both at the bar and upon admission to the premises.

*136. The Policy also states that where children are expected to attend public entertainment, appropriate adult supervision will be required to control the access and egress of children and to protect them from harm (para 7.1.6).*

136.1. In relation to this, we can advise that The Botanist does not host such events.

#### **General comment**

137. The Botanist has a proven track record of managing the risk of underage sales. In addition, the ethos of The Botanist and the modelling effect of adult behaviour also introduces children to a healthier approach to alcohol and the role it plays in having an enjoyable evening. It reinforces the message that alcohol need not be the focus and need not be consumed in large quantities to enjoy yourself.

## **EVIDENCE OF LACK OF NEGATIVE CUMULATIVE IMPACT**

### **Introduction**

138. The above details how NWTC propose to ensure that the Application upholds the licensing objectives.

139. All of this will of course contribute to ensuring that the premises does not add to negative cumulative impact. A comprehensive set of conditions, and compliance with the various general requirements of the Licensing Policy is of course an excellent starting point.

140. However, we provide here further factors and evidence which demonstrate that the grant of the Application will not add to negative cumulative impact.

## **PART 1 - OPERATING STYLE AND OPERATING HISTORY**

### **Operating Style**

141. The CIA Policy states that *"The impact can be expected to be different for premises with different styles and characteristics."* (para 3.1.9, own emphasis added).

142. The current Application adheres to the style and characteristics set out within the witness statement of Tim McCormac, Property Director of NWTC dated 4 January 2023.

143. Mr McCormac's statement sets out The Botanist's operational details as well as its unique offering to its guests. Below is a summary of the style of operation:

143.1. The Botanist is most appropriately described as a 'destination premises' and this is reflected in its proposed location in Brighton. It is not a 'stepping-stone' to other licensed establishments.

143.2. The emphasis of The Botanist's offering is its food menu. The ethos of The Botanist is not based on the quantity of alcohol consumption but the quality of the experience.

143.3. The Botanist provides a relaxed food and drink experience where patrons are encouraged to focus on the style, provenance and ingredients of its products and their presentation. The emphasis is on the novelty of the experience and trying new flavours. The atmosphere encourages people to explore a new way of socialising with alcohol, but where alcohol is a part of, rather than the focus of, the overall experience.

143.4. The Botanist is inclusive in terms of its staff and patrons. It appeals to wide range of people (mainly over 25 yr olds). Those who attend The Botanist expect a certain high-end experience, which does not focus on consuming large quantities of alcohol. This is reflected in the individual price points and the analysis of its consumption statistics.

143.5. The Botanist plays acoustic / low level recorded music to reinforce its relaxed and civilised ambience.

143.6. Seating is integral to the premises, as demonstrated by the plan at "**Appendix 04**". The plan confirms that much of the internal and external areas are designated for seating and dining (and who will receive waiter / waitress service). The remaining 'covers' are designated to those using the bar service and includes seating within the bar area. At least 207 of the covers will be seated with service. This creates a more relaxed environment in



which people consume alcohol rather than one where people feel rushed or compelled to consume their drinks quickly and without realising its effect in time.

144. Mr McCormac's statement also explains that the Botanist is not a standard licensed premises. It operates as a restaurant-bar. As such, it is clear that The Botanist does not neatly fit into either the pub or restaurant (or café bar) categories of premises upon which the CIA Policy is founded<sup>2</sup> and around which much discussion regarding assumed impacts is anticipated<sup>3</sup>.

145. We note that the CIA Policy does not explicitly define the types of premises set out in the matrix. However, the following is heavily implied:

145.1. A restaurant is a premises in which all patrons come to take a meal. That being the primary purpose, all patrons are seated, and all alcohol is sold ancillary to the meal. There is no pure 'vertical drinking' in any part of the premises;

145.2. A bar / pub (and nightclub) is a premises in which vertical drinking of alcohol is permitted without substantial food being available i.e. alcohol consumption is the primary purpose; and

145.3. A café bar is a premises in which people can consume food, alcohol or both. Substantial food is available at all times but need not be ordered. All service of patrons is via waiter / waitress.

146. This aspect of the Application has been discussed previously with the police and the licensing authority<sup>4</sup>. As stated above, it was identified that, but for the CIA, it is likely that the licence would be granted as sought. Furthermore, the Application would be considered if the premises operated as a restaurant within matrix hours to avoid the types of issues associated with vertical drinking (subsequent correspondence from the police expressed concern that there was nothing to stop the premises from operating as a bar) and to avoid adding to the existing negative cumulative impact identified within the CIA<sup>5</sup>.

147. We understand the impulse to require The Botanist to confirm where it sits within the matrix.

148. However, as noted above, The Botanist's operation does not neatly fit into the categories upon which the matrix is based (and, as a corollary, upon which the imposition of conditions is also based). The Botanist is most accurately described as a restaurant - bar (the emphasis on its food offering is too strong to term it a 'café bar'). It is a unique kind of mixed-use venue. Therefore, it is respectfully suggested that the type of licence permitted should reflect the nature of the

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<sup>2</sup> These are the categorisations of premises that are most relevant to the Application (although it is recognised that other categories are also referred to within the CIA).

<sup>3</sup> With reference to the paragraph 3.3.2 of the CIA Policy (matrix of premises and maximum licensing hours)

<sup>4</sup> The Application was originally submitted in May 2022 after consultation with the police and licensing authority. Prior to this, NWTC (and its legal representatives) had met with the police and the licensing authority on 29 November 2021. During that meeting, the issues in this paragraph were discussed and the parties' views indicated. Following this meeting, the Application was submitted, supported by two statements (one of which addressed how the operation of the premises addressed the concerns of the CIA policy). Nevertheless, the police and the licensing authority maintained their resistance to the Application on the basis that there was not sufficient evidence to confirm there were exceptional circumstances confirming the rebutting of the presumption.

<sup>5</sup> Noting that the CIA Policy did not support the introduction of new pubs/bars, nightclubs or off licences within the CIA.

operation itself (rather than the ascription of a premises-type label from the matrix and using this as the foundation for considering the grant of an application).

149. Whilst the premises will not operate as a pure restaurant, we would submit that there are sufficient safeguards contained within the operating schedule to ensure that it cannot, as the police suggest, operate as a pure vertical drinking bar – and therefore to ensure that it will not add to negative cumulative impact. For example, there are conditions guaranteeing the predominately seated model described, and conditions requiring the availability of substantial food.
150. We are also of course aware that the Application seeks hours which are outside of those favoured by the matrix.
151. Planning permission has been sought to operate the premises as a food and drink establishment (*sui generis*). All the statutory consultee responses have been received. The only outstanding matter – being addressed – is in relation to the proposed north elevation and its assimilation with the wider Western Road frontage design.
152. Whilst the outcome of the planning application is awaited, there is currently no indication that the planning permission will curtail the operating hours sought. This would be completely in keeping with the aims of the BHES and BHVES.
153. This of course does not confer any presumption in terms of operating hours from a licensing perspective, but nevertheless provides useful context.
154. Further, there are a number of reasons why we would be confident that the Application, if granted to these hours, will not add to negative cumulative impact.
155. We have undertaken a statistical analysis and mapping exercise to consider the evidence for the implementation of the CIA, and what impact the grant of this Application would likely have.
156. Full details of the data reviewed and considered is at **Appendix 11**, but this includes data from the Public Health Framework for Assessing Alcohol Licensing and data from Operation Marble (both of which underpin the CIA Policy). This analysis suggests that the closing times – whilst later than those preferred by the matrix – are less associated with serious violent incidents (as per Operation Marble data) than the earlier closing times that have been previously proposed by third parties.
157. Additionally, given the profile of the types of the patrons that frequent The Botanist, extended hours are likely to encourage patrons to leave gradually until 2am, such departures being facilitated by a detailed and effective dispersal policy.
158. It is the experience across the estate that there is no mass dispersal at closing time, because customers have made the choice to leave of their own accord at various times throughout the evening. There is no mass migration to the bar for ‘last orders’, nor a mass exodus when ‘the lights go on’.
159. Whilst the Application seeks hours that fall outside those most likely to be granted within the CIA, the nature and profile of the premises (as an operator) and its patrons not only actively promotes the licensing objectives but also *pull away* from the dynamics known to underpin the difficulties associated with later hours within the CIA.

160. The hours sought by The Botanist reflect market demand. We believe that The Botanist will provide an attractive, alternative to other premises in the area, and be an example of exactly the sort of well managed premises that the licensing authority wishes to encourage. In this way, it is argued that it will encourage patrons in Brighton away from those premises that promote high volumes of alcohol consumption, and to partake is a more measured experience, and encourage other premises to modify their offering positively. It will encourage patrons who might not ordinarily consider venturing into the city at night because their socialising needs are not being met.

### **Operating History**

161. NTWC operates 29 Botanists nationally. In each case, The Botanist operates as a restaurant-bar.
162. Each of these premises, regardless of its size, is very well-run with a range of conditions and policies in place to ensure the licensing objectives are met and cumulative impact is not affected negatively.
163. At least 26 of these premises are licensed until past midnight (until 1am, 2am and in some areas 3am). The Botanist has never been subject to a review. Neither has it had any 'serious incidents' at the premises. It has a good relationship with the responsible authorities in the areas in which it operates.
164. Such relationships have been fostered because The Botanist is a responsible operator. As such, its premises trade without giving rise to concerns in respect of the licensing objectives. This is because of the years of operational experience brought to every site and the various exercises undertaken by NWTC in obtaining feedback on the business.
165. Of particular relevance is that The Botanist also operates in at least ten CIA areas (each with their own unique issues) operating to later hours and the majority with external areas.
166. This demonstrates that The Botanist's has a proven track record of operating in a variety of challenging areas nationally without issue and, in particular, without adding to negative cumulative impact.
167. This is because NWTC is alert to the issues CIAs pose and is adept at addressing them from the point of inception. This is a result of the years of operational experience brought to every site and the various exercises undertaken by NWTC in obtaining feedback on the business.
168. This strongly indicates that The Botanist's operating model can be successfully applied across multiple challenging settings. Without diminishing the issues that Brighton seeks to tackle through the CIA Policy, we would respectfully submit that this would also include Brighton.
169. The Botanist does not just lack a negative impact from a licensing perspective, but has been shown to have a positive one, due to a variety of factors in terms of the way it trades, its clientele and the confidence it gives to other operators. As a result, NWTC has often found other high-end operators clustering around it (the 'halo effect'), bringing with it the anticipated commercial and reputational benefits to the area.
170. Whilst it may be argued that such experience isn't specific to Brighton per se or the Churchill Square area in particular, it is highly relevant that the Botanist's model has been successfully applied nationally across a range of locations for over ten years. With this history and operational experience, we would respectfully suggest that there is no reason to predict operating in Brighton

will pose any unique or unsurmountable challenges that indicate away from the Application being granted as sought.

## **PART 2 - LOCATION, ENVIRONS AND TRANSPORT LINKS**

### **Location of the premises**

171. The proposed site is the Upper Mall (entrance) and First Floor level (internal and terrace) of Unit MSU7, Churchill Shopping Centre, Brighton. The premises is also flanked on either side by commercial units and – in particular the terrace area - away from residents. The site is the old Top Shop at Churchill Shopping Centre, which did not re-open after lockdown in February 2021. Since August 2021, the unit has been occupied as a temporary NHS Covid vaccination centre. The unit is now empty.

172. “**Appendix 12**” confirms the location of the proposed premises in relation to its commercial and residential surroundings.

173. Further details of the environs are also provided at paragraphs 5.71 – 5.79 of Dr Hadfield’s Expert Report (**Appendix 13**).

174. Whilst situated close to West Street, the location is significantly set back from the road. It looks onto a wide paved thoroughfare. The wider area surrounding the site is characterised predominantly by retail and commercial uses, with the shopping centre fronting onto Churchill Square – an area of public open space. However, as noted by Dr Hadfield, retail use appears to be in decline in this part of Brighton. Other units within the Churchill Shopping Centre as well as the nearby Imperial Arcade (opposite Churchill Square on the north flank of Western Road) lie empty. In fact, all but one unit in the Imperial Arcade have closed, and the Arcade itself is closed to the public from circa 5pm onwards.

175. The premises is not located next to residential buildings and there are no residential properties within the immediate vicinity of the premises. However, it is recognised that there are some residential properties in the wider vicinity. These include Chartwell Court (a high-rise residential tower located approximately 150m to the southwest on Regency Road / Cannon Place) which is set back from the rear of the shopping centre and separated from it by a service access road to the shopping centre and the car park. The nearest residential properties appear to be the terraced houses on Clarence Square and Clarence Gardens (to the west of Cannon Place) and adjacent to The Prince of Wales and The Cauldron. Dr Hadfield’s Expert Report also refers to a few additional residences on Western Road, noting they are likely to experience ambient and other noise consistent with being centrally located in a city.

176. A plan of the cumulative impact zone (at “**Appendix 14**”) demonstrates that there is a lack of licensed premises surrounding Churchill Square Shopping Centre, and the proposed premises in particular. As set out in Dr Hadfield’s Report, below, there are four licensed premises in the immediate vicinity, all of which operate as bars / pubs (to the west are The Prince of Wales, Clarence Square, and The Cauldron, Clarence Gardens; to the east are Inn on The Square and Crowns Brighton on Cranbourne Street). A Pret a Manger and Leon can be found near to the clock tower but they are not licensed to sell alcohol and close by 10pm in any event. More immediately, there are no licensed premises at the Churchill Square Shopping Centre. The most concentrated area of licensed premises lies to the south-east of the proposed site, away from the Churchill Shopping Centre.

177. As such, the premises is not located in the sort of area that the Policy suggests may be a concern in terms of negative cumulative impact – i.e. one where there are too many single uses in a confined area.

178. This is further supported by the statistical analysis and mapping exercise referred to above, which also considered what cumulative impact is actually present in the specific location of this site, and, again, what impact the grant of this Application would likely have.

179. As noted above, full details of the data reviewed and considered are at **Appendix 11**.

180. The conclusions drawn from this are as follows:

180.1. Although the proposed site is located within the Regency Ward of the CIA, it is located on the northern periphery and in a low concentration of existing licensed premises (away from the main concentration of drinking establishments to the east, along and beyond West Street). The mapping evidence would suggest that the proposed site is not associated with serious incidents (Operation Marble data).

180.2. The Churchill Square Shopping Centre, with its specialist management and mix of uses, presents a very different set of circumstances compared with a single building elsewhere in the CIA and therefore would not set a precedent for further expansion outside of Churchill Square elsewhere in the CIA.

181. Indeed, Dr Hadfield's Report (referred to below) and the analysis of available statistics and mapping data suggests that there may also be scope for BHCC to consider whether there are any geographical areas within the CIA where some flex in the current policy may be appropriate. For example, as the CIA Policy refers to hotspots of impact (and the boundaries of the CIA and SSA being drawn in such a way to encompass these), might it also be appropriate (fair and proportionate) to consider the operation of premises in areas that are (demonstrably) not hotspots<sup>6</sup>? This is the approach favoured by Dr Philip Hadfield, who questions the utility of broadly defined CIA policies, which are meant to tackle such hotspots.

182. We also refer to the determinations in *Rum Kitchen* [1445/3/2021/01608/LAPREN], which refused an application to extend hours within the CIA. That the immediate area of the premises was a hotspot for crime and disorder (with alcohol being a major factor in this) was cited as a major reason by the Panel for not granting the variation sought. A similar concern was raised in *Artists Residence* [2019/02062/LAPREN] in relation to Regency Square.

183. We would therefore submit that it must be a relevant consideration in respect of cumulative impact if the site is demonstrably **not** located within a hotspot.

184. Therefore, it is proposed the site's location suggests an initial reduction in the potential for cumulative impacts arising from the proposed premises, as compared to other locations which fall within the CIA.

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<sup>6</sup> Appendix E, annex 1 "These hotspot maps support the current location and boundaries for the CIZ and SSA as they can be seen to encompass the violent crime hotspots both within the night-time economy timings (Op Marble) and outside of them e.g. day time during the week."

### **Transport links**

- 185.Paragraphs 5.80 to 5.84 and Appendix 2 of Dr Hadfield’s Expert Report (**Appendix 13**) confirm the site benefits from strong public transport provisions which ensure the site is well-connected to the wider city and beyond.
- 186.There are a number of bus services operating from bus stops along Western Road to the north of Churchill Square. Seven bus stops can be found on Western Road directly in front of the terraced space at Churchill Square.
- 187.The nearest taxi rank to the site is at Queen Square, just beyond the bus stops. Other taxi ranks operate in the city and are located around concentrations of activity.
- 188.There is also a high-quality pedestrian environment in the area surrounding the site. Pedestrian access to the site is from Churchill Square to the north.
- 189.The site also benefits from ample public car parking provision, which serves the wider Churchill Square Shopping Centre.
- 190.Brighton Railway Station is approximately 750m to the north of the site.
- 191.As a result of the proximity and choice of transport options at the site, there is little need for The Botanist’s patrons to walk beyond the immediate vicinity and engage with busier locations at night. Similarly, persons attending the more concentrated areas of town are most likely to find transport within those areas, rather than migrate towards the site.

### **PART 3 - INDEPENDENT EXPERT REPORT BY DR PHILIP HADFIELD, DATED SEPTEMBER 2022 (APPENDIX 13)**

#### **Introduction**

- 192.NWTC is confident that the nature of the premises and its proposed operation as described above (including the conditions and restrictions proposed in the operating schedule) are an effective solution to any potential concerns regarding its operation and possible contribution towards negative cumulative impact.
- 193.However, the Applicant has also commissioned an independent expert report from Dr Philip Hadfield, Licensing Consultant<sup>7</sup>, to further address this policy requirement directly. The report is at **Appendix 13**.
- 194.To reach his conclusions, Dr Hadfield conducted two related exercises:
- 194.1. An anonymous assessment of The Botanist’s style of operation in two different sites (in Cardiff and Newcastle), selected on the basis of their similarity to the proposed site in Brighton (which include operating in a CIA and with external areas); and

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<sup>7</sup> The Report confirms Dr Hadfield’s credentials. Dr Hadfield has significant experience gathering and assessing data to inform the drafting of licensing policies, in particular CIA policies, in other areas of comparable challenges to Brighton (citing the London Boroughs of Westminster, Hackney and Camden in this regard).

- 194.2. Applying the outcomes of the above case studies to provide an assessment of the likelihood that the proposed Botanist in Churchill Square in Brighton may add to the cumulative impact concerns that underpin BHCC's CIA Policy.
195. The exercises were undertaken at key days and times relevant to the licence sought by the Application and its proposed operation within the CIA after matrix hours.
196. Regarding their similarity to the proposed site in Brighton, both Cardiff and Newcastle have challenging evening and night-time economies (ENTE). Both operate in CIAs. Newcastle in particular is noted to have a large ENTE, with a higher proportion of vertical drinking venues than Cardiff or Brighton. Whilst in the city centre, neither site is within an area immediately densely populated with other licensed premises. Both sites are on the first and / or second floor of a building shared with other businesses in the commercial heart of the cities. Both play live music and operate a furnished roof terrace, which also hosts DJs on occasions. Both operate late licences, with Newcastle terminating at 01:30am on Friday and Saturday nights and 00:30 Sunday – Thursday. Cardiff terminates at 01:30hrs Monday – Sunday. Neither is subject to a 'restaurant condition' on their premises licence. Both require food and waiter / waitress service to be available at all time. Cardiff is further conditioned such that 75% of the public trading area will be set aside for tables and chairs.

**Demonstration that the Botanist does not add to the cumulative impact: The Botanist in operation**

197. The details of Dr Hadfield's visits to Newcastle and Cardiff can be found at paragraphs 5.1 – 5.36, and 5.4 – 5.64 of his Report, respectively. However, we have summarised Dr Hadfield's key observations below.
198. The Botanist has an understated and discrete presence to confirm it is a 'destination venue' and is not part of a city centre drinking circuit. Both premises operate in areas where the immediate vicinity was only sparsely populated by other premises. Migration between the Botanist and any neighbouring premises was not observed (reflecting different customer preferences).
199. Admission to the premises is managed in the first instance by door staff when required (either by the conditions in the premises licence or in response to known risks emerging on certain days in the city centre e.g. football match days). There is a clear management of guests prior to grant of entry to the main body of the premises (at 'greeting stations'). A broad mix and range of guests visit the Botanist in terms of gender and age (with very few under 24 years old and quite a few who were 50 – 60 years old), friends, work colleagues and families. Large single-sex groups were not present, and no football colours or groups of football fans were present (on match days in the city). Guests were better presented than 'general city centre users' and the impression was that – as befitting with a destination premises – guests had made more effort with their appearance. Pricing points and entry requirements mean that the Botanist's offer is high end but not elitist.
200. Once inside, the various areas of the premises are well-managed and supervised by friendly and courteous staff throughout the evening. Staff managed guests in the dining and bar areas separately (noting that there is little accommodation within the layout of the premises for standing in groups). This includes locating remaining guests in the main bar area at the end of the evening to facilitate closing and dispersal.
201. The Botanist is a food-led restaurant bar, in reputation (amongst customers) and in practice. Guests may stand in the bar area, typically at the bar, but most prefer to dine. Staff do not engage in practices that rush guests or encourage rapid or excessive drinking of alcohol. In fact, the opposite is apparent. The alcohol offering reflects the desire to offer patrons choice. Patrons are encouraged to consider their drink selections (based on flavour notes) and savour their consumption. Patrons do not rush their drinks and their conduct was observed to be paced and

leisurely. Non-alcoholic cocktails are prominently displayed, priced very advantageously and served to increase the attractiveness of the Botanist's offering to a wider range of guests (including those who do not wish to drink alcohol e.g. designated drivers and so on).

202. The ambience is determinedly relaxed (an 'oasis of relaxation in the city centre, para 5.26) and encourages people to stay. Several factors contribute to this, besides being food led. The first is its décor, accurately described as "...a sub-tropical night garden'" (paragraph 5.48), comfortable furniture and the demarcation of different areas within the premises (to produce a more intimate and comfortable environment). Live and recorded music is played but only to add to the ambience. Live music is either acoustic or at a level that permits easy conversation between guests (including outside). The 'winding down period' often referred to by operators is not required at the Botanist because the Botanist has not 'wound up' its customers in the first instance.

203. The premises are 'self-contained', which assists in relation to safety, sound and security. The noise footprint on the immediate area is minimal. There is no noise breakout from within the premises. Music is played at a level where conversations can take place easily. Those wishing to smoke or step outside for air can go onto the roof terrace, rather than the street. As a result, they will not impact on street level surroundings and are unlikely to engage the risks arising from encountering people on the street during a night out.

204. Closing time is not subject to the typical issues of customer management and dispersal often seen with other types of premises. Customers disperse gradually throughout the evening, with only a few remaining at closing time. As a result, there is not a surge to the bar at 'last orders' and door staff are not required to herd guests either into the main bar area at the end of the evening or out on the street at closing. Neither is there a surge of people on to the street at closing time, and those customers waiting for transport (such as taxis) can do so off the street in the lobby area. The later licences allow for staggered departures in the immediate area. This, and the sites' locations (sparsely populated with other licensed premises) also means customers are not competing on the street for public transport. The premises location (sparsely populated immediately with other licensed premises) and being deliberately sited next to a range of late running public transport services. Consequently, customers do not have to compete with, remain on the street or migrate far from the premises to start their onward journey.

### *Conclusions from Cardiff and Newcastle site visits*

205. Dr Hadfield's Report concludes, "*There is a great deal of consistency in the ways The Botanist has been planned in terms of its location, internal design, and modes of operation in Cardiff and in Newcastle*" (paragraph 5.64).

206. It also concludes:

*"Due to its operating standards, style of operation and location The Botanist has skilfully carved its own - possibly unique - niche within the Newcastle ENTE. This has not happened by accident: it is clearly the result of meticulous pre-planning, a deep understanding of the local 'scene' and ongoing strong management."* (paragraph 5.36)

207. The Botanist is an original concept, and its operation easily sets itself apart from other premises. Dr Hadfield confirms that The Botanist "...do(es) things differently and in a way which attracts customers who seek a more relaxed and comfortable atmosphere. In many ways, therefore, The Botanist is not actually in 'competition' with most other city centre venues. It operates within a different niche." (paragraph 5.52) The Botanist's relaxed atmosphere is "...a rarity in ENTE settings" (paragraph 5.54) and even the door staff "...did not have the stereotypical look of 'bouncers' with black shoes, boots, white shirts and arm bands" (paragraph 5.55)



208. Whilst there is a bar area permitting vertical drinking, it is not equivalent to the 'vertical drinking bars' of concern within the CIA Policy. In fact, the report contrasts the Botanist with exactly these types of premises, noting that the latter have extensive vertical drinking space, play loud music with flashing lights and use this style of operation to attract customers off the street.

209. "*The Botanist operates largely as a seated, table service venue with low-key entertainment and very little discernible footprint on its environment*" (paragraph 5.64)

### **The Botanist in Brighton and the CIA Policy: cumulative negative impact?**

210. The Report further considers the suitability of Brighton as a potential site for the Botanist. Of particular note are the following observations that naturally lead one to draw positive analogies with the Cardiff and Newcastle sites:

210.1. The Report confirms that there are four licensed premises in the vicinity of the proposed Brighton site, all of which are public houses and noted to be closed by midnight.

210.2. There are some residential properties nearby, namely a residential high-rise block of Chartwell Court located behind the Churchill Shopping Centre on the other side of an access road (see diagram 30.) and a terrace of houses on Clarence Square / Clarence Gardens next to the Prince of Wales and The Cauldron (public houses). Further afield are residences on Western Road alongside commercial and licensed premises.

210.3. Churchill Square is immediately served by extensive public transport links e.g. bus and taxi ranks (and is probably the most connected location in Brighton – paragraph 5.80). As a result, there would be little need for patrons to walk beyond the immediate vicinity and engage with busier and more populated locations at night. A further result of the extensive public transport links throughout Brighton is that the area does not attract mass migration to the location following the closure of other premises in busier parts of the city.

210.4. The Report confirms that Churchill Square is "...demonstrably and physically removed from Brighton's main centres of ENTE activity" (paragraph 6.6). There is no concentration of licensed premises in the vicinity of the Top Shop site, let alone any concentration of late-night licensed premises. Neither is the area populated by off-licences and late-night takeaways. Therefore, the area is also not a 'through route' for person migrating from one premises to another. As a result, those passing through are typically on their way home, seeking to catch a night bus service or obtaining a taxi from a relatively quiet taxi rank.

210.5. Consequently, the number of patrons in the immediate area of the site is substantially reduced from midnight onwards. Paragraphs 6.1 – 6.3 confirm the near desertion of the area, including at 2am on Saturday evening / Sunday morning.

211. Paragraphs 5.85 – 5.97 of the Report go on to describe the location and character of Brighton City Centre's ENTE. The style and operation of the premises in this area is starkly different from that of the Botanist. Many are vertical drinking venues (some being high capacity) with open frontages or external drinking areas at street level. Patrons can be seen queuing on the street to gain admission. Many have very late licences (later than the hours sought by The Botanist), including late night off licences in use in the very early hours of the morning. Outside this main 'hub' of premises, other premises operate in a variety of guises with elements of al fresco dining, drinking, as well as vertical drinking. The Report highlights how different the Botanist is to those premises in the ENTE centre for that area, in particular, Be At One which "... presents the antithesis of how The Botanist was seen to operate in Cardiff and in Newcastle" (paragraph 5.97).

212. In the above regard, the Brighton site is similar to the environs of the Cardiff and Newcastle premises. Similarly, the juxtaposition of the Botanist's style of operation to other premises is apt. This is, of course, not entirely accidental as the Applicant's identification of potentially suitable sites follows a well-trodden path.

213. The key question is whether the Botanist's proposed style of operation (in particular, operating outside matrix hours) in Churchill Square will add to the negative cumulative impact on the licensing objectives. To answer this, Dr Hadfield considers what is the relevant area in which to consider the potential for cumulative negative impact, and whether it is observable. Accordingly, the Report confirms that the Botanist's Application should not be denied on policy grounds, on the basis that:

213.1. There is no evidence to support the site is in a location experiencing negative cumulative impact

*"...The Botanist, were it to open and trade beyond midnight, would be an outlier premises, it would not be entering a location already experiencing negative cumulative impacts on the Licensing Objectives" (paragraph 6.6)... "In Brighton I could find no evidence of negative 'cumulative impacts' from licensed premises in the vicinity of the Churchill Square Shopping Centre. I found that any potential for cumulative impacts had been largely negated by the low numbers and relatively early closing of licensed premises in the vicinity, with strong on-street management by licensed operators and exceptionally comprehensive and proximate public transport links, such that very little ENTE-related activity by taxis, private vehicles, or pedestrians toward residential areas was observed. Furthermore, the immediate area is also devoid of late-night takeaways and off-licences which often operate as 'honey pots' for patrons leaving nightclubs and late-night bars, thus delaying dispersals from other areas, such as West Street" (paragraph 8.1)*

213.2. But, in any event, the evidence is that the operation of the Botanist will not add to any cumulative impact

214. The Report confirms that the application of the Applicant's extensive operational and management experience to its selection of Brighton as an appropriate site and its development of its ambitions for the proposed site (including its layout and the conditioning on the premise licence) "...[These factors] instil confidence that their proposals would not give rise to negative impacts on the Licensing Objectives" (paragraph 8.11).

215. The Report also highlights the significant difference between the Botanist's style of operation and those operating within the nearby densely populated area.

216. The Report also considers other, arguably less contained, premises operating in very close proximity to residents in order to draw favourable comparisons with the proposed site. The Report refers to the Coppa Club Restaurant as an example of an external premises operating in very close proximity to residential apartments to demonstrate that this is possible where noise is suitably controlled (paragraph 5.98). Unlike the proposed site for the Botanist, Coppa Club is housed in a clear structure (as opposed to a brick / sealed building) and operates a few feet away from the residents in a courtyard-type space formed by the residential buildings.

217. Denying the application on 'policy grounds' against the weight of evidence would be out of step with the Home Office s182 Guidance:

*" I am of the opinion that The Botanist Premises Licence application should not be denied on 'policy grounds'. I can find no empirical evidence to support a 'presumption to deny' in this location. Such an approach would be out-of-step with the general thrust of the s182 Guidance in circumstances where*

*cumulative impacts are absent and other measures are available to secure the Licensing Objectives.”*  
(paragraph 8.10)

218. There is also strong reason to believe that the Botanist will have a *positive* impact on the area. In this regard, the Report goes further than considering negative impact and considers the positive impact that the Botanist would have on its locale, The Report concludes that “...*there would be some positive benefits to the current ENTE offer in Brighton brought by the introduction of a Botanist*” (paragraph 8.12) because “...*assistance with broadening the age range, range of social groups and attitudes to alcohol consumption amongst night-time visitors is exactly what The Botanist delivers*” (paragraph 8.12), speaking directly to BHCC’s own policy ambitions to improve safety and diversity due by encouraging a range of complementary ENTE premises with a wider appeal across ages and social groups which “...*gives potential for positively changing the ambience of the city, or an area of it*” (paragraphs 2.4.1 and 3.3.1 of the Licensing Policy).

## **APPLICATION OF THE POLICY**

### **Introduction**

219. For the reasons set out above, The Botanist would not contribute to the negative cumulative impact in Brighton. Therefore, the presumption against further licences does not apply.

220. Further, and in any event, the evidence that there will not be cumulative impact is sufficient to be viewed as exceptional in its own right.

221. Further, the Application:

221.1. Reflects those factors the CIA Policy indicates will be viewed favourably, to the extent that they should be considered exceptional circumstances; and

221.2. Reflects those factors that the CIA Policy specifically states may be exceptional; and

221.3. Has a range of circumstances that are exceptional, both individually and cumulatively.

### **‘Favourable characteristics’ as exceptional circumstances**

222. The Botanist reflects a number of features which merit consideration as exceptional, and which have been considered exceptional by the Panel in previous cases.

#### ***Positive impact on area***

223. We believe that The Botanist will provide an attractive alternative to other premises in the area and will set an example of exactly the sort of well-managed premises that the licensing authority wishes to encourage. It will also provide a good example of how alcohol can be enjoyed sensibly.

224. The Botanist will encourage patrons in Brighton away from those premises that promote high alcohol consumption, and into a well-run environment where excessive drinking is not promoted. The Botanist would also encourage other premises to modify their offering positively.

225. The entrance lobby and external terrace reduces the risks that may otherwise be associated with patrons on the street, such as noise, litter and coming into contact with anti-social members of the public. In conjunction with the above, this will inevitably have a positive impact on the types of concerns that underpin the CIA Policy.

226. The Botanist will help to change the ambience of that part of the city centre. It is a high-end operator. Its exterior and interior decor is stylish, unique and promotes an experience based on the appreciation of quality rather than volume of consumption. As we have seen with the establishment of the Botanist in other equally – if not more – challenging areas, other high-end occupiers also seek to locate in the same area after the Botanist’s arrival. This “halo effect” is notable in the brand’s history of expansion. For example, in Birmingham, after the Botanist became an established destination, this was followed by an increase in high-end leisure uses including e.g. San Carlo (restaurant), The Ivy (restaurant), Revolution de Cuba (bar), Las Iguanas (restaurant) and other bars (Head of Stream; The Trocadero).

227. The later operational hours and customer profile would contribute to a more graded dispersal of patrons, the need for which is arguably supported by the Operation Marble statistics.

228. The presence of a higher-end premises (with its door supervision and its patrons) will have a wider positive impact on the level of public safety and sense of security in an area previously not subject to such close supervision and surveillance.

*Diversity of premises (and clientele) including different attitudes towards alcohol*

229. NWTC understands that BHCC wishes to introduce a diversified range of complementary evening and night-time economy uses in this location. The changing focus of shopping centres has been further exacerbated by Covid-19, which has highlighted the need for diversification and change in order to meet customer demands and to ensure that the vitality and viability of designated centres is retained.

230. Churchill Square Shopping Centre is located within Brighton Regional Centre, within an area specifically allocated for comprehensive redevelopment (Brighton Centre and Churchill Square).

231. The premises represents a physical manifestation of Churchill Square’s move away from being an almost entirely retail-led environment to one which has, and will have, more experience-led, high-quality uses. It is a change from the uniformity of shopping centres, which is currently being experienced nationwide

232. The establishment of The Botanist will enhance and diversify the use of Churchill Square. The premises would restore a new and innovative use to Churchill Square during the evening as well as daytime. Shopping habits have undeniably changed – many high streets and shopping centres have seen an upturn in evening attractions such as café-bars and other leisure pursuits. It is no longer the case that people expect or are content with a shopping centre to close very early in the evening and become a ‘ghost town’ thereafter.

233. By creating a balanced and diversified range of complementary evening and night-time economy uses in this location, an environment will be created that will appeal to a wide range of age and social groups and can also help to address community safety concerns.

234. A premises like The Botanist does not currently operate in Brighton. However, it has much to offer in terms of changing the character of its location and reducing (or at least not enhancing) any posited cumulative impact. Therefore, granting the licence as sought will be an important step in positively changing the environment around Churchill Square and its perception as a troubled space. In this way, The Botanist would actively assist in achieving the policy aim of reducing the problems that have led to the introduction of the CIA policy.

*Positive effect on reducing fear of crime / increasing visitors to the area*

235. In relation to this factor (which also pertains to having a positive impact The Botanist would have in Brighton), we would also point out that NWTC premises do not operate in isolation or as 'stand-alone' outfits. NWTC recognises the contributions it can make to the wider community and help with wider community concerns.
236. Whilst the exact nature of involvement varies, NWTC have demonstrated that they engage and respond to local needs. For example, the Oast House (again) in Manchester has assisted the police with crucial evidence in relation to a crime committed in the vicinity (and not associated with the premises). The Oast House also supported the emergency services in the aftermath of the Manchester Arena bombing and attends six monthly major-incident training with the police (in addition to operating NWTC's own major incident policy).
237. Of more direct relevance to Brighton is The Botanist's community support in the Trinity area in Leeds. This area has been, unfortunately, beset with various public nuisance, anti-social behaviour and criminal issues that the police have been trying to tackle for some time. The issues are not associated with The Botanist, but the premises is very pleased to work with the West Yorkshire police to capture and catalogue, and permit access to evidence picked up by the premises' CCTV which covers the majority of a large external area located outside the Trinity Shopping Centre and for some distance to other outlets.
238. The Botanist, Brighton would be in a position to make a similar contribution to its community through the presence of CCTV cameras as well as SIA door staff on duty at certain key times, all of which add another layer of surveillance and visibility to those (especially from other premises) who may otherwise be inclined to behave in anti-social ways.
239. The Botanist would also be an active participant in the various local initiatives designed to share knowledge and decrease those issues that have led to the CIA being introduced.
240. The premises will benefit from the Centre Management Team working closely with its occupiers to ensure Churchill Square as a whole operates to significantly high standards and to ensure that the Centre is a welcome environment for the community. Churchill Square is award winning for the services it delivers, which together with bespoke operator security measures, will ensure that high standards of safety and security are maintained for all at the centre.
241. However, a more subtle point regarding The Botanist's contribution to addressing such issues, is that the location of the premises is somewhat isolated at night, which provides a different context in which offences have taken place previously. The surveillance at the premises and the presence of people in the area will serve as a deterrent to those who take advantage of the unobserved nature of the area. It will also enhance a sense of safety visiting that area, particularly later in the evening.
242. All of the above demonstrate some of the ways in which The Botanist in Churchill Square will reduce the fear of crime and increase visitors' willingness to come to the area.

**Exceptional circumstances referred to in the CIA Policy**

*Consultation with and meeting requirements of responsible authorities*

243. NWTC (and its legal representatives) met with the police and the licensing authority on 29 November 2021. During that meeting, it was indicated that, but for the CIA, it is likely that the

licensing authority would grant the premises licence as sought. The issue was its location in the CIA.

244. NWTC has met all requirements of the responsible authorities, save for agreeing to comply with the Restaurant Condition and save for the hours applied for being outside the matrix. However, as detailed above, these elements of the Application do not mean that the premises will contribute to negative cumulative impact.

### *Corporate social responsibility*

245. NWTC operates an ESG strategy, which focusses on the following:

245.1. Environment: reduction of food waste, plastic usage and un-recyclable materials; measure utilities usage and investigate renewable energy sources and suppliers; investigate big ticket measures to reduce CO<sub>2</sub> / carbon footprint.

245.2. Social: to promote health and well-being, including providing healthy options / recipes for guests and staff; increasing awareness of and support for mental health issues (training), as well as reviewing working hours and conditions of all team members.

245.3. Governance / Economic: eliminating gender and ethnicity pay gaps; promoting training and recognising qualifications; becoming a real living wage employer; transparent pay and reward structures; developing a charity programme for causes important to staff and guests.

246. The focus on training and retention of staff can, of course, only benefit NWTC and the areas in which it operates. All staff participate in a comprehensive induction training programme when they first join NWTC, as well as ongoing professional learning and training thereafter. For example, bartender staff undergo a two-week induction comprised of core compliance training (such as health and safety; fire safety; allergen awareness; keeping the site safe; equality and diversity) as well as specific training for the bartender role (which includes coaching, practise and mentoring). A similar induction training format is applied to other roles within the business, each being tailored to the specifics of the job.

247. In addition to this, the well-being of NWTC staff and guests is a key concern that is embedded within the sites' operations.

248. NWTC has 54 mental health first aiders across its estate, with 17 sites having received training. The goal is to reach 10% of the business trained to deliver mental health first aid in line with MHFA England's vision (currently at 3%).

249. NWTC recognises staff work unsocial hours and promotes safe travel for staff, including discounted taxi travel, checking in with trusted persons before and after they arrive home, and speaking with managers if they are concerned about a journey home.

250. All premises operate 'Ask for Angela', which enables guests to ask staff discretely for help. Staff are also trained on how to deal with such sensitive situations, including assisting the person leave the premises safely and removing persons causing distress from the premises.

### ***Community support***

251. NWTC is a big investor in the local communities in which it operates.

252. A significant part of NWTC's ESG is the amount of freedom sites have to source products from the local area. Sites are actively encouraged to set up accounts with local fruit and vegetable suppliers for both bar and kitchen core products. Within the kitchen, menus are adapted to include dishes with a local provenance. Examples of this would include "Scouse", a dish of Liverpool origin available in all of our Liverpool sites, and seafood dishes with locally sourced fish, at The Club House, Plymouth.

253. In relation to the bar operations, 20% of the beverage 'line up' will be committed to local beer, cider and gin and individual sites are encouraged to experiment with different types of products. Coming out of the pandemic, there has been a particular focus on this approach across the sites, including implementing ordering and invoicing systems that allow local producers to be more readily added to the ordering and stock management systems. Similarly, sites have significant freedoms to purchase spirits from local distilleries (either directly or through NWTC's national supplier). In addition, premium back bar space is reserved for these products to ensure good visibility.

254. Sites also collaborate closely with local suppliers when hosting events in site and out in the community. For example, the "Gin Garden" in the external area in the Leeds site involved the premises collaborating with Masons Yorkshire Gin; the Terrace Party at The Botanist, Newcastle collaborated with Wylam Brewery; the Cocktails in the City at The Botanist, York collaborated with Slingsbys Gin; and The Club House Plymouth hosted its launch party with Plymouth Gin.

255. On a related note, it is notable that NWTC contributes to Business Improvement Districts (BIDs) in at least 17 sites across its estate.

### ***Charitable activities***

256. NWTC recognises it has the opportunity (through its multiple capacious sites) to support good causes across the country and has done so widely through its various premises across its estate donating to many national and location charities.

257. All NWTC sites raise money for local charities of their choice throughout the year, as well as hosting larger charity events. For example, West Bridgford runs a monthly 'Botanist Bingo' to raise money for various local charities. The Oast House in Manchester hosted 'Howl for the Bowel' with Jason Manford<sup>8</sup>, which was a high-profile fund-raising event for Cancer Research UK. As an organisation, NWTC has been a huge and proud supporter of Barnardos, not just through fund raising but hosting numerous interactive days across its sites for Barnardos children, including cooking workshops, health eating workshops, and breakfasts for children and their carers.

258. NWTC also works alongside two employment charities - one local and one national - to support persons living with disabilities into employment. NWTC currently has 8 team members across 7 sites participating in the supported employment programme (the average length of service with NWTC is two years and one month).

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<sup>8</sup> This was a comedy night to raise money for Cancer Research UK. It was originally planned by Michelle Mullane and Jason Manford, both local and national radio presenters, following Michelle's diagnosis of bowel cancer.

259. The matter of evidence regarding the impact of The Botanist's operation is further considered below within the specific context of the types of factors Panels have determined to be exceptional (i.e. not impact upon a perceived cumulative negative impact) where a premises has been granted a licence that goes beyond the preferences within the matrix (including premises type and hours).

### **Exceptional circumstances identified from determinations review**

#### *Introduction*

260. Our review of the Panel's determinations has provided further indication of what the Panel may determine to be exceptional circumstances. Our review identified that some of these pertain to 'not adding to negative cumulative impact' (with certain types of evidence of 'not adding to cumulative impact' that are exceptionally persuasive to the Panel<sup>9</sup>) and are discussed further below.

#### *Type of clientele*

261. In *Soho House* [1445/3/2021/04305/LAPREN], a premises licence permitting vertical drinking in a private members club (capacity 500) for those in the arts / creative industries was granted (Soho House). Noted as exceptional circumstances were that the premises was membership-only (no access to the public), where such membership was hard to obtain (requiring also a significant annual membership fee) and carefully managed, and guests were strictly controlled.

262. However, further consideration of this exception leads one to draw favourable parallels with the Botanist's operation.

263. What may be said of this exceptional circumstance (in terms of membership and provisions for unvetted guests) is simply that the presumed 'type of clientele' is relevant and that like associates with like. That is, the conduct of patrons in a licensed premises can be assumed from other aspects of a person's character, conduct, salary and associations.

264. It is our view that the patrons who typically frequent the Botanist are no different from those anticipated by the Panel to attend Soho House (see statement of Tim McCormac dated 4 January 2023, paragraphs 23 - 25) and indeed a 'cross-over' is easily anticipated given the high-end nature and reputation of The Botanist.

265. In this regard, The Botanist attracts the type and blend of guests that are not typically associated with crime and disorder or nuisance, and which would also act to deter those who may otherwise be drawn to the area for such purposes. Its track record speaks for itself.

#### *Not replicating issues associated with crowded bars / wet led premises*

266. The matrix's prohibition on any kind of bar in the CIA is based on the issues associated with vertical drinking premises. This has led to a general objection to any premises operating any kind of vertical drinking bar area.

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<sup>9</sup> A clear example of 'not adding to negative cumulative impact' was apparent either within the context of applications seeking to reinstate lapsed licences (lapsed due to an inadvertent administrative error), [*No. 32 Duke Street*, 1445/3/2019/03812/LAPREN] or where the grant has been associated with a re-organisation of existing premises licences (from existing to new units) [*Unit 1, Savoy Centre*, 1445/3/2019/01643/LAPREN]. That is, 'switch' or 'reinstatement', rather than the full assessment of novel evidence, which is the case in the current Application.



267. In *Toy Shop Bar* [2019/05698/LAPREN], the licensing officer confirmed it did not want another 'wet led' premises in the CIA, including and in particular (reflecting the facts of that case) a high-volume night club or pub (capacity 615, 150 of whom would be seated) where alcohol is the main focus and most customers will be standing. The application also suffered from concerns regarding its marketing (e.g. as a 'party venue') and the likelihood of conflict on the door regarding the operation of the admissions policies (especially in Brighton).

268. However, vertical drinking was permitted in *Soho House* (capacity 500 people) on the basis that the panel did not believe the premises would be akin to a crowded public house (and therefore a 'no vertical drinking' condition was not necessary) and where the panel stressed the bar area should not become congested. This decision was informed by various factors, such as the amount of bar area, the management of the premises and its type of clientele.

269. It is neither fair nor reasonable to assume that the Botanist will give rise to the same concerns associated with street level pubs or bars (or nightclub), simply because of the presence of a bar area (internally and externally) or people drinking without consuming food. The evidence points to the exact opposite. The concerns associated with vertical drinking (and which arise in relation to crowded bar, pub or night club premises) do not apply either conceptually or in practice to the Botanist. Consequently, the concerns underpinning the requirement for a Restaurant Condition are not founded in this instance because:

269.1. Evidence regarding The Botanist's history of trading confirms such concerns are not associated with it;

269.2. The Botanist is not 'alcohol-led' and does not have the propensity to become so; and

269.3. Extensive research shows that venues with a significant proportion of seating are positive in terms of their impact on the licensing objectives. However, it is not just being seated that reduces a negative impact on the licensing objectives. The overall ambience and other operational aspects will clearly contribute to this as well. Therefore, it is reasonable to conclude that, even where premises are not operating fully in accordance with a 'Restaurant Condition', they may exhibit other operational factors which will positively influence the conduct of customers, whether or not they are dining, and mitigate the concerns associated with drinking (vertical or not).

270. Accordingly, there is no reason for The Botanist to diminish the flexibility of its offering by removing the opportunity for its guests to visit for drinks only and / or compelling them to be seated.

271. The Botanist does not market itself as an alcohol-led 'party venue'; instead, its marketing is stylish, food-led with an emphasis on enjoying its convivial surroundings.

272. Within this concept, the Botanist is predominantly a restaurant that has provision for those who wish to drink at the bar (or simply take a drink at a table). The bar area is small in comparison to the seated area. The number of persons standing in the internal or external space is approximately 1/3 of the whole space (approximately 144 persons) and even then, it is important to remember that such a figure is a maximum.

273. It cannot be said that the Botanist is 'wet led' or 'alcohol led'. The Botanist can confirm that its other premises do not operate as such. It does not promote excessive drinking. It is clearly 'food led'. It can also confirm that its premises are not somewhere to go to engage in high-volume consumption of alcohol. That is not the intention of The Botanist, and that is not the practice of its patrons. The Botanist attracts a range of patrons, including families, couples, work colleagues and so on. We would respectfully suggest that Brighton would be no different.

274. The concern that the premises could potentially operate 100% as a bar is not supported by the operation of The Botanist or the requirements of its guests. The Botanist brand and product are clear, and guests attend the premises expecting the food-led experience set out above. It does not attract the congregation of patrons in the way that street bars and pubs do. This is supported by the evidence in Dr Hadfield's Report (September 2022) – notably paragraphs 5.24, 5.51, 5.64 and 5.97 - which confirms that the Botanist's bar operation is not 'akin to a crowded public house' (including the outside terrace areas), and particularly not the vertical drinking bars referred to at paragraphs 5.85 – 5.97 of the Report and which feature heavily in BHCC's concerns.

275. We understand that it is not possible to attach conditions that 'lock in' a businesses' intentions such as high-end pricing and nature (see *Stokbeev*, hearing minutes dated 1 October 2022) in which applicant sought to licence a premise for alcohol tasting and advice). However, this Application is not referring to a new one-off venture. NWTC's business model and style of operation is well-researched and well-developed. As a result, it has a well-deserved reputation for providing beautifully appointed, well-run and relaxing restaurant-bar premises. Put quite simply, the Botanist is not, does not and would not operate as a 'vertical drinking' crowded bar (or nightclub) regardless of its capacity, number of patrons that could (theoretically) drink vertically and its music offering (which is low level). That is not the business model.

276. We would suggest that any hypothetical concerns that the Botanist could operate purely as a bar one evening (for example, if every 483 persons attended simply wanted to drink alcohol) are unfounded conjecture. In fact, the opposite of such concerns is demonstrably true from its history of operating, which reflects its intended business model. This concern was directly referenced in *Artists Residence* [2019/02062/LAPREN], in which the succinct point was made that "...the lack of offered restaurant conditions was not indicative of a business wishing to morph into a pub. The premises was and would continue to operate as a hotel. Over the last five years in particular, eating habits had changed and the applicant wanted flexibility..." The same point is applicable to the Botanist.

### ***Type of operator***

277. We note that (and accept) the Licensing Policy states "... 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" (Licensing Policy, paragraph 3.1.9).

278. However, we also note that The Licensing Policy states:

*"Brighton & Hove has created a Cumulative Impact Zone (CIZ) and adjacent Special Stress Area (SSA), designed to restrict the amount of licensable premises in the city centre and promote good practices to minimise the adverse impact from alcohol-use. The Council have also adopted a matrix approach to decision making to encourage the right type of alcohol establishment across the city. Enforcement policies focus on reducing irresponsible promotions and underage sales" (Licensing Policy page 2, own emphasis added)*

279. There is some departure from this baseline within the determinations reviewed. Management by well-qualified staff clearly provides BHCC with reassurance that the operation of the premises will be conducted as described and conditioned. For example, in *Star and Garter* [1445/3/2021/02255/LAPREN] "...The panel also appreciated that the applicant was an experienced operator with a very responsible attitude to the application" when considering whether to grant a premises licence in order to 'reverse' the administrative lapse of a premises licence.

280. Of course, a history or reputation of poor management would be detrimental to the application. For example, the fact that an operator is unlikely to adhere to conditions (where it may be accepted the grant of a licence is unlikely to have a negative cumulative impact) was considered

in *Twisted Lemon* [hearing minutes 15 March 2019]. In this application, the premises sought to remove its 'restaurant condition' in order to bring premises licence in line with the way it had been operating for a while. It had been argued – somewhat questionably – that it would not add to negatively to any cumulative impact on the basis that it had been operating contrary to the 'restaurant condition' for some time and without Review or prosecution. The applicant also offered conditions pertaining to seating and the availability of food at all times. However, the Panel's over-riding concern was that the premises would operate primarily as a pub or a bar. In addition, the consistent breach of the current restaurant condition meant that the Panel could not be confident that the substantial food condition would be adhered to.

281. We would also suggest that quality of management, based on experience, is a highly relevant consideration in this case. NWTC is not an operator with a small handful of premises that have been operating for a short period of time or a few years. NWTC is a highly-qualified, highly-experienced, long-standing and exceptionally well-respected operator with a number of industry awards to its name (see **Appendix 08**).

282. NWTC presents this Application against an impressive history of operating 41 premises in a variety of locations across the country, employing the same model and ethos and has been granted premises licences in several challenging areas, including at least ten CIAs and without negative impact on the area.

283. It is proof that the various elements of The Botanist's operation are as described in this Application and that they work together to create an exceptional operation which allows NWTC's premises (including The Botanist) to respond to the operational sensitivities of any given location and operate in the most difficult of areas. NWTC brings a wealth of experience and understanding to the current Application. It is that operation, combined with the comprehensive operating schedule submitted, that should provide comfort that this is exceptional and provides a true exception to the Policy.

284. The evidence in this statement confirms The Botanist's mode of operation either will not impact upon or – in fact – will have an overall positive effect on the CIA in Brighton such that it would be an asset to the city even with (but also, arguably, in relation to) the extended hours that it seeks

285. The Botanist would practise, demonstrate and promote good practices, both to those visiting licensed premises and to other operators. It would set a high standard for conduct and operational practises. Furthermore, The Botanist does not encourage irresponsible promotions or sales practices. In fact, the opposite is demonstrably true.

#### *Direct and relevant experience of operating in the area*

286. In 66 *Lewes Road* [1445/3/2021/00754/LAPREN], an off licence was granted a premises licence (otherwise prohibited under the matrix) on the basis that the panel believed the applicant understood the challenges of the area. The Panel had confidence that she and her husband, residents of the area and having previously operated a premises at the same site, had the necessary experience and ability to run the premises in a responsible way and to promote the licensing objectives. The Panel concluded that such direct relevant experience was unusual, and it was sufficient to amount to exceptional circumstances, warranting a departure from the matrix.

287. In contrast, in *Toy Shop Bar*, the applicant was deemed not to have sufficient experience, even though they operated in Putney. It was clear upon questioning that the applicant did not know Brighton well-enough to understand the concerns underpinning the CIA Policy (which it had not reviewed or engaged in during the application process) and how confusion regarding its operation could lead to conflict with patrons.

288. We also note that the CIA Policy does not stipulate that running similar premises elsewhere without complaint is not a relevant consideration. We would agree with this stance.
289. Whilst the Botanist does not have the exact same direct relevant experience as in *66 Lewes Road*, it has extensive and significant comparable relevant experience. It also has significantly more experience than the applicants in *Toy Shop Bar*.
290. NWTC has over ten years of experience operating numerous late-night premises (several past the matrix hours) in similarly challenging areas nationally. It operates The Botanist past midnight and up to 3am (in some areas) in 26 of its premises (this does not include operation of its houses and club houses, such as the Oast House, The Canal House, The Clubhouse and so on).
291. NWTC also has considerable proven track record of successfully operating premises within the CIAs of other councils. The Botanist operates in at least ten CIAs nationally (including Cardiff and Newcastle, which feature in Dr Philip Hadfield's analysis of The Botanist's operation).
292. As a result, NWTC has demonstrated the effective implementation of a comprehensive operating schedule, which ensures the successful running of the premises, with no detrimental impacts on the local context (and including in CIAs).
293. It would be unreasonable for the Panel to ignore The Botanist's successful operation across a range of national premises and within CIA's, in a mix of commercial and mixed settings. Each site has its own challenges that have been successfully met by the operation of the premises to the extent that it does not contribute to the cumulative impact and – arguably – in other areas, *positively* impacts on the area.
294. To turn it on its head, the Panel would undoubtedly question a national operator's ability to understand the challenges of a CIA if it was without previous relevant experience.
295. In addition to this formidable operational and management experience, NWTC also recruits staff locally with a view to offering them various routes of career development and training that will benefit in the long term not only the individual but also the ongoing operation of the premises. This experience means the selection of Churchill Square as a proposed site has been subject to careful research and consideration by NWTC. It also means NWTC is confident the Botanist will operate in a way that does not impact negatively on any cumulative impact that may be associated with the area. Such an assertion isn't based on optimism. It is based on a proven track record.
296. In fact, a failure to engage with the CIA policy by applicants (especially those seeking to operate wet-led premises, in city hot spots) was a very noticeable concern of the responsible authorities and the Panel where applications were either rejected or were subject to lesser hours within the matrix. It is also clear that the Applicant has engaged with the CIA policy during this application process and – before that – during its investigations and enquiries as to whether Brighton would be a suitable place for the Botanist. It has also obtained an expert report from Dr Hadfield (exhibited at **Appendix 13**) in order to review its assessment and consider any potential negative cumulative impact in detail so that it may proactively address any concerns within the Application.
297. In this regard, it is submitted that the Applicant has the relevant experience and informed understanding to operate the Botanist in Brighton.

*Off-setting impact*

298. The offering, clientele and style of operation of The Botanist is such that it offsets concerns regarding its size and its operation outside Operation Marble hours (i.e. Monday – Thursday). This is further supported by the extensive conditioning that is proposed within the Application.

299. In relation to off-setting any potential impact, we refer again to paragraphs 8.1 – 8.10 of Dr Hadfield’s Report which confirms that the proposed site is not in an area that suffers from negative cumulative impact. Neither is it on a main dispersal artery (which are, according to the Licensing Policy, populated with various LNR venues and off licences, causing ‘hot spots’ of disruption away from on-licences).

300. Nevertheless, NWTC has in place appropriate corporate and social responsibility initiatives (see paragraphs 245 – 250, above). We also note that the Licensing Policy sets out various initiatives operating in Brighton such as Good Night Owls, Street Pastors, Beach Patrol Quad Bikes, Street Wise and other community safety strategies. NWTC has an established history of making financial contributions to local initiatives at ‘site level’. The availability of such assistance (and where it might be best placed to off-set any potential impact through these initiatives) would be discussed in the event the licence is granted.

*Credible third-party support*

301. In *Star and Garter* [1445/3/2021/02255/LAPREN] which considered the re-granting of a lapsed premises licence, the Panel were persuaded by a supportive representation from the head of the Council’s estates team as landlord of the property, which detailed how the building has had to undergo major structural repairs and how they have been impressed by the commitment during all this of their tenant (the applicant).

302. Whilst the Botanist does not have the direct support of a Council Department (with a legal and financial interest in the property), the following bodies support the Botanist bringing its hospitality and style of operation to Brighton:

302.1. ABRDN, the site developer (see **Appendix 15**); and

302.2. Brighton and Hove Economic Partnership, Business Improvement District (BHEP, BID). Gavin Stewart, Executive Director of BHEP has written a direct and detailed letter of support on behalf of the BHEP for the planning application by The Botanist. A copy of this letter dated 28 July 2022 is appended at **Appendix 16**.

303. ABRDN’s and BHEP’s support for the Application are set out in more detail at paragraphs 325 – 331, and paragraphs 315 – 321 respectively within the context of how The Botanist would contribute to the wider long-term economic aims of BHCC. The letters merit being read in full.

304. It is notable that the BHEP were also consulted in relation to the Licensing Policy.

305. Whilst BHEP’s letter was submitted in relation to the planning application, it is clearly in relation to a property that is going to be licensed in accordance with The Botanist’s style of operating, and the hours applied for are – of course – reflected in the licensing application.

306. We also note within this context that whilst planning has not been granted, the only outstanding issue to be resolved is in relation to the north elevation and its assimilation with the wider Western Road frontage.

307. It is our view that significant weight should be given to such support (and such support exceeds the level observed in *Star and Garter*) and, accordingly, together with other factors, should be considered exceptional.

### ***Regeneration***

308. In *Star and Garter* [1445/3/2021/02255/LAPREN], the supportive representation by the head of the Council's estates team (the landlord of the property) also advised that re-granting the lapsed premises licence would breathe life back into the area.

309. This is naturally closely related to the exceptional circumstance 'diversity of premises' (see paragraphs 229 – 234, above).

310. Further consideration of regeneration as an exceptional circumstance is below (paragraphs 315 – 331, below).

### **Other exceptional circumstances**

311. The CIA Policy's suggested list of what may be considered 'exceptional circumstances' is non-exhaustive.

312. In addition to the above, we would submit the following:

- 312.1. The nature and extent of evidence of lack of negative cumulative impact is exceptional in itself.
- 312.2. The fact that the Application meets such a full range of the exceptional circumstances detailed in the CIA Policy and in previous Panel determinations is exceptional in itself.
- 312.3. The fact that the location of the premises is demonstrably not a 'hotspot' is evidently exceptional within a CIA.
- 312.4. The Botanist provides a unique confluence of a variety of characteristics that make it exceptional

## **WIDER CONTEXT**

### **Introduction**

313. We also explore below some further exceptional factors which merit consideration in greater detail.

314. These factors also provide a wider context in respect of the Application, and, we submit, would be sufficient to allow the Panel to use their discretion to depart from the Licensing Policy even in circumstances where they are not satisfied that no negative cumulative impact will be caused and/or that the Application is exceptional.

## PART 1 (WIDER CONTEXT) - REGENERATION

### Introduction (including BHES)

315. Of course, all applications take place within the broader economic context of their location.

316. We note that paragraph 1.4.2 of B&H CC's Statement of Licensing Policy confirms:

*"In relation to this, its fifth statement of licensing policy, the licensing authority has also chosen to consult the following persons or bodies... Brighton and Hove Economic Partnership, Business Improvement District (BID)"*

317. The Application before the Panel embodies the aims of the Brighton and Hove Economic Strategy (2018 - 2023) (hereafter, "BHES")<sup>1011</sup> and Brighton and Hove Visitor Economy Strategy (2018 - 2023) (hereafter, "BHVES").

318. But this is not just our view. We are very pleased to confirm that *Brighton and Hove Economic Partnership, Business Improvement District* has written a detailed letter in support of NWTC's application to bring The Botanist to Brighton. Gavin Stewart, Executive Director of Brighton and Hove Economic Partnership, who has written a direct and detailed letter of support for the planning application by The Botanist. A copy of this letter dated 28 July 2022 is appended at **Appendix 16**.

319. Within Mr Stewart's letter, he directly confirms on behalf of the BHES that The Botanist's proposed arrival in Brighton:

*"... ties in strongly with a number of the key aims of the current Brighton & Hove Economic Strategy, namely:*

- **A Growing City** with focus on business space. The priority action which is to unlock stalled development sites
- **An Open City** with a focus business investment, thriving visitor, retail, leisure and cultural offer with better quality places
- **A Talented City** with a focus Economic participation, skills for growth and labour market productivity
- **A Fair City** with a focus economic and social inclusion and business responsibility

*To highlight these links the applicant has provided a full Economic Impact Assessment...."*

320. The letter deserves to be read in full as it sets out further details evidencing how The Botanist would actively contribute to the ambitions of the BHES.

321. Whilst the letter was submitted in relation to the planning application, it is clearly in relation to a property that is going to be licensed and the hours applied for are - of course - reflected in the licensing application.

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<sup>10</sup> See "Productive Inclusive Transformative: An Economic Strategy for Brighton & Hove 2018"

<sup>11</sup> See "Brighton and Hove Economic Partnership: Executive Summary of Economic Strategy - Inclusive Transformative: An Economic Strategy for Brighton and Hove - Executive Summary 2018"

### **Brighton and Hove Visitor Economic Strategy (BHVES)**

322. We would also suggest that The Botanist in Brighton also strongly ties in with the BHVES. In so doing, we note that the Licensing Policy recognises the how new commercial ventures are vital to Brighton's growth and future success:

*"...licensing policy supports entrepreneurial activity, promoting the city's businesses...extending the business improvement district. The cultural and tourism offer in Brighton and Hove is crucial to the ongoing economic success of the city; it brings both money and jobs" (paragraph 1.7.1)*

323. The Licensing Policy refers to the BHVES (paragraph 1.7.2), which is a significant document and sets out a crucial pathway into Brighton's future. For ease of reference, **Appendix 17** sets out key paragraphs of note in relation to this particular Application and which are referenced below in the key themes selected for their pertinence to the current Application:

#### **323.1. Safeguarding long term sustainability does not mean standing still and maintaining the status quo in a highly competitive marketplace (page 4, 6)**

The Botanist is an opportunity to step outside the confines of the matrix and provide a model to the council and other businesses as to how the licensed trades can start to expand and keep up with demand in a tourism market that is nationally competitive.

#### **323.2. The creation of a high quality of life that makes Brighton and Hove a good place to live, work and study, which involves creating a vibrant weekday city centre, creating job opportunities and providing choices of places to eat and drink that the resident population alone cannot support (page 5)**

The Botanist is a natural contributor to these aims.

#### **323.3. Provide a platform to talk about the city at a national and international level (page 5)**

The Botanist is a high-end national brand that is very selective as to where it operates and would provide Brighton with natural signpost that the city can compete nationally and internationally for hospitality and tourism markets.

#### **323.4. Making the best use of land for the purpose of tourism and hospitality (page 5)**

The Botanist represents the best use of the unit in the shopping centre and long employment. The site has remained empty for a significant period of time and, particularly given the high land value (which can act as a barrier to many new business that wish to operate in Brighton, especially in the current unpredictable financial climate), it is unclear who else would be able to occupy such a space.

#### **323.5. Access for international leisure visitors and international conference trips (page 5)**

The stylish premises and the hours sought by The Botanist reflect European dining and socialising habits (as well as what domestic patrons expect when they go out). The premises will clearly be attractive to such visitors.

#### **323.6. Attracting higher spending visitors and extending the length of trips to Brighton, and to attract 'urban dwellers' (target market) who are - amongst other things - brand-conscious, trend sensitive and culturally aware and have above average disposable income (page 8)**



The Botanist's customer base readily reflects this ambition.

**323.7. Brighton as a destination brand, which is creative, free, European and energetic (page 10).**

The Botanist's Application, its ethos and hours reflect this.

**323.8. Good food is included within the thematic strength of 'wellness' (page 11).**

The Botanist is a high-end, food-led venue presenting an interesting menu and carefully selected and unusual Botanical twists on drinks to complement the overall offering.

**323.9. Positive connections between public realm design, use of public spaces and management (page 14)**

The Botanist is beautifully curated and presented. The ambiance created by its décor, arrangement, staff service and music affects not only who are attracted to The Botanist but also their conduct once there.

**323.10. Identification of best practice on what works in similar destinations elsewhere in the UK (page 14)**

The Botanist is a highly regarded, experienced national operator with a proven track record of operating nationally and in some CIAs. Dr Philip Hadfield's Report confirms the consistency and success of this model in two premises that are comparable to the proposed site in Brighton.

**323.11. Being at the vanguard of piloting new schemes and working with industry partners (page 19)**

The Botanist has a unique concept and style of operating that we hope Brighton will embrace. The Botanist can only work with BHCC if it is permitted to bring its style of operation to Brighton.

**323.12. Delivering the plan by developing and retaining skilled work forces to increase competitiveness of Brighton's tourism sector (page 20)**

The Botanist has a clear emphasis on and commitment to training its staff with a view to retaining them for as long as possible. The Botanist recognises the clear benefits and roles played by commercial and corporate memory and experience in the success of a business.

## **Conclusion**

324. The delivery aims of the BHES and BHVS are, effectively, what The Botanist does already. It is one reason why it is so successful and operates so effectively across the country.

## **Stakeholder Views - ABRDN (Developer/Landlord)**

325. These views are reflected in the letter of support provided by ABRDN appended at **Appendix 15**.

326. ABRDN is a long-established and highly experienced investor and developer of commercial properties and complexes. Any decision by ABRDN regarding where to invest and who its

partners will be careful strategic decisions based on a variety of factors, including the potential of an area and reasonable projections regarding its development.

327. Part of ABRDN's portfolio investments pertain to the development of a diverse range of shopping centres. It is currently responsible for the refurbishment of the Churchill Shopping Centre which incorporates the units The Botanist would like to occupy.

328. We would encourage the Panel to read the letter of support in full. However, it summarises the key issues faced by the Churchill Square area and how it sees the area changing with the right long-term investment and businesses in place.

329. Retail everywhere is severely under pressure and Churchill Square is in particular need of regeneration. It has suffered several closures within the complex, and it is currently an uninviting and unused prime retail space outside core retail hours. Churchill Square has a real opportunity to be developed into a vibrant and sustainable retail destination. The transport links and facilities are already in place and the space is there waiting to be transformed.

330. ABRDN has seen this opportunity. ABRDN has also worked with NWTC for several years. After careful consideration, ABRDN not only believes it can successfully develop the old Top Shop site but it also believes that NWTC and The Botanist are the ideal operators to re-imagine the space and move the redevelopment of Churchill Square forward.

331. The arrival of the Botanist would be an important step towards converting Churchill Square into an attractive, mixed-use, vibrant destination with an offering that extends beyond core retail hours; where people will want to shop, and go for lunch or dinner during the day and evening. It would expand the variety and hours of retail in the Square. And where The Botanist goes, other similarly high-end responsible operators follow. The Botanist is not only an industry 'seal of approval' but it also shows that good operators are welcome and should not be put off from bringing their business to the area. ABRDN have partnered with NWTC with an eye on the future. We hope the Committee will consider this Application with the same in mind.

## **PART 2 (WIDER CONTEXT) - THE BOTANIST'S FIT FOR BRIGHTON'S CULTURE**

332. Brighton is famously a borough of diversity and contrasts. It is well-known for the ease with which its eclectic collection of businesses, people, interests, and lifestyles live alongside each other to create one of the most interesting and vibrant parts of south-east of England.

333. Brighton and Hove's Economic Strategy 2017 - 2023 says the following on page 1:

*"Brighton & Hove has long been established as one of the UK's most distinctive cities.*

*It is known for the spirit and diversity of its people; for its unique retail, leisure and cultural offer; and for its world-famous seafront and heritage assets. Most recently it has become recognised for the strength of its small business economy and as a genuine hub of creativity, innovation and enterprise."*

334. NWTC has identified Brighton as their preferred location. It is clear that The Botanist is a natural fit for Brighton, not just commercially (and in terms of, for example, the Brighton and Hove Visitor Economy Strategy 2018 - 2023) but also in terms of its culture. Amongst The Botanist's core values are ambition, expertise, integrity, individuality, happiness, and exploration. These reflect Brighton's social and commercial ethos and future ambitions.

335. Brighton is a unique city. Similarly, The Botanist's offering is undeniably stunning and unique - you do not find it in the standard repertoire of high street restaurant-bars. This much is clearly confirmed by the list of locations in which it operates.

336. With its high-end yet accessible and well-operated offering, The Botanist feels that it can further enhance the dining scene Brighton and provide a quality of experience that need not be limited to private members' clubs. The Botanist would provide creative and relaxed hospitality, set back from the main streets, within the unusual setting of a Botanical secret garden. This, as well as its multi-faceted influences in its food and drinks offering, reflects the nature of Brighton itself, and - we hope - will appeal to its residents and businesses.
337. As expected, (and intended), The Botanist has a mixed guest base, proudly welcoming people of all ages, backgrounds and from all walks of life. Patrons tend to be slightly older and professionals, reflecting the higher pricing points of the offering. But it is also popular amongst families, friends, business associates and corporate clients.
338. The Botanist also builds community not only within the business but also within the neighbourhoods in which it operates. Not only does it recruit locally, but it also takes great pride and invests heavily in their fit out, to seek to reflect the calibre of the offering and create the best possible vibe for its guests. If granted, the premises would benefit from a multi-million-pound investment, including refurbishment and set up costs.
339. As set out within this statement, The Botanist also believes that it has a longer-term role to play in the improvements sought via Brighton's various economic and tourist initiatives in terms of the impact it will have on the area as an experienced, considerate and (commercially and socially) responsible operator.

### **PART 3 (WIDER CONTEXT) - IMPLICATIONS OF NOT GRANTING THIS APPLICATION**

340. We would submit that that *not* granting the licence sought would have a negative impact on Brighton and the hospitality economy that it wishes to cultivate.
341. One effect of not granting the Application as sought (and imposing the CIA matrix) is that Brighton would not benefit from any of the positive contributions it has to make to Brighton.
342. Brighton also recognises that licensed premises have had to reinvent themselves in the light of the significant challenges posed by the pandemic recently. The press is full of stories of well-operated licensed premises closing in the light of such hardships and with an eye on the somewhat bleak financial future. This reinvention involves the overall style of the hospitality as well as the food and drinks offerings to guests. The Botanist's restaurant-bar offering means that it has stayed ahead of the curve.
343. The Botanist is neither a 'restaurant' nor a 'bar'. It reflects a hybrid hospitality model (restaurant-bar) that is increasingly adopted by other operators nationally. Their popularity is due to reflecting the variety and flexibility that people want from the hospitality trade when they go out. However, the dichotomous approach excludes the introduction of The Botanist's particular model, even though it reflects a move away from vertical drinking bars (and even though it would not add to the cumulative impact in the area).
344. By only granting a licence within the preferences of the matrix, The Botanist would be required to operate according to conditions that are far stricter than those imposed on many existing premises operating within BHCC's CIA (including, and in particular, many vertical bars and LNR venues). Such premises operate with later hours and, arguably, with greater and more obvious cumulative impact than the Botanist ever could. They are the reason the CIA has been introduced. They should not be the reason why the Application is not granted. The Botanist is not looking to operate on an equal footing with such late-night bars or pubs. The Botanist is simply asking for a

fair and reasonable licence which – in our view - can and should be granted on either of the bases set out at **paragraphs 360 – 369, below.**

345. However, this isn't an observation or a concern that applies to a single case. There are broader and more fundamental issues at stake that would be cast into the spotlight should the Application not succeed.

346. As the BVHES notes, in various guises, that “...but in a highly competitive marketplace no destination can stand still” and maintaining the status quo in a highly competitive marketplace is ineffective (page 4). It also raises the question of how it is going to achieve its long-term strategy. One response cited is to:

*“...develop a place brand that builds on the values in the destination brand and sharing it across all sectors including the tourism industry and applying it consistently across the city” (page 7)*

*“The city's brand must respond to market trends and be motivating to potential new growth markets across all sectors, and relevant whether Brighton & Hove is being talked about as a place to live, work, invest, study or visit. It is important to make sure that people see the city as more than just for day trips, more than just for seaside fun, more than just a summer or fine-weather destination, and more than just a party town. Its history of alternative thinking is key – and that has already been recognised in the current brand's “free-thinking city” and talk in the brand materials of “an independent spirit” and “the story of alternative thought” (BHVES, page 10)*

347. We would also invite the Panel to consider more widely the way in which the CIA Policy is being expanded and applied. In brief, it carries a very real risk that Brighton's hospitality industry will stagnate. This will have several very real and tangible ‘knock on’ effects:

347.1. Existing – and arguably less responsible – providers (with the later licences) will retain their licences and continue to operate for however long it is commercially viable to do so (in the current economic climate, it is unclear how long that will be). However, new premises, somewhat ironically, will only be permitted to operate according to old models of food-led premises and to earlier hours.

347.2. Operators that are less reputable than The Botanist and arguably contribute less to the aims of the BHES / BHVES would be permitted to operate within the preferences of the matrix.

347.3. The message going out to leading contemporary operators is that Brighton is closed to your business after midnight.

347.4. The Botanist understands why BHCC is resistant to the introduction of premises that operate purely as bars. However, we would respectfully observe that the clear preference for ‘Restaurant Conditions’ (or its variants) runs the risk that the character of night life in Brighton will stagnate.

347.5. The dichotomy applied by the Licensing Policy (restaurant or bar) not only fails to reflect the commercial reality of the new way of operating but will also have the effect of either forcing premises to operate according to old models (which are increasingly unpopular).

347.6. Similarly, innovative operators whose offering reflects modern dining habits will either be deterred or prevented from coming to Brighton.

347.7. Brighton will fall behind progress seen in other parts of the country and it will gain a reputation reflective of that position. As a result, Brighton will not be attractive to patrons, hospitality providers or other businesses that may be thinking of coming to Brighton.

347.8. There will be a stagnation in the local leisure economy.

347.9. This is *directly contrary* to the explicit aims of BHES and BHVES, and the views of the BHEP (who were consulted in relation to the CIA policy).

348. If the current Application is not granted despite the evidence within this statement, it is clear evidence that the CIA Policy is excluding the exact type of operator Brighton clearly wants to attract. This runs in direct conflict to the aims and ambitions of the BHES and BHVES. This leaves two very serious questions to be answered:

348.1. If not The Botanist, then who will be able to operate e.g. a restaurant-bar outside the matrix preferences?

348.2. And when (under what circumstances)?

349. Unless an operator is a private members club (*Soho House*), the answer appears to be whoever is fortuitous enough to identify an existing licence to either vary or reinstate. For example, an existing late-night bar / nightclub could be varied by either the current licence holder or (upon transfer) a new licence holder to lesser hours but still operate outside the matrix.

350. Indeed, through a series of FOI requests we sought to understand more about licensing applications. A series of FOI requests<sup>1213</sup> considered the pattern of grant and surrender of premises licences by year (from 2019 - 2022), area type (CIA, SSA and other) and premises type. Within the CIA area, 81 premises licences were granted (against 17 being surrendered).

351. Through FOI request<sup>14</sup> we sought to understand more about licensing applications (defined as either new or variations to existing licences) within the CIA, including their chances of successfully applying for hours that exceeded the preferences of the matrix. The response confirmed the following:

Application / year	2018	2019
Total no. of applications to BHCC (n=258)	134	124
Total no. of applications for premises within the CIA (n=132)	64	68
Applications seeking times beyond CIA and granted	5	12
Applications seeking times beyond CIA and refused	4	4
Applications within CIA matrix and granted (as applied for or with reduction in hours)	15	21

352. Of the premises seeking and being granted times beyond the CIA matrix in 2018, none were granted to restaurants. Only one was granted to a restaurant in 2019 (reinstating a lapsed licence).

353. Of the premises seeking and being granted times beyond the CIA matrix in 2018 - 2019, five were granted to pubs, bars and nightclubs typically on the basis that the premise licence had lapsed, a

<sup>12</sup> BHCC FOI requests reference no.s 11483206; 11672405; 11672405

<sup>13</sup> Further enquiries are ongoing in relation to the grant / surrender of premises licences within the area of direct relevance to the Application (Regency Ward and defined area around the proposed premises site).

<sup>14</sup> BHCC FOI reference no. 11896337

shadow licence was being sought or the premises was part of a relocation. Other types of premises were granted licences on the basis that they were time limited.

354. This would suggest that it is exceptionally difficult – if not impossible - for brand new premises to open in Brighton.

355. The result of sticking to this approach is that the positive changes to Brighton’s hospitality industry will take place more by luck and opportunity, and less by planning.

356. Even where support is strong in all other relevant council departments and initiatives, the perception is that even the best new operators can predict being refused a new premises licence to operate as they do elsewhere in the country (including other equally difficulty CIAs).

357. As a result, the investment, development and preparation involved in bringing new concepts to any area means that Brighton will be seen as too risky to those it most wants to attract.

358. Currently, the message going out is that Brighton is effectively ‘closed’ after midnight to all newcomers. However, the Botanist is an opportunity for BHCC to step outside the confines of the matrix and provide an operating model to the council and other businesses as to how the licensed trades can start to expand and keep up with demand in a tourism market that is nationally competitive.

359. Granting the Application would demonstrate that BHCC and Licensing Policy is responding to such trends and new growth initiatives.

## **CONSIDERATION OF THE APPLICATION - REBUTTING THE CIA PRESUMPTION AND PANEL DISCRETION TO GRANT THE APPLICATION**

### **Routes to granting the Application**

360. We have highlighted some flexibility regarding the criteria to be met under the CIA Policy. There are various routes by which the Application (as sought) can be assessed and granted. It is our view that whatever the route, the Panel would be justified in granting the Application.

### ***No Negative Cumulative Impact***

361. Firstly, the Panel *may* be content with the evidence that no negative cumulative impact will be caused. In this instance, the presumption does not even arise.

362. We would submit that the evidence does show that no negative cumulative impact will be caused. To summarise, this evidence is:

- 362.1. The analysis within this statement as to how The Botanist meets every relevant aspect of the Licensing Policy to demonstrate that it will promote the licensing objectives.
- 362.2. The operating style of The Botanist.
- 362.3. Consideration of the available statistics to consider the risk associated with the later hours sought by the Application. Operation Marble data point away from a terminal hour of midnight towards a later time (1am, 2am).
- 362.4. The operational history of The Botanist, including its ability to operate its model across at least ten different CIAs nationally.
- 362.5. The location, environs and transport links of this specific site.

- 362.6. Evidence from the independent report of Dr Philip Hadfield, confirming the current operation of two sites in CIAs (comparable to Brighton) does not add to negative cumulative impact.
- 362.7. Field research in Brighton confirming The Botanist will not add to any negative cumulative impact due to its operational style, clientele, location, transport links

### *Exceptional Circumstances*

363. Secondly, the panel may either decide to grant the Application because no negative cumulative impact is demonstrated (and which it may view as exceptional) and/or because there are other exceptional circumstances.

364. We consider that the weight of evidence of lack of cumulative impact is exceptional.

365. We consider that there are further exceptional circumstances as follows:

- 365.1.1. The Botanist meets each of the criteria for elements of applications/premises that the Policy looks favourably upon. The extent of such factors and the degree to which they are met are exceptional.
- 365.1.2. The Botanist meets a broad range of the 'exceptional circumstances' criteria referred to within the CIA Policy.
- 365.1.3. The Botanist also meets the criteria identified a selection of the determinations by the Panel as being exceptional.
- 365.1.4. The fact that the Application meets the full range of exceptional (and favourable) circumstances detailed in the Policy and in previous Panel determinations is exceptional in itself.
- 365.1.5. The fact that the location of the premises is demonstrably not a 'hotspot' is evidently exceptional within a CIA<sup>15</sup>.
- 365.1.6. The Botanist provides a unique confluence of a variety of characteristics that make it exceptional.

### *Departure from Policy*

366. Where the Panel disagrees that the test within the CIA Policy is met, it still has a discretion to depart from the Licensing Policy completely and grant the Application where there is just cause and wider reasons (in the public interest) for its grant<sup>16</sup>. This route allows the Panel to grant the Application even in circumstances where concerns regarding negative cumulative impact remain.

367. In this respect, we would invite the Panel to consider the wider benefits The Botanist would bring to the area and how it will promote the various initiatives BHCC is promoting to transform the area to benefit both residents and businesses.

368. The wider context includes:

- 368.1. The potential for The Botanist to drive regeneration in this area.
- 368.2. The natural fit of The Botanist with Brighton's culture.

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<sup>15</sup> Should the Panel disagree with the contention regarding the importance of the premises not being within a 'hotspot', it is important to stress that the central tenet of this statement remains that – regardless of whether the proposed site is in a hot spot or not – it will not add to the negative cumulative impact and there are other exceptional reasons to grant the Application.

<sup>16</sup> The CIA Policy is just that – it is (often prudent or expedient) course of action of principle adopted by someone or an organisation. It is not a 'law'. It is a tool, not a master, and should be used as such.

368.3. The impact of not granting the Application.

368.4. The balancing of competing interests at play<sup>17</sup>.

369. We would submit that these factors demonstrate that the appropriate and proportionate decision is to grant the Application.

## CONCLUSION

370. We would urge the Panel to conclude that there are various routes by which they could grant this Application, and to conclude that this is the correct approach.

371. The Botanist is exactly the type of responsible operator that Brighton should permit to trade according to the model submitted in this Application.

372. As the s.182 Guidance states, at paragraph 1.17:

*“Each application must be considered on its own merits...conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.”*<sup>18</sup>

373. And with good reason. Each application reflects a different operation and will be supported by a different body of evidence to address the concerns pertinent to each case. They must be judged, independently of all others, on its own merits and in relation to the licensing objectives and the Licensing Policy<sup>19</sup>.

374. The Panel is invited to consider the actual operation of the premises and its impact on the licensing objectives (including how the risks and concerns leading to the imposition of the CIA have been mitigated in this instance), rather than predict what these might be based on a label, which we say is distracting and unhelpful in The Botanist’s case.

375. There are no premises like The Botanist currently operating in Brighton

376. The Botanist is an exceptionally well managed premises. It is our view that its presence would actively assist in achieving the overarching and long-term aim of the Licensing Policy to reduce alcohol related harms, crime, disorder, and anti-social behaviour, and which underpin the implementation of the CIA Policy.

377. The Botanist is a unique, experience-led destination premises. It is a ‘secret garden’ of food and drink, where the emphasis is on quality rather than quantity of consumption. It is a scene of botanic theatre. It is an inclusive premises and its presentation and ethos direct patrons away from an attitude of excessive drinking. The Botanist has the potential to attract high-end customers, as well as other high-end businesses to Churchill Square and the wider City Centre (the “halo effect”). The Botanist operates across the country and is part of a multiple-award winning brand supported by highly trained staff. Bringing The Botanist’s concept to Brighton would further serve to add to the diversity and integration of mixed-use premises. It is a unique

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<sup>17</sup> For example, the need to balance economic concerns with the protections afforded under the licensing regime (Licensing Policy, paragraphs 1.4, 1.5.6, 1.7.1).

<sup>18</sup> See also BHCC Licensing Policy paragraph 3.1.9

<sup>19</sup> Therefore, a new licence should not be based on standards of existing or past licences, consistency across licensed premises. Neither would granting the Application set any kind of precedent either in law, or because of the unique characteristics of the Application.



and exciting opportunity for Churchill Square and the wider City Centre. Not only that, but it is also a good fit for Brighton. This is not just our view that that also of the ABRDN and BVEP.

378. The Botanist does not operate as a 'standalone' premises. It is an active member and contributor to its local communities. It is a responsible employer. It invests in people, community support and the area. It works with residents and other businesses to ensure harmonious living and working alongside each other. It invests heavily in its premises and takes responsibility for its fit out and design to ensure all planning and licensing requirements are met, and it can operate without conflict.
379. NWTC is a responsible and considerate operator that wishes to bring its unique model of hospitality to Brighton. NWTC has traded The Botanist model of operating for over 10 years nationally and in several challenging locations (including at least ten CIAs) without undermining the licensing objectives and without adding to any areas of negative cumulative impact.
380. The Botanist is not a night club or a major event venue. It is not a vertical drinking bar. It is a hybrid restaurant-bar that is predominantly food-led. As such, its premises do not operate as a traditional restaurant or a bar and the licence sought reflects the conditions that are appropriate to this hybrid model operating in BHCCs' CIA.
381. The way to address problematic areas is not to bar access to responsible operators who can raise the standards of licensed premises. We believe that The Botanist will provide an attractive, food-led alternative to other premises in the area and be an example of exactly the premises that BHCC wishes to encourage.
382. Accordingly, we would invite the Panel to consider the confluence of all of the evidence and other commercial factors set out within the statements accompanying this Application as a unique set of circumstances in Brighton's commercial growth. We would respectfully submit that this provides more than sufficient (dare we say, exceptional) reason to depart from the CIA Policy entirely, even if there remains a concern that the premises may add to the cumulative impact (which The Botanist disputes). In so doing, we invite the Panel to adopt a broader and longer-term view to The Botanist's presence in Brighton.
383. Whilst cumulative impact is clearly a concern for all, pre-emptive steps should be taken, whilst the opportunity is there, to start to change the face Brighton and support businesses that are willing and able to operate responsibly in Brighton and Hove. With a keen eye on the future, it is foreseeable that there will be a depletion of licensed premises in Brighton. This will be largely due either to commercial or regulatory forces. It is respectfully suggested that - rather than waiting - steps should be taken as soon as possible (now) to start re-configuring Brighton according to the vision set out in the BHES and BHVES.
384. The Botanist is knocking on Brighton's door now and asking to be part of its future. Even if concerns regarding cumulative impact remain, this is an opportunity to put in place an experienced and responsible operator that will grow with Brighton's plans for change, impact positively on the area and outlast current problematic premises. We are inviting the Panel to consider the long-term benefits of The Botanist's presence in Brighton. After all, that is what the BHES and BHEVS are all about. Otherwise, it is unclear under what circumstances Brighton would welcome The Botanist (and other similar operators). It is certainly unclear when such circumstances might arise in the future.
385. We would like to stress that observations regarding the CIA Policy's underpinnings are not made with the intention to criticise the CIA Policy, the intentions behind it or those that deal with the challenges Brighton faces. Those challenges are very real and it is clear that there is a great will

within BHCC, and responsible authorities, residents and other organisations to pull together to tackle the issues Brighton faces. The Botanist would like to be part of that solution and we believe it can be. We simply hope that the observations made in this statement provide reassurance that the proposed site is not within a 'hotspot' and, furthermore, granting the licence sought will not add to the various impacts Brighton currently has to manage.

386. We would invite any objection to or refusal of the Application to address directly the evidence regarding the above reasons to grant.

387. It is our view that granting the licence by any of the routes available to it would be in accordance with the Licensing and CIA policies, and wider community interests.

388. In the light of the evidence within this statement, The Botanist is confident that the conditions and restrictions proposed in the operating schedule are a more than effective solution to any potential concerns.

389. We would respectfully submit that the grant of the premises licence does not require the imposition of any additional conditions and to do so would be unreasonable in light of the evidence before the Panel.

390. By granting this Application, the Panel will allow a responsible operator to open a well-run, well-managed and attractive business that will be an immediate and long-term asset to the area.

391. The refusal of this Application will clearly be a significant detriment to Brighton and its plans for change.

392. We note that the licensing authority supports high quality establishments within the in the City Centre. This is clearly one such premises. NWTC would be grateful for the council's support by its approval for the Application before it.

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