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Licensing Authority: Brighton and Hove City Council
Applicant: New World Trading Company (UK) Ltd
Application: Premises Licence
Proposed premises: The Botanist
Address: Ground and 1st Floor Churchill Square Shopping Centre, Brighton

APPENDIX 19

Brighton and Hove City Council Determination Notice (Planning Permission) dated 13 February 2023

Application No: BH2022/01639

Montagu Evans
70 St Mary Axe
London
EC3A 8BE

BRIGHTON AND HOVE CITY COUNCIL
Town and Country Planning Act 1990 (as amended)
GRANT OF PLANNING PERMISSION

Address: Unit MSU 7 Churchill Square Brighton BN1 2TF

Description: Change of use of part ground, first and roof level to provide a food and drinking establishment (sui generis) including internal reconfiguration, new roof level outdoor seating areas, new shopfronts and associated works.

In accordance with the application and plans submitted to the Council on 16 May 2022 and SUBJECT to compliance with any condition(s) specified hereunder:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location Plan	MSU7- CDA-XX- 00-DR-A- 020001	P2	16 May 2022
Block Plan	MSU7- CDA-XX- 00-DR-A- 020002	P2	16 May 2022
Proposed Drawing	MSU7- CDA-XX- ZZ-DR-A- 020007	P3	16 May 2022
Proposed Drawing	MSU7- CDA-XX- 00-DR-A- 020008	P4	8 December 2022
Proposed Drawing	MSU7- CDA-XX-	P4	8 December 2022

	01-DR-A-020009		
Proposed Drawing	MSU7-CDA-XX-00-DR-A-020010	P5	8 December 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020011	P4	8 December 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020012	P4	8 December 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020013	P3	16 May 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020014	P3	16 May 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020015	P2	16 May 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020016	P2	16 May 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020017	P2	16 May 2022
Proposed Drawing	MSU7-CDA-XX-XX-DR-A-020018	P2	16 May 2022
Proposed Drawing	6322-CBC-00-RF-DR-M-57001	P01	17 May 2022

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

Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS 4142:2014 (or the relevant updated Standard). In addition, there should be no significant low frequency tones present.

Reason: To safeguard the amenities of the occupiers of neighbouring properties and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

4. The use hereby permitted shall not be carried out except between the hours of 09:00 and 01:30 on Mondays to Sundays, including Bank or Public Holidays.

Reason: To safeguard the amenities of the locality and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

5. The rooftop terrace hereby permitted shall not be accessible to customers between the hours of 00:00 and 09:00.

Reason: To safeguard the amenities of the locality and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

6. The development hereby permitted shall not be occupied until a Roof Terrace Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Roof Terrace Management Plan should set out the measures that will be taken to minimise the impact of the roof terrace on the amenity of neighbouring properties and uses. The Roof Terrace shall be operated in accordance with the approved Management Plan thereafter.

Reason: To safeguard the amenities of the locality and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

7. Amplified music or other entertainment noise from within the premises shall not be audible at any residential premises between the hours of 23:00 and 09:00.

Reason: To safeguard the amenities of the locality and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

8. No takeaway or delivery service shall be operated by the Sui Generis food and drinking establishment hereby permitted without the prior submission to and approval in writing by the Local Planning Authority of a Delivery Management Plan. Any deliveries shall thereafter be carried out in accordance with the approved plan.

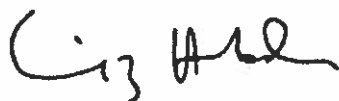
Reason: In the interests of the amenity of the area and to ensure that no adverse transport impacts arise from the development, to comply with Policies DM20 and DM33 of the City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. The applicant is advised that this planning permission does not override the need to obtain a licence under the Licensing Act 2003. Please contact the Council's Licensing team for further information. Their address is Environmental Health & Licensing, Bartholomew House, Bartholomew Square, Brighton BN1 1JP (telephone: 01273 294429, email: ehl.safety@brighton-hove.gov.uk, website: www.brighton-hove.gov.uk/licensing).

Dated this 13 February 2023



Liz Hobden
Head of Planning
City Development and Regeneration

NOTE: This decision does not give approval of plans for the purposes of the Building Regulations 1991. If an application for such approval has been made a decision has or will be given separately.

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APPENDIX 20

The Botanist's soft drinks menu

NON-ALCOHOLIC COCKTAILS

- ☐ **MIND MOJITO**\$5.50
Lyle's Dark Cane Spirit, apple juice, strawberry purée, mint, topped with soda
Get your energy and focus recharged and rehydrated during the day! No sugar or artificial sweeteners.
- ☐ **MOUNTAIN BLOSSOM MARTINI**\$5.95
Everleaf Mountain, strawberry syrup, apple juice and foam
- ☐ **HOMEMADE LEMONADE**\$4.95
Everleaf Marine, lemon juice, elderflower cordial, bay leaves, topped with soda
- ☐ **EVERLEAF RHUBARB SPRITZ**\$4.95
Everleaf Forest, rhubarb and sage cordial, topped with Fever-Tree Ginger Ale
- ☐ **FOREST SPRITZ**\$5.95
Everleaf Forest, apple & cardamom shrub, quince cordial and soda

punchy

SOPHISTICATED, PREMIUM LOW CALORIE SOFT DRINKS MIXED WITH ALL NATURAL INGREDIENTS AND FEEL GOOD FLAVOURS. (GF)

- ☐ **PUNCHY DRINKS** Cans, 250ml * *Bottle Recommended*\$4.25
Planet friendly and plastic free, with a splash of Vitamin D to help you catch the sun all year round. Gluten-free, vegan, low calorie and all natural!

Choose from: Blood Orange, Bitters and Cardamom
Cucumber, Yuzu and Rosemary | Peach, Ginger and Chai

SOFTS

- ☐ **COCA-COLA** Bottles, 330ml\$3.75
Choose from: Original Taste, Diet Coke or Coke Zero
- ☐ **APPLETISER** Bottles, 275ml\$3.25
- ☐ **FANTA** Bottles, 330ml\$2.95
- ☐ **FEVER-TREE** Bottles, 200ml\$2.95
Indian Tonic, Light Tonic, Elderflower Tonic, Mediterranean Tonic, Aromatic Tonic, Cucumber Tonic, Sicilian Lemon Tonic | Ginger Beer, Ginger Ale | White Grape & Apple Cider, Mexican Lime Soda, Blood Orange Soda, Raspberry & Orange Blossom Soda
- ☐ **EAGER FRUIT JUICES**\$3.75
Small \$2.25 / Large \$3.75
Choose from: Apple, Orange, Cranberry or Pineapple
- ☐ **REDBULL** Cans, 250ml\$3.25
Choose from: Original, Sugar Free, or ask about our flavours

TRIP

CBD INFUSED

DELICIOUSLY REFRESHING, LIGHTLY SPARKLING AND INFUSED WITH NATURAL ADAPTOGENS FOR STRESS FREE SIPPING. (GF)

- ☐ **TRIP** Cans, 250ml * *Bottle Recommended*\$4.25
Infused with CBD to create a moment of calm with range of sophisticated flavours that taste as good as they make you feel. Gluten-free, vegan, low calorie and no added sugar!

Choose from: Elderflower Mint, Peach, Ginger or Lemon Basil

APPENDIX 21
Layout of premises
(colour-shaded bar, internal seating and external
seating areas)

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APPENDIX 22

District Judge's determination in

Brewdog Bars Ltd v Leeds City Council

APPENDIX

IN THE LEEDS MAGISTRATES COURT

BETWEEN :-

BREWDOG BARS LIMITED

Appellant

- and -

LEEDS CITY COUNCIL

Respondent

NOTE OF DECISION OF
DISTRICT JUDGE ANDERSON
6th SEPTEMBER 2012

1. No doubt when the 2003 Licensing Act came into being, no-one foresaw the emergence of an operation such as Brewdog. They are a Scottish company specialising in craft beers with a devoted clientele. They do not operate large public houses selling cheap lager or cheap food. They have outlets in other cities including in cumulative impact areas where they operate well and without police objection. Now they seek to come to Leeds.
2. The company takes a didactic approach, with books on brewing, and customers invited to watch instructional videos playing at their premises. Their customers could be described as “alcohol geeks.” They are not run of the mill or everyone’s cup of tea, but there is a demand for outlets selling a good quality of beer.
3. If they had identified a site outside the City’s Cumulative Impact Policy area, there is absolutely no doubt that they would already have their licence. They are an intelligent, well-run company, and in a short space of time they have shown themselves to be an effective operator.
4. However, this site does fall foul of the Cumulative Impact Policy which was introduced with the best possible motives to control the grant of licences to new premises. There is a presumption within it that new applications shall not be granted, unless the applicant can discharge the reverse burden in establishing that they will not add to the cumulative impact, and that is the issue in this case.
5. I can deal with one conclusion briefly, the issue of noise and nuisance. The Court heard evidence from Miss Ludford that she had gone to the trouble of circulating a letter to all residents in the neighbouring block of flats but received no objections. Against that was the more general evidence of Mr Kenny, which showed noise complaints to the Council. But most of those complaints were amplified music and Brewdog does not seek to be able to provide amplified music and so there is no risk of noise from regulated

entertainment emanating from the premises. The capacity is small and any noise generated as people leave the premises will be very marginal indeed. It seems to me that the premises of this public house would not be a significant impact on the Cumulative Impact area regarding public nuisance and so I do not intend to mention this further.

6. That leaves the more important objection of the Police and the potential impact of another premises on the levels of crime in the area. There are a number of clubs around the Corn Exchange and the late hours they trade, the marketing operations and the type of customer they attract means that there is regular disorder and violence. They run with late hours, attracting a different sort of customer. Their presence causes violence. That is a sad fact of modern life. The situation cannot be assisted by the sort of promotion I saw advertised by Chilli White with cheap vodka and free vodka, but they have their licence.
7. It cannot be the policy of the Cumulative Impact Policy to bring the iron curtain clanging down to allow such clubs to continue to trade while shutting out Brewdog which attracts more discerning customers who do not engage in binge drinking, though I do accept the requirement of the Cumulative Impact Policy is to ascertain specifically whether there will be impact.
8. If I accept, as I do, that the enterprise sells expensive beers in expensive measures, then I think I can conclude that the people likely to be attracted are not “get it down your neck” drinkers but rather better heeled customers. The type of clientele a premises attracts has a material part to the play in the decision, because if I am not worried about their clientele and am impressed by the running of their bars elsewhere, it follows that it is unlikely that their clientele will have any adverse impact on the area here.
9. The Police argued that customers may accidentally cause impact. Their argument that customers could get caught up in a melee caused by others is not a valid one. A simple increase in footfall isn’t a rational reason to refuse entry to Leeds by Brewdog.
10. I have listened carefully but have heard nothing which causes me to believe that the application should not be granted. I am satisfied that the appellants have discharged the burden of proof placed on them.
11. I accept that the Committee and the Police did their best but their application of the Policy was too rigid. They seemed to take the view that man was made for the Policy, when the Policy should be made for man.
12. The appeal is upheld, and the licence granted in the terms set out in the bundle served on the Court.

