

FAO: Jean Cranford

Brighton & Hove City Council
Environmental Health & Licensing

Sent by email only

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18 December 2015

Our Ref: RPB/26508/1907

Dear Sirs

Brighton & Hove Statement of Licensing Policy 2016 Consultation

We act for Sainsbury's Supermarkets Ltd of 33 Holborn, London EC1N 2HT ("Sainsbury's"). Please accept this letter as a response to the above Consultation on behalf of Sainsbury's.

We are responding to the Consultation as a representative of a local business. Sainsbury's owns and operates ten supermarkets in Brighton & Hove.

The responses by Sainsbury's to the questions set out in your Consultation Survey are as follows:

Q1. We wish to make specific and general comments.

Q2a We strongly disagree.

Q2b It will militate against an application being considered on its merits. It is wrong for the Policy to prescribe what may or may not be considered exceptional circumstances: that is a decision to be taken on the consideration of any given application. It is wrong for the Policy to exclude 'good management' from the exceptional circumstances capable of rebutting the cumulative impact policy presumption.

Q2c We do not find it easy to understand this policy, not least because of internal contradictions. It is informed by assertions that are not evidence-based. We think that it is wrong, and contrary to principle, for an applicant for a licence to be required to prove a negative. For an applicant to be required to prove that his application "will have no negative Cumulative Impact" places a burden on him which it is impossible to discharge. We believe that the net outcome of this policy will be refusals of licences upon no or insufficient grounds; a stagnation of licensed premises in Brighton; and a reluctance of operators to invest in the town.

Q3a. We strongly disagree.

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- (I) We are concerned that the Council may not have understood the documents it has relied on in formulating this approach.
 - (II) We do not find those documents as supportive of the Council's approach as the Council would appear to think they are.
 - (III) We operate as supermarkets with off-licences, and make no comment about the inclusion/exclusion of other types of premises.

Q3b. We strongly disagree. The stated times are arbitrary.

Q3c. The approach taken by the Council in the "notes" again militates against applications being considered on their merits. The occasional references to "individual merit" are formulaic – we believe them to be the mere rehearsal of words, the intended inference from them running contrary to our experience when making applications in Brighton, to the policy-presumption of refusal, the prescriptive list of what may or may not amount to exceptional circumstances, and the suggested pool of conditions.

Q4.

- (I) We are not satisfied that the assertions made in sections 3.5 and 3.6 are evidence-based.
- (II) 3.5.1 equates to an extra-statutory creation of 'the promotion of health' as a 5th licensing objective.
- (III) We do not understand what is meant by 3.5.2.

Q5. The Council has paid insufficient regard to the principles set out in paragraph 13.9 - 13.13 of the Guidance issued under section 182 of the Licensing Act 2003. The draft policies are over-prescriptive and will impede decision-makers from doing what is right on a case-by-case basis. We are concerned at the extent of un-evidenced assertion, particularly (but not exclusively) in the adoption of the "matrix approach". Where evidence *is* relied on:

- (I) It is frequently unverified; and/or
- (II) It has not been understood by the Council; and/or
- (III) It is 'cherry-picked' to support predetermined policy; and/or
- (IV) Reliance on it not justified; and/or
- (V) Contrary evidence has been ignored.

In addition, we do not understand the position taken in the draft policy as to the relevance of planning permission on an application for a premises licence under the licensing Act 2003. Neither do we understand what significance is to be attached to the alleged incidents of crime in "central Brighton".

We think that the conclusions drawn from the various statistics relied on (in particular from a comparison of local and national statistics) are irrational.

It is unclear whether 'Annex B' forms part of the draft policy; no mention of it is made in the body of the document. If it is intended to be part of the policy, we disagree with its inclusion.

We believe that 'pools of conditions' militate against applications being determined on their individual merits.

Yours faithfully

A handwritten signature in black ink, appearing to be the initials 'Wh'.

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