

**Boston Borough Council**  
**Licensing Act 2003**  
**Application for a Premises Licence**  
**Decision Notice**

Date of hearing	1000hrs – 25 October 2019
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Members of Sub-Committee	Councillor Jonathan Noble Councillor Tom Ashton Councillor Stephen Woodliffe
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Applicant(s) Name	Mr Uldis Austrums
Premises Address	Food Stop, 1 Vauxhall Road, Boston
Represented by	Mr Byatt
Date Application Received	2 September 2019
Details of Application	Application for a premises Licence under the Licensing Act 2003.

**The Parties:**

Mr Byatt has, on behalf of the applicant Mr Austrums, submitted an application for a premises licence for Food Stop, 1 Vauxhall Road, Boston.

The application submitted is for the sale of alcohol for consumption off the premises between the hours of 0800hrs and 2200 hours every day. The opening hours being the same.

Representation has been received from the Chief Officer of Police.

**Policy and Guidance:**

In reaching its decision, the sub-committee has considered the statutory guidance issued under S182 of the Licensing Act 2003 and Boston Borough Council's Statement of Licensing Policy.

**Licensing Objectives:**

The sub-committee has found that the licensing objective of the prevention of crime and disorder public safety, the prevention of public nuisance and the protection of children from harm is relevant to this application.

**Decision:**

The sub-committee has decided to reject the application.

**Reasons:**

The reasons for the sub-committee reaching this decision are as follows:

The sub-committee has read and heard all of the information before them.

The sub-committee is aware of and has taken into account any implications that may arise from the Human Rights Act 1998.

The sub-committee in reaching its decision has had due regard for its public sector equality duty under section 149 of the Equality Act 2010 and consider that in reaching their decision to reject the premises licence that they have fulfilled their duty under the Act.

In reaching their decision, the sub-committee has read all of the papers before them, and in addition heard from Fiona White, Licensing & Land Charges Manager and Mr Byatt on behalf of the applicant, the applicant himself and Mr Ahmadi (who appeared as a witness for the applicant), and considered the representation received from the Chief Officer of Lincolnshire Police. Sgt Enderby and PC McConville attended the hearing to represent the police.

At the start of the hearing, Lincolnshire Police made a request to the Sub-Committee to exclude the public and press (including the applicant, his witness and his agent) from the hearing under regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 on the

basis that they had additional information to supplement their representation that was sensitive and confidential. The Police made the argument that the public interest in excluding the applicant and his representatives from a portion of the hearing outweighed that applicant's right to hear the information and to reply to it.

Mr Byatt argued on behalf of his client, that the applicant was entitled to hear the full argument against their application, and to reply.

The Sub-Committee retired to consider the Lincolnshire Police's request, and after due consideration decided that it was in the public interest to grant the request, and to exclude the applicant from a portion of the hearing.

During the public portion of the meeting, it was confirmed to the Sub-Committee on behalf of the applicant, that this was a genuine application, submitted with the intention of starting up a small business to better his family. The Sub-Committee heard that the applicant has obtained a personal licence, and how his girlfriend has three years experience of working at a licensed premises but that she does not have a personal licence. The applicant is not yet sure whether his girlfriend will also work at the premises.

Mr Byatt, along with Mr Ahmadi, explained to the Sub-Committee how the applicant came to be aware of the premises in February 2019 and how despite attending a meeting in Nottingham to make further enquiries about acquiring the premises, he had insufficient funds, and so was unsuccessful in his first attempt to take on the premises.

The Sub-Committee then heard how Mr Ahmadi had been successful in obtaining the lease for the premises, but had been unsuccessful in his application to obtain a premises licence. It was confirmed to the Sub-Committee that the applicant learnt that the premises was back on the market in July 2019, and took steps to acquire it from Mr Ahmadi, as he now had the necessary funds from the sale of a property in Latvia. The transfer of the business was completed on the 15<sup>th</sup> July 2019, but Mr Ahmadi continued to run the premises until the lease was transferred on the 1<sup>st</sup> September 2019.

It was stressed to the Sub-Committee that the applicant had entered into the transaction of acquiring the business from Mr Ahmadi with the knowledge that the premises had a licence albeit one that was currently the subject of an appeal. The Sub-Committee heard from Mr Byatt how his client was very annoyed to learn that this was in fact not the case, and that an application would need to be submitted for a licence.

The applicant told the Sub-Committee that his application was genuine, and he did not think he should have to pay for someone else's mistakes.

When questioned by Members of the Sub-Committee and the Police, it was confirmed that the applicant and Mr Ahmadi only have a business relationship based on the purchase of Mr Ahmadi's business, which had only begun at the meeting in Nottingham in February 2019.

The Sub-Committee then heard from Lincolnshire Police how they had received notification of the application, and in undertaking their standard due diligence had contacted the applicant to discuss their application. Emails were exchanged and a face to face meeting took place. The Police's aim in carrying out their checks was to ensure that the application was legitimate because notwithstanding this application being for a new premises licence, the Police were aware of the premises from Mr Ahmadi's unsuccessful application in March 2019, and of Mr Ahmadi's history of associations with criminality at licenced premises- indeed the Police annexed a decision of the licensing Sub-Committee refusing to name Mr Ahmadi as Premises Licence Holder and Designated Premises Supervisor at this premises, and referenced Mr Ahmadi's associations with the Tatro premises – where he was removed as DPS, in part due to illegal cigarettes being discovered as being sold.

The Police informed the Sub-Committee that they had encountered a considerable amount of conflicting information about the extent of the relationship between Mr Ahmadi and the applicant. Lincolnshire Police told the Sub-Committee that they had received information that the applicant and Mr Ahmadi had attended the meeting in February together, with the joint intention of acquiring the premises, and further how when it became clear that the applicant did not have the necessary funds, that Mr Ahmadi had initially offered to be a guarantor before subsequently changing his mind and taking on the lease himself. Mr Ahmadi denied this when asked under caution.

Lincolnshire Police also explained to the Sub-Committee how initially the applicant had denied having any dealings with Mr Ahmadi prior to July 2019 and it was only when the Nottingham meeting in February was put to him that he confirmed they had met there also. The Police also detailed that they felt there was a much closer connection between Mr Ahmadi and the applicant than being disclosed on the basis that they used the same solicitor to handle the legal work for the applicant acquiring the lease and the business,

and because some of the paperwork was submitted with Mr Ahmadi's details, when there was no need- the applicant had the information at his disposal also notwithstanding the conflicting information given to the Police previously, at the hearing the applicant confirmed to the Sub-Committee that he had met Mr Ahmadi in February 2019 at the meeting in Nottingham.

It was at this stage, that the applicant, his agent, Mr Ahmadi, and a democratic services apprentice left the hearing. Lincolnshire Police, then presented additional information to the Members to substantiate their representation in private session. The Sub-Committee considered the information and asked the Police for clarification on some points.

The hearing was then returned back into public session, and Mr Byatt confirmed that the applicant wished to offer some additional conditions relating to the strength of the beer/larger/cider that could be sold, and regarding not selling single cans by way of an amendment to their application.

In reaching their decision, the Sub-Committee had due regard for all that they have read and heard, the s.182 Guidance and Boston Borough Council's licensing policy.

The Sub-Committee are well aware that of paramount importance to the determination of the application is the safeguarding of the licensing objectives.

Undertaking the role of PLH and DPS comes with ultimate responsibility for the premises, and the Sub-Committee have grave concerns in relation to the applicant's ability to fulfil this role and to promote and safeguard the 4 licensing objectives; by his own admission he has no experience in running licensed premises, and his girlfriend whilst has 3 years experience of working at licenced premises, she does not have a personal licence. Further the applicant wasn't able to confirm that she would be working at the premises with him.

The above being the case, the Sub-Committee also have concerns over what role Mr Ahmadi may have at the premises. There is some discrepancy as to the extent of the historic relationship between the applicant and Mr Ahmadi, but additionally it was explained to the Sub-Committee that Mr Ahmadi was helping out the applicant with his licensing application. The Sub-Committee do not consider it inconceivable that given the applicant's lack of experience, that he would not look to call upon Mr Ahmadi for future assistance in running the premises if a licence were granted, and given that Mr Ahmadi has previously been found to have not only failed in the role of DPS and been removed from the Tatry premises licence, there had also been illegal cigarettes being sold from the

Tatry whilst it was under his control as DPS. Additionally, the Sub-Committee were mindful of refusal to grant Mr Ahmadi the premises licence for this premises in March 2019, and for all of the reasoning and consideration to that decision.

Taking all of the above into consideration, the Sub-Committee have therefore decided that on the balance of probabilities the licensing objectives would not be safeguarded nor promoted, and accordingly refuse this application.

### **Appeal Provisions**

The sub-committee would like to remind the parties that there is a right of appeal to the Magistrates' Court under Section 181 of the Licensing Act 2003. The circumstances in which parties may appeal are detailed in Schedule 5 to the Licensing Act 2003.

The appeal must be commenced by notice of appeal to the Justice's Chief Executive for the Magistrates Court within the period of 21 days beginning with day on which the party was notified by the Licensing Authority of the decision being appealed against (i.e. the date of this decision notice).

Appeal should be made to Lincoln Magistrates' court at 358 High St, Lincoln, LN5 7QA

Upon hearing an appeal the Magistrates' Court may:

- a) Dismiss the appeal,
- b) Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
- c) Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court,

And make such order as to costs it thinks fit.

Signed:

Fiona White  
Licensing & Land Charges Manager  
On behalf of the Licensing Sub-Committee  
29 October 2019