

**Boston Borough Council
Licensing Act 2003
Review of a Premises Licence
Decision Notice**

Date of hearing	15 January 2020
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Members of Sub-Committee	Councillor Frank Pickett Councillor Stephen Woodliffe Councillor Colin Woodcock
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Premises Licence Holder	Boston European Supermarket Limited
Premises Address	Boston Supermarket, 8 George Street, Boston
Date Application Received	21 November 2019
Details of Application	Review of a premises licence in accordance with the Licensing Act 2003 – submitted by The Chief Constable of Lincolnshire Police.

The Parties:

Lincolnshire Police requested a review of the Premises Licence for Boston Supermarket, 8 George Street, Boston on 21 November 2019. No representations in respect of the review were received. The Premises Licence holder is Boston European Supermarket Limited and the Designated Premises Supervisor is Aleksandra Citko-Plaga.

Policy and Guidance:

In reaching its decision the sub-committee has considered the statutory guidance issued under section 182 of Licensing Act 2003 and Boston Borough Council's Statement of Licensing Policy.

Licensing Objectives: The sub-committee has found that the licensing objectives of the prevention of crime and disorder, public safety and the protection of children from harm are relevant to this application.

Decision and Reasons:

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 today, that they have had due regard for the duty placed upon them by s.149.

The sub-committee has heard from the Licensing & Land Charges Manager, Lincolnshire Police and Miss Cartmell on behalf of the Premises Licence Holder, and Mr Karim (as representative and sole director of Boston European Supermarket Limited being the Premises Licence Holder).

In reaching their decision the sub-committee has had due regard for all that they have read and heard, along with the Licensing Act 2003, s.182 statutory guidance, the licensing objectives and Boston Borough Council's Licensing Policy.

The sub-committee has noted that at a previous review hearing in August 2019 in respect of the Premises Licence two conditions were imposed requiring as follows:

- A maintenance contract will be entered into and at all times be valid

with a qualified electrician. This contract should be made available to the police and licensing authority on request.

- In so far as it complies with access requirements by the utility company, the cupboard where the electricity supply is kept will be locked and 2 keys supplied. One key will be retained by the electrician named in the maintenance contract. The other key to be retained by a named responsible person. The names of the key holders to be made available to responsible authorities upon request.

The sub-committee has further noted that at the August review hearing how Miss Cartmell and Mr Karim had sought to reassure the sub-committee that the issues encountered at the premises were not his fault because he had been ill and his son had been in charge. The sub-committee heard that Mr Karim was better and looking to step fully back in charge of the premises, and also how there were no other issues encountered at the premises other than the illegal abstraction of electricity for which his son was largely responsible. The sub-committee in that instance decided to also impose a strict warning as to future conduct as part of their decision in August 2019.

At the hearing today, the sub-committee has heard how there had been a multi-agency visit undertaken at the premises in October 2019. The police outlined to the sub-committee how the visit revealed a number of issues, namely;

- Illegal workers were found to be working at the premises
- Bottles of alcohol were found on the shelves and in the store room which were not displaying a UK duty stamp in contravention of the

Customs and Excise Management Act 1979

- The premises was contravening the conditions imposed at the August 2019 review hearing
- Illegal medicines were being offered for sale at the premises some of which were expired, some of which did not display English original packaging, and some of which should not be offered for general sale without the assistance of a Pharmacist or only after having been prescribed by a qualified medical practitioner
- Various issues of non-compliance in relation to fire safety measures which resulted in an enforcement notice being issued to the Premises. The sub-committee does however note that these issues have since been resolved to the satisfaction of the Fire & Rescue Service

The sub-committee noted that a civil penalty of £10,000 has been issued in relation to one of the individuals encountered working illegally at the premises. It was put to the sub-committee that the notice is being appealed by Mr Karim. Miss Cartmell outlined to the sub-committee that Mr Karim is an experienced business owner having previously run a business in Wakefield. Miss Cartmell explained that Mr Karim had kept the non-UK duty paid alcohol on advice from HMRC officers following a visit in 2018, and confirmed that the Premises Licence Holder had sent a letter to HMRC following the seizure of the alcohol after the October 2019 visit. Mr Karim explained to the sub-committee that the alcohol was on the shelves for sale because he had purchased the alcohol from a reputable wholesaler and had receipts. He confirmed that he had explained as such to officers both at the 2018 and 2019 visits to the premises. Mr Karim further set out to the sub-committee how he had also legitimately

purchased the medicines from a reputable wholesaler, and had therefore assumed it was fine to sell them at the premises. He confirmed that he had not sought any assistance or information from a professional and that he had sold medicines at his business in Wakefield also. The Police supplied to the sub-committee a statement from David Williams which gave information on the different legal classes of medicines, and an overview of what had been found at the premises. It was noted how none of the medicines had a Product Licence number on them.

The sub-committee heard how upon visiting the premises, the Police had found the key to the electricity cupboard in a cup on top of a filing cabinet. Mr Karim explained to the sub-committee that he is in charge of the key, but the key is also needed to access the room where the electricity meter is kept for other reasons, and so there are times when he cannot keep it in his possession. He explained that works are on-going at the premises in relation to moving switches etc. and this was the invoice found at the premises by the Police and included in their representation to the sub-committee.

In reaching their decision, the sub-committee has had due regard for all that they have read and heard. The sub-committee is aware that it is an offence to keep smuggled goods on licensed premises, and know that there is a high standard when issuing a civil penalty notice in respect of illegal workers. The sub-committee has had regard for the fact that at the August review hearing they were assured that there were no other issues at the premises of concern, and how Mr Karim was now well and as the sole director of the Premises Licence Holder would ensure that the premises would be run legitimately. The

sub-committee was therefore very disappointed to note the number of issues encountered at the premises in October 2019, a relatively short period after August. Further, the sub-committee was alarmed to note that many of Mr Karim's answers to their questions were "I wasn't aware", "no one informed me", and the assumptions he had made in running his business on licensed premises without conferring with an expert for assistance. The sub-committee felt that Mr Karim sought to blame others for not helping him for some of the issues encountered at the premises.

The sub-committee has accordingly decided to revoke the premises licence. The sub-committee considers that the keeping of smuggled goods and employing illegal workers are very serious issues that seriously brings into question the Premises Licence Holder's regard for the prevention of crime and disorder licensing objective. Indeed the s182 Guidance advises that revocation of a premises licence should be considered where such criminal activity is encountered at premises. The sub-committee also has very serious concerns as to the ability of the Premises Licence Holder to uphold the Licensing Objectives of the prevention of crime and disorder, public safety and the protection of children from harm in selling illegal medicines (some of which were aimed at children and infants), which Mr Karim (as sole director of the Premises Licence Holder company) has admitted to doing. Additionally, on the balance of probability the sub-committee has no confidence in the Premises Licence Holder's ability to run the premises legitimately and responsibly, and in accordance with the Licensing Objectives, not only because of the criminal activity encountered at the premises (i.e. Mr

Karim's admission to the selling of illegal alcohol and medicines, and employing illegal workers) but also because the response of the person running the business is that he is largely reliant on someone else stepping in and assisting him, and not seeking out any further information to clarify the law before proceeding with the running of the business. The sub-committee does not consider this to be the actions of a responsible Premises Licence Holder and are not satisfied that a reputable Premises Licence Holder would simply rely on purchasing products from a wholesaler as reason enough to sell in the premises. The sub-committee is aware that the Premises Licence Holder was previously issued with a strict warning as to future conduct.

The sub-committee also considers that the condition added to the premises licence in relation to the securing of the electricity meter and keys has not yet been satisfactorily complied with, despite the Premises Licence Holder having ample time to do so. The sub-committee therefore considers this to be another factor in their decision today.

The sub-committee was asked by Miss Cartmell to consider suspending the premises licence, however in coming to their decision to revoke the licence the sub-committee is minded that given the issues encountered at the premises, and the role Mr Karim (as sole director of the Premises Licence Holder company) has played in the occurrence of those issues, that the only reasonable and proportionate option available to them to safeguard and promote the Licensing Objectives is revocation of the premises licence.

Appeal:

The Premises Licence Holder and Lincolnshire Police have a right of appeal

to the Magistrates' Court under Section 181 of the Licensing Act 2003.

The appeal must be commenced by notice of appeal to the Justices' Chief Executive for the Magistrates Court within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision being appealed against.

Any appeal should be sent to: Lincoln Magistrates Court, 358 High St, Lincoln LN5 7QA

This decision does not take effect until the end of the appeal period or if the decision is appealed, when the appeal is disposed of.

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
22 January 2020