

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

Date of hearing	26 April 2021
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Members of Sub-Committee	Councillor Tom Ashton Councillor Frank Pickett Councillor Judy Welbourn
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Applicant	Mrs P I Dos Santos Pereria
Premises Address	Beira Alta Deli, 18 West Street, Boston
Date Application Received	10 March 2021
Details of Application	Application for a Premises Licence for the sale of alcohol for consumption on and off the premises.

The Parties:

The Sub-Committee heard from the applicant (Mrs Dos Santos Pereira), the applicant's agent (Mrs Gilliead), Lincolnshire Police, and the Council's Licensing Officer.

Policy and Guidance:

In reaching its decision the Sub-Committee has had due regard for all that they have read and heard (including the additional papers and information, submitted at the hearing with the agreement of all parties), and has considered the statutory guidance issued under section 182 of Licensing Act 2003, along with the Council's Statement of Licensing Policy.

Licensing Objectives:

The Sub-Committee has found that the following licensing objectives are relevant to the application:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public Safety
- Protection of children from harm

Decision and Reasons:

The Sub-Committee has read and heard all of the information before them. In reaching its decision, the Sub Committee is aware of and has taken into account any implications that may arise from the Human Rights Act 1998, and has considered its public sector equality duty under s149 of the Equality Act 2010. The Sub-Committee considers that in reaching their decision, that they have had due regard for the duty placed upon them by s149.

The Sub-Committee heard details from the applicant's agent about the training that has been undertaken by the applicant, it was noted that the training workbook had been translated into Portuguese to assist. The Sub-Committee were informed that the premises was not considered a problem premises, and that the applicant (following the training) has a full comprehension of the responsibilities of running a licence premises. The Sub-Committee heard that steps had been taken to cover the issues that were encountered on the premises in 2020, and how negotiations had been had with the police since the application was submitted.

The Sub-Committee heard from Lincolnshire Police that their main concern was having confidence that the applicant would promote the licensing objectives. The police agreed that the premises has not been considered a problem, but issues were encountered last year. Lincolnshire Police acknowledged that they had expected training to be given following the review hearing in July 2020, and explained how in their opinion training and conditions are only good tools if used correctly. It was stressed to the Sub-Committee, that it will be the applicant in charge of the premises, and not her agent, and the applicant was now applying to be DPS and PLH. Lincolnshire Police explained that they did not consider it was lack of knowledge or issues regarding training or language that led to the review hearing. At the time of the review hearing the applicant was a personal licence holder, and was not compliant with the few conditions on the premises licence.

The Sub-Committee noted how when questioned the applicant informed the Sub-Committee of the amount of training she had undertaken, and also that she had required her husband to do also. When pressed she was able to give some information as to what she felt were the important issues she had learnt as a result of her training.

During the hearing the applicant formally amended her application as follows:

Opening hours (Mon-Sun) – 5 am until 9 pm

Alcohol sales (on and off sales) (Mon-Sun) – 10 am until 9 pm

Conditions – as on the operating schedule and as agreed with the police (where there is overlap the police conditions should be applied) as suggested by Lincolnshire Police in their representation, and the additional conditions relating to the refusal log and CCTV as suggested by the applicant.

With all of the information before them, the Sub-Committee do not consider that they have sufficient confidence in the applicant's ability to promote the licensing objectives, and accordingly refuse the application.

Whilst the introduction of training is welcomed, the Sub-Committee remain unconvinced of the applicant's ability to run a licensed premises, and had strong regard to the issues that had been encountered at the premises last year when the applicant was not DPS, and there were less conditions on the premises licence than proposed now. In deciding to refuse the application, the Sub-Committee did not feel that there were any conditions that could be modified to overcome their concerns as to the ability of the applicant to promote the licensing objectives, nor do they consider that excluding any of the licensable activities would address their concerns. Additionally, the Sub-Committee noted that problems were encountered at the premises when the applicant was not the DPS, so were not satisfied having a third party as DPS instead gave them confidence that in granting the application, the licensing objectives would be upheld and safeguarded by the applicant based on everything the Sub-Committee had read and heard. Taking into account all that they have read and heard the Sub-Committee accordingly refuse the application for the grant of a premises licence.

Appeal:

The Applicant 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 (appeal period expires 0001hrs on 6 September 2018).

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: Agreed by all serving members during remote deliberations on 26.4.21