

BOSTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE APPLICATION FOR A PREMISES LICENCE

Licence number: 32UBB21007

Applicant: Mrs Patricia Dos Santos Pereira

Premise: Beira Alta Deli, 18 West Street, Boston

Licence Holders Representative: Jane Gilliead – Emag Licensing

Hearing Date: 26 April 2021 – 14.00 hours

Summary

This is a report to consider an application for a Premises Licence for premises known as Beira Alta Deli, 18 West Street, Boston. In summary the applicant seeks a licence for the sale of alcohol for consumption on and off the premises.

The Licensing Act 2003 requires that the Licensing Sub-Committee determines an application where any relevant representations have been received.

Options

The Licensing Sub-Committee must determine the application, in accordance with the Licensing Act 2003, having regard to the guidance issued under Section 182 of the Act, the Licensing Authority's Statement of Licensing Policy and any relevant representations. The Sub-Committee is required to take such steps it considers appropriate for the promotion of the licensing objectives. These steps are summarised as follows:

- To grant the licence, as applied for;
- To grant the licence with modified conditions;
- To exclude from the licence any of the licensable activities applied for;
- To refuse to specify a person as the designated premises supervisor;
- To reject the application.

The Sub-Committee must give full reasons for its decision.

1. Premises History

- 1.1 In February 2014 a Premises Licence was granted for 18 West Street, Boston for the sale of alcohol for consumption on and off the premises from 06.00 hours until 23.00 hours on every day of the week.
- 1.2 On 01 May 2018 an application was received to transfer the premises licence to Mrs Dos Santos Pereira. This transfer was duly granted. At the same time an application to specify Mrs Dos Santos Pereira as the Designated Premises Supervisor was submitted. At the time Mrs Dos Santos Pereira did not hold a valid personal licence. It was advised that until such time as she obtained a Personal Licence or specified a current Personal Licence holder as Designated Premises Supervisor, alcohol sales could not be carried out at the premises.
- 1.3 On 15 June 2018 a further application was received to specify a new Designated Premises Supervisor at the premises.
- 1.4 On 29 July 2020 the Premises Licence was revoked for breach of Covid-19 restrictions following the submission of a review application by the Chief Officer of Lincolnshire Police

2. The Application

- 2.1 An application for a Premises Licence, under section 17 of the Licensing Act 2003 was submitted by Jane Gilliead from Emag Licensing on behalf of the applicant. Mrs Dos Santos Pereira is also the proposed Designated Premises Supervisor. A plan showing the location of the premises is attached at Appendix 1.

2.2 The application describes the premises as a “deli with on and off sales of food and alcohol”. A copy of the application, including a list of proposed volunteered conditions, is attached at Appendix 2. A plan of the premises is attached at Appendix 3 and it will be a requirement that should the licence be granted the premises layout be in accordance with that plan.

2.3 The licensable activities applied for are as follows:

Sale by retail of alcohol for consumption on and off the premises
Monday – Sunday: 06.00 hours until 23.00 hours

Opening hours of the premises
Monday – Sunday: 05.00 hours until 23.00 hours

2.4 In submitting the application the applicant is required to describe any steps intended to be taken to promote the four licensing objectives, namely:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

2.5 The steps the applicant intends to take to promote the licensing objectives, should the licence be granted, are in accordance with the operating schedule at section 18 of the application. Should the application be granted, conditions consistent with the steps outlined at section 18 of the application will be appended to the licence.

2.6 As required under the terms of the Licensing Act 2003 the application form was correctly completed and a copy was served on all “Responsible Authorities”. The application was advertised in a local newspaper and outside the premises. Notice of the application was posted on the council website. Responsible Authorities and other persons are permitted, within 28 days of the day after the day the application was made, to submit a representation regarding the application.

3. Representations

3.1 The Licensing Act 2003 states that “relevant representations” means representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

3.2 A relevant representation was received from Lincolnshire Police being a Responsible Authority. Lincolnshire Police suggest, in their representation, that serious consideration be given to the application being refused. No further steps for the promotion of the licensing objectives have been proposed. A copy of this representation is attached at Appendix 4.

3.3 Each party submitting a representation may choose to rely on their written submission or may attend the hearing to also put their representation to the sub-committee. At the hearing parties may not add further representation to that disclosed to the applicant but may expand on the existing representation.

4. Considerations

4.1 The application must be considered on its own merits; standardised conditions cannot be applied.

4.2 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what would be suitable to achieve that end. Whilst this does not require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the Premises Licence holder as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the sub-committee ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the licensing objectives and nothing outside of those parameters. The sub-committee must come to its determination based on an assessment of the evidence of both the risks and benefits either for or against making the determination.

4.3 When considering the evidence the sub-committee must satisfy themselves whether or not the licensing objectives would be promoted as the application stands.

4.4 The Sub-Committee should seek to focus the hearing on the relevant parts of the representation only and the steps considered appropriate to promote the particular licensing objective(s) that have given rise to the representation. The sub-committee must avoid straying into undisputed areas.

4.5 Conditions on a premises licence are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. If consideration is being given to attaching or amending conditions, they:

- Must be appropriate for the promotion of the licensing objectives;
- Must be precise and enforceable;
- Must be unambiguous and clear in what they intend to achieve;
- Should not duplicate other statutory requirements or other duties or responsibilities placed on the licence holder by other legislation;
- Must be tailored to the individual type, location and characteristics of the premises and events concerned;
- Should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- Should not replicate offences set out in the 2003 Act or any other legislation;
- Should be proportionate, justifiable and capable of being met;

- Cannot seek to manage the behavior of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behavior of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in a prescriptive format.

4.5 In determining the application, in accordance with the Licensing Act 2003 and with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The statutory guidance issued under section 182 of the Licensing Act 2003. The relevant extracts from the Statutory Guidance are reproduced at Appendix 5;
- Boston Borough Council's Statement of Licensing Policy; Relevant extracts from the policy are reproduced at Appendix 6.
- The steps that are appropriate to promoting the licensing objectives;
- The relevant representations including supporting information, if any, presented by all parties.

Should the Committee depart from the statutory guidance or the Statement of Licensing Policy reasons for doing so must be given.

5. Human Rights & Equalities

5.1 In determining the application the sub-committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Human Rights Act it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

5.2 The sub-committee, in its decision making, must have due regard to its public sector equality duty under section 149 of the Equality Act 2010. A copy of section 149 of the Act is attached at Appendix 7.

6. Decision

6.1 The Sub-Committee's determination should be evidence-based, justified as being appropriate and reasonable to achieve promotion of the licensing objectives and proportionate to what it is intended to achieve.

6.2 The sub-committee must consider the application, the relevant representation at Appendix 4 and any submissions made by any party at the hearing. The Licensing Sub-Committee must determine the application, in accordance with the Licensing Act 2003, having regard to the guidance issued under Section 182 of the Act and the Licensing Authority's Statement of Licensing Policy. The Sub-Committee must, having regard to any relevant representations, take such steps it considers appropriate for the promotion of the licensing objectives. These steps are:

- To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application and any mandatory conditions ;
- To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application, having modified the conditions to such extent as the authority considers necessary for the promotion of the licensing objectives. Conditions are modified if any of them is altered or omitted or any new condition is added. Grant of the licence would also be subject to the mandatory conditions prescribed in the Licensing Act 2003;
- To exclude from the scope of the licence any of the licensable activities to which the application relates;
- To refuse to specify a person in the licence as the premises supervisor;
- To reject the application.

This is a matter for the sub-committee to determine in light of the above information and any other information it considers material.

The Sub-Committee is required to give full reasons for its decision and must make its decision within 5 working days of the end of the hearing.

7 Appeal

- 7.1 It should be noted the applicant and any person making a representation may appeal the decision made by the Licensing Sub-Committee to the Magistrates' Court. However, the decision made by the Licensing Sub-Committee takes immediate effect. Any appeal must be made within 21 days of the day on which all parties were notified, in writing by the Licensing Authority, of the decision to be appealed against.

8 List of Associated Papers

Appendix 1	Location Plan
Appendix 2	Application Form
Appendix 3	Plan of premises
Appendix 4	Relevant representation – Lincolnshire Police
Appendix 5	Relevant extract of Section 182 Guidance.
Appendix 6	Relevant extract from Licensing Policy.
Appendix 7	Section 149 of the Equality Act 2010.