

# **BOSTON BOROUGH COUNCIL**

## **LICENSING SUB-COMMITTEE APPLICATION FOR A PREMISES LICENCE**

Licence number: 32UBB19007

Applicant: Mrs S Acinik

Premise: Club Angel, The Assembly Rooms, Market Place, Boston

Hearing Date: 13.00hrs – 15 September 2021

### **Summary**

This is a hearing to consider an application for a Premises Licence, the applicant and proposed Designated Premises Supervisor being Mrs Sibel Acinik. In summary the applicant seeks a licence for the sale of alcohol for consumption on and off the premises, the provision of regulated entertainment, consisting of live and recorded music, performances of dance, and anything similar, and the provision of late night refreshment.

A relevant representation has been received from a person not being a “responsible authority”.

The Licensing Act 2003 requires that the Licensing Sub-Committee determine 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 and the Licensing Authority’s Statement of Licensing Policy. The sub-committee must, having regard to any relevant representations, take such steps as considered 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. The Application

1.1 An application for a premises licence, under section 17 of the Licensing Act 2003, was received from Mrs Sibel Acinik who is also the proposed Designated Premises Supervisor. A plan indicating the premises location is attached at Appendix 1.

1.2 The applicant seeks a licence to provide licensable activities as follows:

### **Sale by retail of alcohol for consumption on & off the premises and live music**

Sunday – Thursday: 08.00 hours until 03.00 hours the following day

Friday – Saturday: 08.00 hours until 04.00 hours the following day

24th & 31st December: From the start of permitted hours until the end of permitted hours the following day

One additional hour to the standard and non-standard timings upon the commencement of British Summertime.

### **Recorded music, performances of dance, anything of a similar description**

Sunday – Thursday: 08.00 hours until 03.30 hours the following day

Friday – Saturday: 08.00 hours until 04.30 hours the following day

24th & 31st December: From the start of permitted hours until the end of permitted hours the following day

One additional hour to the standard and non-standard timings upon the commencement of British Summertime.

### **Late night refreshment**

Sunday – Thursday: 23.00 hours until 03.30 hours the following day

Friday – Saturday: 23.00 hours until 04.30 hours the following day

24th & 31st December: 23.00 hours until 05.00 hours the following day

One additional hour to the standard and non-standard timings upon the commencement of British Summertime.

A copy of the application is attached at Appendix 2 and a plan of the premises is attached at Appendix 3.

1.3 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

1.4 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 M of the application. Should the application be granted, conditions consistent with the steps outlined in the operating schedule, along with the mandatory conditions will be appended to the licence.

1.5 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 to submit a representation regarding the application during the 28 day period starting on the day after the day the application is given.

## **2. Premises history**

The Assembly Rooms has been licensed as a nightclub since July 2014 under premises licence number 32UBB14010. This premises licence is still current and Mrs Acinik has been operating under it, in agreement with the site owner, since July 2021. The new licence application is to provide for a shadow licence in order to preserve premises licence number 32UBB14010. The activities and hours applied for and conditions offered are identical to the current licence. A copy of this licence is attached at Appendix 4.

## **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 representation has been received from a person other than a responsible authority and a copy is attached at Appendix 5.

3.3 Following on from the representation the party has submitted a number of diary record sheets identifying alleged noise from the premises. Copies are attached at appendix 6.

3.4 The party who has submitted 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 the party 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. The sub-committee must have regard to evidence, not speculation. In the case of a new application/new premises, the history and makeup of the site (and surrounding area) and the history of the applicant will be relevant, if sufficiently evidenced.
- 4.4 The sub-committee should seek to focus the hearing on the relevant parts of representations only and the steps considered appropriate to promote the particular licensing objective(s) that have given rise to the representations and avoid straying into undisputed areas. Any matter which is not about the likely effect of the grant of the licence on the promotion of one or more of the four licensing objectives is not, in accordance with the Licensing Act 2003, relevant and therefore cannot be considered.
- 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.

- 4.6 The sub-committee's attention is drawn, in particular to the following paragraphs of the Section 182 Guidance.

**Paragraph 9.12**

*Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the there the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

**Paragraph 10.13 to 10.15 – Hours of Trading**

*“10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.*

*10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.*

*10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.”*

**Paragraph 14.19 – The need for licensed premises**

*“There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This*

*is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.”*

#### **Paragraph 14.42 – Absence of a cumulative impact policy**

*“The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives. However in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact.”*

- 4.7 The sub-committee’s attention is drawn, in particular, to the following paragraphs of the Statement of Licensing Policy:

#### **“Licensable hours**

5.1 *Under the Act there are no standard permitted hours for the sale of alcohol. Applicants are able to suggest in their operating schedule the hours they wish to be open for the sale of alcohol and to apply to vary their existing licences if they wish to sell alcohol beyond their current hours. However, there is no general presumption in favour of lengthening licensing hours in any area of the Borough and the four licensing objectives will be the paramount consideration at all times.*

5.2 *As far as the Licensing Authority’s overall approach to licensing hours is concerned it is not intended that any form of zoning will be introduced. Experience in other areas shows that this can lead to the significant movement of people across boundaries in search of premises opening later and puts greater pressure on the centre than is necessary and can lead to unnecessary disorder and nuisance. Applicants should note that the Licensing Authority will give more careful consideration to applications for premises situated in predominantly residential areas, where relevant representations have been received and the proposed hours of operation are between 11.00pm and 7.00am. In the absence of any representation the application must be granted.*

5.3 *Shops, stores and supermarkets should generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes subject to paragraph 5.2 above. However, in the case of individual shops that are known to be or are in an area which is known to be, a focus of disorder and disturbance, or in largely residential areas where the proposed operation is likely to result in noise nuisance, subject to receiving relevant representations, a further limitation on licensing hours may be appropriate.”*

#### **“Cumulative Impact**

7.1 *Cumulative impact is not mentioned specifically in the Act. Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises. This should not, however, be confused with ‘need’. Need concerns the commercial demand for another pub, restaurant or shop and is a matter for the market and not a matter for the licensing authority to*

*consider in discharging its licensing functions or for its statement of licensing policy. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the licensing authority to consider.*

*7.2 The absence of a cumulative impact policy does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.*

*7.3 The Licensing Authority will not operate a quota of any kind which would pre-determine any application. Regard will be given to the individual characteristics of the premises concerned within a given area. It is recognised that pubs, nightclubs, restaurants, hotels, theatres, other clubs and off licences all sell alcohol, but with contrasting styles and characteristics. Proper regard will be had to those differences and the impact they are likely to have on the local community.”*

4.8 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. Extracts from the Statutory Guidance are reproduced at Appendix 7;
- Boston Borough Council’s Statement of Licensing Policy; Extracts from the policy are reproduced at Appendix 8;
- The steps that are appropriate to promoting the licensing objectives;
- The relevant representation including supporting information, if any, presented.

Should the sub-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 which 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 9.

## **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 representations along with any supporting evidence/information and any submissions made by any party at the hearing. The 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 the relevant representations, take such steps considered 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 appropriate 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 The applicant and any party making a representation may appeal the decision made by the sub-committee to the Magistrates' Court. However, the decision made by the 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	Copy of current Premises Licence
Appendix 5	Representation from interested party
Appendix 6	Noise record diary sheets
Appendix 7	Extract from s.182 Guidance
Appendix 8	Extract from Licensing Policy
Appendix 9	s.149 Equalities Act