



REPORT TO:	LICENSING COMMITTEE – SUB-COMMITTEE
DATE:	11 JANUARY 2022 – 10.00 HOURS
SUBJECT:	BOSTON BIG WEEKEND, CENTRAL PARK, PARKGATE, BOSTON
PURPOSE:	TO CONSIDER AN APPLICATION FOR A PREMISES LICENCE WHERE RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED
KEY DECISION:	NO
PORTFOLIO HOLDER:	COUNCILLOR PAUL SKINNER
REPORT OF:	SENIOR LICENSING OFFICER
REPORT AUTHOR:	ANNA MCDOWELL
WARD(S) AFFECTED:	CENTRAL
EXEMPT REPORT?	NO

SUMMARY

This is a hearing to consider an application for a Premises Licence, the applicant being NS-UK Group (Northern) Ltd and the proposed Designated Premises Supervisor being Mr David Bailey. 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, anything of a similar description to live music, recorded music and performances of dance, 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.

RECOMMENDATIONS

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.

It is recommended that the Sub-Committee take into account all evidence and information received from the interested party and the applicant and determine this matter.

The sub-committee must, having regard to all information presented, 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 reject the whole or part of the application.

The sub-committee must give full reasons for its decision.

REASONS FOR RECOMMENDATIONS

Section 35 (3) of the Licensing Act 2003 requires that

“3. Where relevant representations are made, the authority must –

- a. hold a hearing to consider them, unless the authority, the applicant and each person who has made a representation agree that a hearing is unnecessary, and
- b. having regard to representations, take such of the steps mentioned as it considers necessary for the promotion of the licensing objectives.

OTHER OPTIONS CONSIDERED

None

1. BACKGROUND

- 1.1 The premises is located in the centre of Boston in a predominantly residential area. A plan indicating the premises location is attached at **APPENDIX 1**.

2. APPLICATION

- 2.1 An application for the grant of a premises licence, under section 17 of the Licensing Act 2003, was received from NS-UK Group (Northern) Ltd and specifies Mr David Bailey to be the Designated Premises Supervisor in charge of the sale of alcohol.
- 2.2 The applicant seeks a licence to provide licensable activities on one weekend in June or July annually as follows:

Sale by retail of alcohol for consumption on and off the premises, live music, recorded music, performances of dance, anything similar to live and recorded music and performances of dance:

Saturday and Sunday from 12.00 hours until 22.00 hours.

A copy of the application, including a site plan, is attached at **APPENDIX 2**.

2.3 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

2.4 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 form.

3. CONSULTATION

3.1 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.

3.2 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.

4. RELEVANT REPRESENTATIONS

4.1 The Licensing Act 2003 states that relevant representations mean representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

4.2 A relevant representation was received by the chief officer of Lincolnshire Police requesting additional steps on the applicant's part to ensure the promotion of all four licensing objectives. Following mediation by the Licensing Authority between Lincolnshire Police and the applicant, the additional steps suggested by Lincolnshire Police were agreed to by the applicant. Those steps will be incorporated into the Premises Licence as conditions.

As the representation was mediated it is not a matter for the Sub-Committee to consider. However, for information a copy of this representation is attached at **APPENDIX 3**.

4.3 A relevant representation was also received from a person other than a responsible authority. The representation raises concerns regarding the impact of the event on the licensing objectives, particularly in respect of the potential for noise pollution to be caused. No further steps to facilitate the promotion of the licensing objectives have been suggested by the author. A copy of the representation is attached at **APPENDIX 4**.

4.4 Parties who submit a representation may choose to rely on their written submission or may attend the hearing to 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.

5. Human Rights & Equalities

- 5.1 In determining the review 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 When determining the application the Sub-Committee should be satisfied that any decision which interferes with the rights of the licence holder, or of any other person, only does so insofar as is necessary to protect the rights of others and that no alternative decision would be more appropriate.
- 5.3 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 5**.

6. CONSIDERATIONS

- 6.1 The application must be considered on its own merits; standardised conditions cannot be applied.
- 6.2 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.

- 6.3 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.
- 6.4 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.
- 6.5 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.

6.6 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 Licensing Authority's Statement of Licensing Policy. Relevant extracts of which are attached at **APPENDIX 6**.
- The statutory guidance issued under section 182 of the Licensing Act 2003.

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

Paragraph 9.3

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule, and it is relevant, the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

Paragraph 9.4

A representation is relevant if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation from a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at the premises to support their representations, and in fact this would not be possible for new premises.

Paragraph 9.37

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

Paragraph 9.38

In determining the application 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 steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

Paragraph 9.39

The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.

Paragraph 9.40

Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

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.

EXPECTED BENEFITS TO THE PARTNERSHIP

By working together as a Partnership the three sovereign councils benefit from the learning and experience of each other and also the trade benefits from a consistency and uniformity of approach from the Licensing service across the sub-region.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

There are no SELCP implications.

CORPORATE PRIORITIES

This work contributes to one Priority areas in the Boston Borough Council Corporate Strategy 2020 to 2024; Priority One. **People Focussed:** Make Boston as healthy and safe place to work.

STAFFING

There are no implications in terms of staffing.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

An appeal could be lodged with Lincolnshire Magistrates' Court against the decision of the Regulatory & Appeals Sub – Committee.

DATA PROTECTION

The personal details relating to the persons/s submitting representation has been redacted for data protection purposes.

FINANCIAL

There are no financial implications arising from this report.

RISK MANAGEMENT

There is a risk that the Council's reputation could be damaged if licensing legislation and guidance are not upheld and applied appropriately.

STAKEHOLDER / CONSULTATION / TIMESCALES

There are no stakeholder implications.

REPUTATION

There is a risk that the Council's reputation could be damaged if licensing legislation and guidance are not upheld and applied appropriately.

CONTRACTS

None.

CRIME AND DISORDER

The Council has a duty to promote the Licensing Objectives.

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

Equality Implications: The licensing authority must have due regard to its public sector equality duty under section 149 of the Equality Act 2010.

Human Rights: 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.

Safeguarding Implications: The Council has a duty to protect the public and promote the four licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm within the Borough that is consistent with prevailing national guidance and standards.

HEALTH AND WELL BEING

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the borough's residents, visitors, and business community. Effective implementation of a fair, proportionate and consistent licensing regime should help to promote the local economy.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

There are no implications.

ACRONYMS

None

APPENDICES	
Appendices are listed below and attached to the back of the report: -	
APPENDIX 1	Location plan
APPENDIX 2	Premises Licence application
APPENDIX 3	Copy of mediated representation from Lincolnshire Police
APPENDIX 4	Copy of representation from interested party
APPENDIX 5	Extract from the Equality Act 2010
APPENDIX 6	Extract from BBC Licensing Policy

BACKGROUND PAPERS
No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.

CHRONOLOGICAL HISTORY OF THIS REPORT
A report on this item has not been previously considered by a Council body.

REPORT APPROVAL	
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Approved for publication:	Not applicable

