

## 1 Introduction

- 1.1 Boston Borough Council is situated in the south of the county of Lincolnshire, which contains 7 district councils in total. The Borough has a population of 69,366 (as detailed in Office for National Statistics 2018 Mid-Year Population Estimates and is the smallest district in the County in terms of population. In terms of area it is the second smallest, covering 139 square miles. The council area is mainly rural with an urban area comprising of Boston town itself.

## 2 The Licensing Act 2003

- 2.1 Boston Borough Council as Licensing Authority (hereinafter referred to as the Licensing Authority) is responsible for the licensing of all licensable activities under the Licensing Act 2003 (the Act). This document sets out the policies and principles that the Licensing Authority will apply when making decisions on applications for:

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club;
- The provision of regulated entertainment; and
- The provision of late night refreshment.

The term licensee/licence holder is deemed to include licence holders, designated premises supervisors and club premises certificate holders.

This policy is intended to provide clarity to applicants, responsible authorities and other persons on how this Licensing Authority will determine applications to supply alcohol, provide regulated entertainment and operate late night refreshment premises. Guidance and best practice is available to assist applicants; this guidance does not form part of this Policy. The Licensing Authority will take this Policy into account if its discretion is engaged (i.e. at a hearing following relevant representations or a review hearing)

- 2.2 The Licensing Authority has a duty under the Act to carry out its functions with a view to promoting the 4 licensing objectives. These are: -

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

- 2.3 It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as solving all problems within the community. The Licensing Authority will therefore continue to work in partnership with the Borough Council, its neighbouring authorities, the Police, Responsible Authorities, local businesses and local people towards the promotion of the objectives.

- 2.4 In preparing this policy statement the Licensing Authority has consulted with the following: -

- Lincolnshire Police
- responsible authorities as defined by the Act
- representatives of licence holders and club premises certificate holders
- local businesses and their representatives
- local residents and their representatives
- Boston Borough Council Elected Members

- Parish Councils
- Other persons and organisations that the Authority considered could contribute to this Policy

A full list of consultees is available from the Licensing Section on request.

Appropriate weight has been given to the views of all those consulted prior to this policy statement taking effect on 24 November 2020.

2.5 In developing this Policy, the Licensing Authority took into account the legal requirements of the 2003 Act and had regard to other legislation and guidance, including, but not exclusively:

- Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the Borough
- The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses
- The Provision of Services Regulations 2009 to ensure requirements are:
  - Non- discriminatory.
  - Justified by an overriding reason relating to the public interest.
  - Proportionate to that public interest objective.
  - Clear and unambiguous.
  - Objective.
  - Made public in advance, and
  - Transparent and accessible
- Human Rights Act, 1998
- Violent Crime Reduction Act, 2006
- Policing and Crime Act, 2009
- Police reform and Social Responsibility Act, 2011
- Live Music Act, 2012
- Anti-Social Behaviour, Crime and Policing Act, 2014
- The Legislative Reform (Entertainment Licensing) Order, 2014
- Deregulation Act, 2015
- Immigration Act, 2016
- Equality Act, 2010

2.6 The Act describes two “bodies” that may make representations to licence applications and may apply for an existing premises licence to be reviewed by the Licensing Authority, Responsible Authorities and “other persons”. Responsible Authorities are defined in the Act.

- 2.7 “Other persons” means any individual, body or business who is affected by the operation of a licensed premises regardless of their geographical location. Although they may be in any geographical location, any representation they make must be relevant to one or more of the licensing objectives and must not be considered to be frivolous or vexatious. Additionally, any application to review a premises licence must not be repetitious.
- 2.8 The Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or a review, this authority will examine the content of the representation particularly closely. The authority will expect the author to explain in detail how, in terms of the licensing objectives, they would be affected by the application. The Licensing Authority will consider rejecting any representation or review application which does not include sufficient detail to outline harm or disturbance which may be caused.
- 2.9 The purpose of licensing is to control licensed premises and other events within the terms of the Act. Where responsible authorities and other persons do not raise any representations about the application made to the Licensing Authority, it is the duty of the Authority to grant a licence or certificate subject to conditions that are consistent with the operating schedule and any mandatory conditions prescribed in the 2003 Act itself. The Licensing Authority will not impose any further conditions unless its discretion has been engaged following the making of relevant representation(s). It may then only impose such conditions as are appropriate to promote the licensing objectives arising out of the consideration of the representation(s).
- 2.10 These conditions will relate to the premises and other places being used for licensable activities and the impact of those activities in the vicinity. In this regard the Licensing Authority will primarily focus on the direct impact of any activities taking place on those living, working or otherwise engaged in the area concerned. Vicinity has not been given a definition within the Act and may vary in distance from the premises depending on the nature of the area. Considerations which will be taken into account when assessing “in the vicinity” include but are not limited to:
- The nature of the licensable activity
  - The nature and locality of the premises
  - The time of day of the proposed licensable activity/activities
  - The frequency of the activity/activities
- 2.11 The Licensing Authority will discharge its responsibilities identified by other Local and Government strategies and policies, so far as they impact on the objectives of the Licensing Act. Some examples of these strategies and policies are:
- Government Action Plan for Tackling Alcohol Related Crime, Disorder and Nuisance;
  - Safer Clubbing
  - Community Safety Strategy.
  - Public Space Protection Order (PSPO) Home Office guidance or any successor to this.

2.12 The Licensing Authority takes the following approach to the decision making process:

- Each case will be decided upon its merits. This Authority will not apply a rigid rule to its decision making;
- Other persons can include residents'/ tenants' associations, community associations, trade associations and elected members. Councillors may represent other persons, providing they do not also sit on the Licensing Sub-Committee determining the application in question.
- We will give clear reasons for our decisions.

Where valid representations are made applications will be considered by a Licensing Sub-Committee (consisting of Councillors); we give applicants, responsible Authorities and other persons an equal opportunity to state their case in accordance with our protocol, which is available from the Licensing Section.

2.13 The licensing function is not to be seen as the primary mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. Whilst there are a range of statutory powers available to deal with such behaviour, these powers will not always be sufficient to control negative impacts on the licensing objectives in the vicinity. Therefore, the fact that such impact may occur is a relevant factor in the consideration of licensing applications. This may lead to a refusal of the application or the addition of conditions to meet the concern(s) contained in a relevant representation

2.14 The Licensing Authority is committed to the implementation and application of this policy in such a manner and to ensure that no applicant or other person is treated less favourably on the grounds of sex, marital status, race, nationality, ethnic or national origin, colour, disability or age, nor is disadvantaged by the application of a rule, condition or requirement, which has a discriminatory effect which cannot be justified either in licensing terms or as a requirement of law. An Equality Impact Assessment has been undertaken with respect to this policy

2.15 The Licensing Authority is fully committed to promoting equal opportunities and non-discriminatory practice. For further information, please see <https://www.mybostonuk.com/5885-2/>

### **3 Integrated Strategies and the Avoidance of Duplication**

3.1 The Boston Borough Council aims to make the Boston area a safer place to live, work and visit by reducing crime and the fear of crime and reducing antisocial behaviour.

3.2 By consulting widely prior to this policy statement being published the Licensing Authority has endeavoured to secure proper integration with local crime prevention, planning, transport, tourism and cultural strategies.

3.3 There are a number of wider issues which may need to be given due consideration when dealing with applications. The Licensing Committee may therefore receive and may act upon relevant reports concerning:-

- crime and disorder
- community safety issues
- needs of the local tourist economy
- employment situation in the area and the need for new investment and employment where appropriate
- planning considerations which might affect licensed premises
- local transport arrangements
- impact of licensing on regulated entertainment and particularly live music and dancing with reference to any cultural strategy
- any other reports considered appropriate to the licensing function

3.4 The Licensing Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. There are several key differences between licensing and planning control. Licensing is concerned with the fitness of the operator and detailed issues concerning the operation and management of the premises that are not addressed by the planning control process. Planning control relates to use of the premises. The grant of planning permission should not be a presumption that a premises licence will automatically follow and vice versa. Additionally, there is no legal basis for the Licensing Authority to refuse a licence application because it does not have planning permission.

3.5 Applicants are strongly encouraged to make any necessary applications for Planning permission /Building Regulations approval permission before or at the same time as they make an application for a licence/club premises certificate. Furthermore, to reduce the risk of being subject to planning enforcement, applicants are advised to ensure that:

- the activity to be authorised by the premises licence or club premises certificate is a lawful planning use; and
- the hours sought do not exceed those authorised by any planning permission.

3.6 In reaching a decision of whether or not to grant a licence, the Licensing Authority will take account of any non-compliance with other statutory requirements brought to its attention, particularly where these undermine the licensing objectives. Non-compliance with statutory requirements may demonstrate that the premises are unsuitable for the activities proposed or that the management of the premises is not adequate to protect the public from harm or nuisance.

3.7 In order to avoid duplication with other existing legislation and regulatory regimes the Licensing Authority will not attach conditions to the licence unless they are considered appropriate for the promotion of the licensing objectives. Conditions will be considered unnecessary if they are already adequately covered by other legislation.

3.8 Conditions (other than mandatory conditions and those in the applicant's operating schedule) may not be attached to a premises licence or club premises certificate unless the application has been the subject of a relevant representation.

## **4 Licensing Objectives**

Each of the four licensing objectives is of equal importance and no one objective will take precedence over others when considering applications.

The Licensing Authority considers the effective and responsible management of premises, instruction, training and supervision of staff and the adoption of best practice to

be amongst the most essential control measures for the achievement of all the licensing objectives. For this reason these elements should be specifically considered and addressed within the applicants operating schedule.

The Licensing Authority recommends that applicants carry out their own risk assessments in relation to the four licensing objectives in order to assist them in deciding whether any steps are required to be taken in order to meet those objectives.

In accordance with the Home Office Guidance to Licensing Authorities, this Authority expects applicants to demonstrate knowledge of the area within which the licensed premises is situated. This would include, for example, proximity to residential properties, areas where children congregate and any risk posed to the local area by the applicant's proposed licensable activity.

## **4.1 Prevention of crime and disorder**

4.1.1 The Licensing Authority will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees/certificate holders/designated premises supervisors take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises.

4.1.2 In addition to the requirement for the Licensing Authority to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect on, and do all it reasonably can to prevent, crime and disorder in the Borough.

4.1.3 When addressing crime and disorder the applicant should initially identify any particular issues (having regard to their type of premises and/or activities) which are likely to adversely affect the promotion of the crime and disorder objective. Such steps as are required to deal with these identified issues should be included within the applicant's operating schedule.

The Licensing Authority encourages applicants to include in their operating schedule the steps they propose to take to reduce/deter crime and disorder. These steps will vary from premises to premises according to the type of licensable activities that are to be carried on. Examples of measures the Licensing Authority encourage applicants to consider and address include

- Physical security features e.g. use of toughened, polycarbonate or plastic drinking glasses
- Procedure for risk assessment of alcohol promotions to ensure they do not promote irresponsible drinking or potentially breach the mandatory condition on irresponsible drinks promotions
- The use and number of Security Industry Authority (SIA) registered door supervisors
- Amount of seating to be provided to reduce the risk of high volume vertical drinking
- Training given to staff in crime prevention and drug awareness measures
- Measures agreed with the Police to reduce crime and disorder
- Measures to prevent the use or supply of illegal drugs
- Search procedures
- Formalisation of a dispersal policy
- Measures to prevent customers taking glasses and bottles away from the premises

- Training given to staff to prevent the sale of alcohol to those who are under age or appear drunk
- Measures to tackle street drinking including not selling single cans or bottles of beer, lager and cider; not selling super strength (ABV above 6.5) beer, lager and cider; and attaching water proof labels with printed shop names and addresses to cans and bottles of beer, lager and cider.

CCTV remains one of the most effective measures for reducing crime and disorder. The Licensing Authority expects premises that retail alcohol for consumption on or off the premises will have an effective CCTV system installed that operates in compliance with the requirements of Lincolnshire Police

- 4.1.4 The British Beer and Pub Association (BBPA) has consolidated good practice on combating violence in licensed premises into a guide to risk assessment. This is available on the BBPA's website: [www.beerandpub.com](http://www.beerandpub.com).

## 4.2 Public Safety

- 4.2.1 The Licensing Authority will carry out their licensing functions with a view to promoting public safety and will seek to ensure that licensees/certificate holders/designated premises supervisors take measures to protect the safety of performers and persons attending licensable activities. The risk to public safety will vary according to the type of premises and the activities carried out.

The Licensing Authority encourages applicants to include in their operating schedules the steps they propose to take to promote public safety.

- 4.2.2 Where an applicant identifies an issue in regard to public safety, which is not covered by existing legislation, the applicant should identify in their operating schedule the steps which will be taken to ensure public safety.

- 4.2.3 Depending on the individual style and characteristics of the premises and/or events the following issues may be of relevance:

- Use of equipment and effects
- Levels of door supervision
- Measures to prevent the supply and use of illegal drugs
- Physical safety features e.g. use of toughened glass, polycarbonate and plastic containers
- Fire evacuation procedures
- Provision of CCTV (see para 7.1.3)
- Occupancy figures

- 4.2.4 It will be the responsibility of licence/certificate holders/designated premises supervisors to ensure they have complied with all Health and Safety legislation.

- 4.2.5 Where a premise is on a vessel for which a current Passenger Ship Certificate is in force, the public safety objective can generally be considered to be met in respect of the layout, structure, access arrangements and operation of the vessel.

- 4.2.6 Whilst the Licensing Authority cannot require documentation regarding risk assessments to be attached to the operating schedule, it considers such risk assessments to be good practice. Risk assessments, including fire risk assessments, are a useful tool in the instruction and training of staff, as well as a sound basis for review by the licence holder,

in the event of needing to make an application for variation of a premises licence or in response to changing circumstances/conditions at the premises.

### **4.3 Prevention of Public Nuisance**

- 4.3.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.
- 4.3.2 The Licensing Authority intends to interpret “public nuisance” in its widest sense and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.
- 4.3.3 When addressing public nuisance the applicant should initially identify any particular issues (having regard to their type of premises and/or activities) which are likely to adversely affect the promotion of the objective to prevent public nuisance. Such steps as are required to deal with these identified issues should be included within the applicant’s operating schedule. For example, the Licensing Authority expects an applicant to identify how public nuisance will be controlled in outside areas, particularly in smoking areas, that are not within the boundary of the licensed area. This would include prohibiting the consumption of alcohol.
- 4.3.4 Applicants are encouraged to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events. These may include:
- The location of premises and proximity to residential and other noise sensitive premises, such as hospitals, local businesses, hospices and places of worship
  - The hours of opening, particularly between 23.00 and 07.00
  - The nature of the activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside the premises
  - The design and layout of the premises and in particular the presence of noise limiting and/or monitoring features
  - The occupancy capacity of the premises (Where appropriate)
  - The availability of public transport to facilitate dispersal of customers
  - ‘wind down period’ between the end of the licensable activities and the closure of the premises
  - last admission time
  - The formulation of a dispersal policy
  - Control of nuisance from persons using outside areas and in particular smoking areas.
- 4.3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities
- Effective and responsible management of premises
  - Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance e.g. to ensure customers leave quietly

- Control of operating hours for all or parts (e.g. garden areas) of the premises, including such matters as deliveries
- Adoption of best practice guidance (e.g. Good practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics)
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- Management of people, including staff and traffic (and resulting queues) arriving and leaving premises
- Liaison with public transport providers
- Siting of external lighting, including security lighting
- Management arrangements for collection and disposal of litter
- Effective ventilation systems to prevent nuisance from odour
- Undertaking noise impact assessments
- Regular assessments of the noise coming from the premises when used for regulated entertainment and steps to control the level of noise so as not to cause disturbance to local residents.
- Regular assessment of any noise coming from outside areas, including smoking areas, and steps to control the level of noise so as not to cause disturbance to local residents.
- Keeping a written record of assessments in a log book kept for that purpose including, the time and date of the checks, the person making them and the results including any remedial action.
- Identifying smoking areas in operating schedules to enable responsible authorities to appraise proposals with a view to promoting the prevention of public nuisance licensing objective.
- Keeping external doors (except for access and egress) and windows closed when regulated entertainment is being provided except in the event of an emergency.
- The disposal of empty glass bottles not being undertaken externally between 23.00 hours and opening hours on the following day on every day of the week.
- Posting at exits from the premises in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and the area quietly and in an orderly manner.
- Regularly clearing outside the premises of litter associated with the operation of the premises e.g. cigarette ends.

## **4.4 Protection of children from harm**

4.4.1 The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. Except as prohibited by law, access by children to all types of premises will not be limited in any way unless it is considered necessary to do so to protect them from harm. It is hoped that family friendly premises will thrive but the risk of harm to children remains a paramount consideration when determining applications.

The protection of children from harm includes protection of children from moral, psychological and physical harm.

4.4.2 When receiving relevant representations and deciding whether to limit access to children, other than in circumstances where the law demands their access to be limited, applicants/licence/certificate holders should consider the activities carried on at the premises. Examples which may give rise to concern in respect of children would include premises;

- Where entertainment or services of an adult or sexual nature are commonly provided;
- Where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;
- With a known association with drug taking or dealing
- Where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines)

4.4.3 Films - In the case of premises which are used for film exhibitions, conditions will be imposed restricting access only to those who meet the required age limit in line with any certificate granted by the British Board of Film Classification or, in specific cases, a certificate given to the film by the Licensing Authority itself. Applicants will be expected to explain in their operating schedule the steps they intend to take to ensure children and young persons do not gain access to films with a restricted access classification.

Where a film is to be shown locally within the authority's area and has not been classified by the British Board of Film Classification, an application can be made to the Authority for the film to be classified. Applications should be made in accordance with the guidelines set out by the British Board of Film Classification. These guidelines can be found at: [www.bbfc.co.uk](http://www.bbfc.co.uk).

4.4.4 Theatres- In certain cases it may be necessary to impose a condition to restrict the admission of children to theatres, which are incorporating adult entertainment in their productions.

4.4.5 Where a large number of children are likely to be present on any licensed premises and representations are received; conditions may be imposed requiring the presence of an appropriate number of adult staff to ensure public safety and their protection from harm. Where the Licensing Authority considers it appropriate, following receipt of relevant representation(s) it may require the adult supervisors (being persons over the age of 18) to be subject to a criminal record check. The onus will be on the Premises Licence holder to ensure that staff members are suitable to carry out the supervision of children, which may include criminal record disclosure from the Disclosure and Barring Service (DBS).

4.4.6 The options available for limiting access by children would include –

- Limitations of the hours when children may be present
- Limitations or the exclusion of the presence of children under certain ages when particular specified activities are taking place;
- Limitations on the parts of premises to which children might be given access;
- Age limitations (below 18 years);
- Requirements for accompanying adults (including for example, a requirement which provide that children under a particular age must be accompanied by an adult); and
- Full exclusion of those people under 18 years of age from the premises when any licensable activities are taking place.

4.4.7 The Licensing Authority will not impose any condition that specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed the issue of access will remain a matter for the discretion of the individual licence holder/certificate holder or designated premises supervisor.