



REPORT TO:	LICENSING COMMITTEE – SUB-COMMITTEE
DATE:	18 JANUARY 2022 – 13.00 HOURS
SUBJECT:	ARBOR CLUB, 10 SOUTH STREET, BOSTON
PURPOSE:	TO CONSIDER AN APPLICATION FOR THE VARIATION OF 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 the variation of a Premises Licence, the applicant being Mrs Claudia Torres. In summary the applicant seeks to vary the licence to extend the hours for the sale of alcohol for consumption on the premises, the provision of regulated entertainment, consisting of live and recorded music, performances of dance, and the provision of late night refreshment.

Relevant representations have 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 parties 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 original application for a premises licence was received on 10 March 2022. Following representation from Lincolnshire Police and subsequent mediation the licence was granted with additional conditions on 11 April 2022. A copy of the current Premises Licence is attached at **APPENDIX 1**.
- 1.2 The premises is located in the centre of Boston and is located in a mixed use commercial and residential area. A plan indicating the premises location is attached at **APPENDIX 2**.

2 APPLICATION

- 2.1 An application for the variation of the premises licence, under section 34 of the Licensing Act 2003, was received from Ms Claudia Torres who is also the Designated Premises Supervisor.
- 2.2 The applicant seeks a licence extend the permitted hours for licensable activities as follows:

Live music

Friday and Saturday from 11.00 hours until midnight.

The current hours are 19.00 until 22.00 on Friday and Saturday and 14.00 until 21.00 on Sunday.

Recorded music

Sunday to Thursday from 11.00 hours until midnight

Friday and Saturday from 11.00 hours until 02.30 hours the following day

The current hours are 11.00 until 00.00 daily.

Late night refreshment

Sunday to Thursday from 23.00 hours until midnight

Friday and Saturday from 23.00 hours until 02.30 hours the following day

Supply of alcohol

Sunday to Thursday from 09.00 hours until midnight

Friday and Saturday from 09.00 hours until 02.30 hours the following day

The current hours are 11.00 until 23.30 daily.

2.3 The applicant also seeks to add the following licensable activities.

Performances of dance

Friday & Saturday from 11.00 until 00.00 hours

Late night refreshment

Sunday to Thursday 23.00 until 00.00 hours

Friday & Saturday 23.00 until 02.30 hours the following day

2.4 The application states that the proposed opening hours are as follows:

Sunday to Thursday from 06.00 hours until 00.30 hours the following day

Friday and Saturday from 06.00 hours until 03.00 hours the following day

The current opening hours state 11.00 hours until midnight daily.

A copy of the application is attached at **APPENDIX 3**.

2.5 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

2.6 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. No additional steps to those already conditioned on the current licence were submitted as part of the application.

2.7 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.

3. CONSULTATION

3.1 The Licensing Act 2003 requires that the applicant send a copy of their application to the responsible authorities, post a notice in a local news publication, providing the details of the application. They must also post a copy of the notice in a prominent position outside the premises for 28 consecutive days. The Council must also post a notice on their website. It is confirmed that this requirement has been complied with.

4. RELEVANT REPRESENTATIONS

4.1 A Responsible Authority or interested party may submit a representation during the 28 day consultation period.

4.2 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.

4.3 Relevant representations have been received from persons other than a responsible authority and a copy of those representations is attached at **APPENDIX 4**.

4.4 A party who has submitted 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 9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

Paragraph 9.6

Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

Paragraph 9.7

Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

Paragraph 9.8

Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

Paragraph 9.9

It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

7. Appeal

- 7.1 The applicant for review and/or the holder of the premises licence may appeal the decision made by the Sub-Committee to the Magistrates Court. Any appeal must be made within 21 days of the day on which the appellant is notified, in writing, by the Licensing Authority of the decision to be appealed against.
- 7.2 The hearing determination does not take effect until the end of the period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

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	Current Premises Licence
APPENDIX 2	Location plan
APPENDIX 3	Copy of variation application
APPENDIX 4	Copy of representations
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