



<b>REPORT TO:</b>	LICENSING COMMITTEE – SUB-COMMITTEE
<b>DATE:</b>	19 MARCH 2024 – 0.00 HOURS
<b>SUBJECT:</b>	BOSTON PHOENIX FOOTBALL CLUB, TATTERSHALL ROAD, BOSTON
<b>PURPOSE:</b>	TO CONSIDER AN APPLICATION FOR A PREMISES LICENCE WHERE RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED
<b>KEY DECISION:</b>	NO
<b>PORTFOLIO HOLDER:</b>	COUNCILLOR DALE BROUGHTON
<b>REPORT OF:</b>	SENIOR LICENSING OFFICER
<b>REPORT AUTHOR:</b>	ANNA MCDOWELL
<b>WARD(S) AFFECTED:</b>	WITHAM
<b>EXEMPT REPORT?</b>	NO

## SUMMARY

This is a hearing to consider an application for the grant of a Premises Licence, the applicants being Boston Phoenix Football Club Limited. In summary the applicants seek a licence to carry out licensable activities consisting of the sale of alcohol for consumption on and off the premises, the provision of regulated entertainment, consisting of recorded music, and the provision of late night refreshment.

Relevant representations have been received from persons 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 set out in the Licensing Act 2003 Section 18 (4) as follows:

- To grant the licence, subject to mandatory conditions and conditions in the operating schedule;
- To grant the licence with modified conditions;
- 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.

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

### REASONS FOR RECOMMENDATIONS

Section 18 (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 in subsection 4 (if any) as it considers necessary for the promotion of the licensing objectives.

### OTHER OPTIONS CONSIDERED

None

## 1. BACKGROUND

- 1.1 The applicant has held a Club Premises certificate for the premises since the implementation of the Licensing Act 2003 in November 2005. The certificate permits licensable activities including the supply of alcohol and regulated entertainment for the benefit of club members and bonafide guests. The licensable activities and hours currently authorised under the certificate are detailed below and a full copy of the club premises certificate is attached at **APPENDIX 1**.

#### Supply of alcohol on and off the premises

Monday – Thursday:	12.00 hours until 00.00 hours
Friday – Saturday:	12.00 hours until 02.00 hours the following day
Sunday:	11.30 hours until 23.00 hours

#### Indoor sporting events, Indoor live music, Indoor recorded music, Performances of dance

Monday – Thursday:	12.00 hours until 00.00 hours
Friday – Saturday:	12.00 hours until 02.00 hours the following day
Sunday:	11.30 hours until 23.00 hours

- 1.2 To allow the premises to host events that are not restricted to club members and their guests the applicant has submitted an application for a Premises Licence in accordance with Section 17 of the Licensing Act 2003.
- 1.3 The premises is located on the outskirts of Boston in a semi-rural, semi-residential area. A plan indicating the premises location is attached at **APPENDIX 2**.
- 1.4 A search of Licensing and Environmental Health records have not revealed any history of complaints regarding the premises.

**2. APPLICATION**

- 2.1 On 30 January 2024 an application for the grant of a premises licence, under section 17 of the Licensing Act 2003, was received from Boston Phoenix Football Club Limited. The activities and hours applied for are detailed below and a copy of the application is attached at **APPENDIX 3**.
- 2.2 The applicant seeks a licence to permit licensable activities as follows:

Sale by retail of alcohol for consumption on and off the premises

Sunday – Thursday:	11.00 hours until 22.30 hours
Friday & Saturday:	11.00 hours until 23.30 hours
24 and 31 December:	11.00 hours until 01.00 hours the following day
Sunday prior to a bank holiday Monday:	11.00 hours until 01.00 hours the following day

Exhibition of a film

Thursday:	11.00 hours until 22.30 hours
Friday – Saturday:	11.00 hours until 23.30 hours
Sunday prior to a bank holiday Monday:	11.00 hours until 01.00 hours the following day

Indoor sporting events, indoor live music, indoor recorded music and anything similar to indoor recorded and live music

Sunday – Thursday:	11.00 hours until 22.30 hours
Friday – Saturday:	11.00 hours until 23.30 hours

Late night refreshment

Friday & Saturday:	23.00 hours until 23.30 hours
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- 2.3 The application states that the proposed opening hours are as follows:

Sunday – Thursday:	11.00 hours until 23.00 hours
Friday & Saturday:	11.00 hours until 00.00 hours
24 and 31 December:	11.00 hours until 01.30 hours the following day
Sunday prior to a bank holiday Monday:	11.00 hours until 01.30 hours the following day

- 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 M of the application. Steps identified at part M are appended to a granted licence as conditions with which a licence holder must comply.

### **3. CONSULTATION**

- 3.1 The Licensing Act 2003 requires that the applicant send a copy of their application to the responsible authorities and 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 starting on the day after the application is received by the Licensing Authority. The Council must also post notice of the application on their website. It is confirmed that these requirements were complied with.

### **4. RELEVANT REPRESENTATIONS**

- 4.1 A Responsible Authority or other person 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. Only parts of a representation that are relevant to the application and its impact on those objectives may be considered.
- 4.3 Relevant representations have been received from a number of persons other than a responsible authority and a copy of those representations is attached at **APPENDIX 4**.
- 4.4 Each representation has been provided to the Sub-Committee in its original format containing all concerns each objector has raised. However, it is important that the Sub-Committee be aware that matters contained in the representations that relate to the likely impact on local nature and wildlife and referencing current issues with anti-social behaviour and littering in Witham Way Country Park are not relevant in the context of the Licensing Act 2003. Only concerns relating to the possible impact from the premises providing licensable activities may be considered by the Sub-Committee when determining the application.
- 4.5 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. CONSIDERATIONS**

- 5.1 The Live Music Act 2012 came into force on 01 October 2012 and removes the licensing requirement for live music and recorded music where:-

- There is a premises licence or club premises certificate in place permitting the sale of alcohol for consumption on the premises
- The premises are open for the sale or supply of alcohol for consumption on the premises
- The live or recorded music is taking place between 8am and 11pm

- If the music is amplified live music or recorded music (e.g. DJs or a disco for example), the audience consists of no more than 500 people

The Act also dis-applies any live music and recorded music related conditions which appear on a premises licence, providing the above criteria are satisfied. However, if a nuisance is evidenced, the licence may be reviewed and those conditions can be re-imposed and will need to be complied with. Any entertainment that falls outside the above criteria will be subject to compliance with any conditions on the licence.

- 5.2 The application must be considered on its own merits and standardised conditions cannot be applied.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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 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.

5.7 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 5**.
- The statutory guidance issued under section 182 of the Licensing Act 2003. Relevant extracts of which, are attached at **APPENDIX 6**.

## **6. Human Rights & Equalities**

6.1 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.

6.2 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.

6.3 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 7**.

## **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 the Growth and Prosperity, Safe and Resilient Communities Priority in the South & East Lincolnshire Councils Partnership Sub-regional Strategy 2024/25 to 2028/9.

## **STAFFING**

There are no implications in terms of staffing.

## **CONSTITUTIONAL AND LEGAL IMPLICATIONS**

There is a risk that an appeal is lodged with Lincolnshire Magistrate's Court against the decision of the Regulatory & Appeals Sub – Committee.

## **DATA PROTECTION**

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

## **FINANCIAL**

This hearing is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved.

## **RISK MANAGEMENT**

There is a theoretical risk of civil action against the Licensing Authority if it is found not to have exercised due diligence in licensing matters.

## **STAKEHOLDER / CONSULTATION / TIMESCALES**

There are no stakeholder implications

## **REPUTATION**

There is a risk that the Council's reputation could be damaged if the requirements of licensing legislation are not implemented in the prescribed manner.

## **CONTRACTS**

There are no contractual implications.

## **CRIME AND DISORDER**

The Council has a duty to promote and ensure compliance with the licensing objectives of, the prevention of crime and disorder, public safety, prevention of public nuisance, and the protection of children from harm.

## **EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING**

**Equality Implications:** Under the Human Rights Act 1998, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

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

**Safeguarding Implications:** The Council has a duty to provide the public with a safe and secure taxi and private hire vehicle service 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 climate change or environmental implications.

## LINKS TO 12 MISSIONS IN THE LEVELLING UP WHITE PAPER

<b>MISSIONS</b>	
<b>This paper contributes to the following Missions outlined in the Government's Levelling Up White paper.</b>	
<b>Crime</b>	By 2030, homicide, serious violence, and neighbourhood crime will have fallen, focused on the worst-affected areas.

## ACRONYMS

None

<b>APPENDICES</b>	
Appendices are listed below and attached to the back of the report: -	
APPENDIX 1	Club premises certificate
APPENDIX 2	Location plan
APPENDIX 3	Copy of premises licence application
APPENDIX 4	Copy of representations
APPENDIX 5	Extract from BBC Statement of Licensing Policy
APPENDIX 6	Relevant extracts from Section 182 Guidance
APPENDIX 7	Extract from the Equality Act 2010

## 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:	