



<b>REPORT TO:</b>	LICENSING COMMITTEE – SUB-COMMITTEE
<b>DATE:</b>	22 APRIL 2024 – 10.00 HOURS
<b>SUBJECT:</b>	BOSTON FOOD STORE, 12 RED LION STREET, BOSTON
<b>PURPOSE:</b>	TO REVIEW THE PREMISES LICENCE FOLLOWING AN APPLICATION RECEIVED FROM LINCOLNSHIRE POLICE
<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>	CENTRAL
<b>EXEMPT REPORT?</b>	Appendices A to G of the review application are exempt by virtue paragraph 1 of part 1 of schedule 12A to the Local Government Act, 1972

## SUMMARY

This is a report to consider an application for the review of the Premises Licence for Boston food Store, 12 Red Lion Street, Boston. The review was submitted by the Deputy Chief Constable of Lincolnshire Police under the provisions of Section 51 of the Licensing Act 2003.

The application to review the Premises Licence relates to the licence holder's alleged failure to promote the licensing objectives of:

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

## RECOMMENDATIONS

It is recommended that the sub-committee take into account all evidence and information received from Lincolnshire Police in connection with their review application and determine this matter, having due regard to the guidance issued under Section 182 of the Act and the Licensing Authority's Statement of Licensing Policy.

## REASONS FOR RECOMMENDATIONS

The Licensing Act 2003 requires that the sub-committee make a determination where an application for the review of a Premises Licence is received in accordance with Section 51 of the Licensing Act 2003.

The sub-committee must give full reasons for its determination in respect of the licence.

## OTHER OPTIONS CONSIDERED

None

### 1. BACKGROUND - THE PREMISES

- 1.1 The premises is a small shop, licensed for the sale of alcohol for consumption off the premises. The premises also sells a selection of essential products as well as a number of other age-restricted products i.e., cigarettes, lighters and vape equipment. It is located within Boston town centre, in a mixed-use area. A location plan is attached at **APPENDIX 1**.
- 1.2 The premises has been licensed under the Licensing Act 2003 since November 2011. Since the grant of the licence, it has been transferred a number of times. Most recently in December 2022, applications were submitted by Mr Yavuz Ecer under sections 37 and 42 of the Licensing Act 2003 for the transfer of the licence into his name and also to vary the Designated Premises Supervisor (DPS), specifying himself as the DPS. A copy of the premises licence is attached at **APPENDIX 2**.
- 1.3 At the time of the transfer and variation of Designated Premises Supervisor the premises licence was the subject of an ongoing application for review submitted by Lincolnshire Police.
- 1.4 A hearing was held on 18 January 2023 at which Mr Ecer assured members of the Sub-Committee that he was in the process of finalising his purchase of the business. The Sub-Committee were also advised that once the full hand over of the business had taken place the previous licence holder, who's management of the premises had given grounds for review, would no longer have any reason for involvement in the operation of the premises.
- 1.5 The Sub-Committee were concerned that during the initial migration period from the outgoing licensee to Mr Ecer there may be a potential for an overlap of management and involvement in the running of the business by the previous licence holder. However, following assurances by Mr Ecer that he wished to run a legitimate business and would be taking over the business fully in the near future, they were satisfied that culpability for the

issues leading to the review sat with the outgoing licence holder. The Sub-Committee felt reassured that once the business hand-over was complete and that the previous licence holder had no involvement the business, Mr Ecer would be able to run the premises responsibly and in accordance with the licence conditions.

- 1.6 The Sub-Committee determined to suspend the premises licence for the maximum permitted period of three months to give Mr Ecer time to get his business affairs in order. The suspension came into effect on 17 February following the end of the 28-day appeal period and the suspension of the premises licence ended on 17 May 2023. A copy of the decision notice can be found at **APPENDIX 3**.

## **2. Review application**

- 2.1 On 13 March 2024 an application for the review of the premises licence was received from the Deputy Chief Constable of Lincolnshire Police. The grounds of the review application are the premises licence holders' failure to promote all four licensing objectives, namely:

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

Full details of the grounds for review and their evidence to support the application will be presented by Lincolnshire Police at the hearing. However, a full copy of the review application and supporting evidence is attached at **APPENDIX 4**.

## **3. Consultation**

- 3.1 The Licensing Act 2003 requires that the applicant (Lincolnshire Police) send a copy of their review application to the premises licence holder and all responsible authorities. The Licensing Authority must post a notice providing the details of the review at the Council Offices, on the Council website and prominently displayed at, or near to, the premises. It is confirmed that this requirement was complied with.

## **4. Relevant Representations**

- 4.1 A "Responsible Authority" or other person or business may submit a representation during the consultation period. No relevant representations were received throughout the consultation period.

## **5. Options**

- 5.1 With respect to the review the Sub-Committee must determine whether or not the licence holder has operated with a view to promoting the licensing objectives. In deciding any action to implement, it is expected that the sub-committee will, as far as possible, seek to establish the cause or causes of concern that the review application identifies. The remedial action taken should generally be directed at those concerns and should always, giving appropriate weight to any supporting evidence and the submission made by any party at the hearing, be no more than an appropriate and proportionate resolution. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

5.2 Having regard to the application the sub-committee must take such steps, if any, it considers appropriate for the promotion of the licensing objectives. The steps are:

- to modify the conditions of the licence (either permanently or for a period not exceeding 3 months)
- to exclude a licensable activity from the scope of the licence (either permanently or for a period not exceeding 3 months)
- to remove the designated premises supervisor from the licence
- to suspend the licence for a period not exceeding 3 months
- to revoke the licence

Alternatively, the sub-committee may consider that no action is required or that a warning should be issued and/or recommend improvement within a particular period of time.

The sub-committee must give full reasons for its decision and must make its decision within 5 working days of the end of the hearing.

## **6. Considerations**

6.1 In determining the review 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.
- Boston Borough Council's Statement of Licensing Policy
- The steps that are appropriate to promoting the licensing objectives.
- The submissions, including supporting information, if any, presented by all parties.

Should the Sub-Committee depart from the Section 182 Guidance or the Statement of Licensing Policy reasons for doing so must be given.

## **6.2 Guidance issued under Section 182 of the Licensing Act 2003**

6.2.2 The Sub-Committee's attention is drawn to the following paragraphs of the Section 182 guidance.

### **Crime and disorder**

#### *Paragraph 2.1*

*Licensing Authorities should look to the police as the main source of advice on crime and disorder.*

### **The role of responsible authorities**

#### *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 nighttime economy and should have good working relations with those operating in their area. The police should usually therefore be the 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 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.*

### **The review process.**

#### *Paragraph 11.1*

*The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.*

#### *Paragraph 11.2*

*At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.*

### **Powers of a Licensing Authority on the determination of a review**

#### *Paragraph 11.16*

*The 2003 Act provides a range of powers for the licensing authority, which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.*

#### *Paragraph 11.17*

*The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.*

#### *Paragraph 11.18*

*However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil*

*immigration penalties which a licence holder has been required to pay for employing an illegal worker.*

#### *Paragraph 11.19*

*Where the licensing authority considers that action under its statutory powers is appropriate, it may take the following steps:*

- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times.*
- Exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)*
- Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management.*
- Suspend the licence for a period not exceeding 3 months.*
- Revoke the licence.*

#### *Paragraph 11.20*

*In deciding which of these powers to invoke, it is expected that licensing authorities should so far as is possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.*

#### *Paragraph 11.21*

*For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions by that individual.*

#### *Paragraph 11.22*

*Equally, it may emerge that poor management is a direct reflection of poor company practice or policy, and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact on the licensing objectives.*

#### *Paragraph 11.23*

*Licensing authorities should also note that modification of conditions and exclusion of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always*

*be important that any detrimental financial impact that may result from a licensing authorities' decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.*

6.3 A copy of the relevant sections of the Licensing Authority's Statement of Licensing Principles, with respect to the licensing objectives and grounds for review identified in the application is attached at **APPENDIX 5**.

6.4 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 behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in a prescriptive format.

## **7. Human Rights & Equalities**

7.1 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.

7.2 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.

7.3 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 6**.

## **8. Appeal**

8.1 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.

- 8.2 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.

### **WORKFORCE CAPACITY IMPLICATIONS**

None

### **CONSTITUTIONAL AND LEGAL IMPLICATIONS**

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

### **DATA PROTECTION**

This report is exempt by virtue of Part 1, Paragraph 7 of Schedule 12A of the Local Government Act 1972 because it contains information relating to ongoing criminal proceedings.

### **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.

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

<b>MISSIONS</b>	
<b>This paper contributes to the follow Missions outlined in the Government's Levelling Up White paper.</b>	
<b>Pride in Place</b>	By 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between the top performing and other areas closing.
<b>Crime</b>	By 2030, homicide, serious violence, and neighbourhood crime will have fallen, focused on the worst-affected areas.

## ACRONYMS

DPS – Designated Premises Supervisor

<b>APPENDICES</b>	
Appendices are listed below and attached to the back of the report: -	
APPENDIX 1	Location plan
APPENDIX 2	Premises licence
APPENDIX 3	Decision notice – January 2023
APPENDIX 4	Review application from Lincolnshire Police
APPENDIX 5	Extract from Boston Borough Councils Licensing Policy
APPENDIX 6	Section 149 of the Equality Act

**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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