



<b>Report To:</b>	Licensing Sub-Committee
<b>Date:</b>	11 <sup>th</sup> June 2024
<b>Subject:</b>	A Taste of Portugal, 2 James Street, Boston
<b>Purpose:</b>	To determine a Temporary Event Notice following objections being submitted by the Chief Officer of Lincolnshire Police and Boston Borough Councils, Environmental Health Department
<b>Key Decision:</b>	No
<b>Portfolio Holder:</b>	Councillor Dale Broughton
<b>Report Of:</b>	Anna McDowell, Senior Licensing Officer
<b>Report Author:</b>	Anna McDowell, Senior Licensing Officer
<b>Ward(s) Affected:</b>	Not applicable
<b>Exempt Report:</b>	No

### **Summary**

This is a hearing to consider a Temporary Event Notice following objections to the notice from the Chief Officer of Lincolnshire Police and Boston Borough Council's Environmental Health Department.

The Notice was submitted by Antonio Duarte Lima for A Taste of Portugal, 2 James Street, Boston.

### **Recommendations**

The Licensing Sub - Committee determine the Temporary Event Notice, in accordance with the Licensing Act 2003 and, having regard to the objection notices and any evidence submitted by the applicant or his representative, take such steps as considered appropriate for the promotion of the licensing objectives. These steps are summarised in Section 4 of the report.

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

### **Reasons for Recommendations**

The Licensing Act 2003 requires that the Licensing Sub - Committee make a determination in accordance with Section 105 of the Licensing Act 2003 where an objection notice is submitted under S 104 of that Act.

## Other Options Considered

None

### 1. Background

- 1.1 A Temporary Event Notice (referred to from hereon in as “Notice”) indicates that a premises will be used for licensable activities during the period identified in the Notice. A Notice can either be used to authorise licensable activities at a premises that does not benefit from a Premises Licence, extend the hours for licensable activities at a licensed premises, provide additional licensable activities at a licensed premises, or allow a person who is not the Premises Licence holder to provide licensable activities at a licensed premises. This is a light touch regime for occasional events where no more than 499 persons, including staff, may attend an event at any one time.
- 1.2 Only the Police or Environmental Health may object to a Notice and any such objections must be submitted by the end of the third working day following the date on which they receive the Notice.
- 1.3 An objection may only be submitted if the Police or Environmental Health are satisfied that allowing the premises to be used in accordance with a Notice would undermine one or more of the licensing objectives. The Licensing Objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 1.4 In accordance with the Licensing Act 2003 Section 105 (2) (a) the licensing authority must hold a hearing to consider the objection notice, unless all parties agree a hearing is not necessary.

### 2. Report

#### 2.1 The Premises and the Notices

- 2.1.1 A Taste of Portugal is a café and delicatessen specialising in Portuguese products and is located at 2 James Street, Boston. The location is a mixed-use area with a number of commercial and residential properties within close proximity. A location plan is attached at **appendix 1**.
- 2.1.2 The premises sits within an area designated under a Public Space Protection Order. The Order is in place to restrict consumption of alcohol within that area. A copy of the Public Space Protection Order is attached at **appendix 2**.
- 2.1.3 The premises benefits from a Premises Licence for the sale of alcohol for consumption on and off the premises between 10.00 hours and 22.30 hours seven days a week. The premises licence was granted in June 2021 subject to conditions agreed with Lincolnshire Police. A copy of the premises licence is attached at **appendix 3**.

- 2.1.4 The premises is also subject to planning permission which restricts the use for public access to the ground floor of the premises to between the hours of 06:00 and 23:00.
- 2.1.5 On 29 May 2024 a Notice was received from Mr Duarte Lima to allow the premises and adjacent external area to be used for the sale by retail of alcohol for consumption on and off the premises and to provide regulated entertainment consisting of live and recorded music, and late-night refreshment. The Notice is to be in effect from 12.00 hours on Saturday 29 June 2024 until 02.00 hours on Sunday 30 June 2024. The event is described as a celebration of the business' anniversary and states that the maximum number of persons expected to attend at any one time is 150. A copy of the notice is attached at **appendix 4**.
- 2.1.6 On 29 May 2024 an objection to the Notice was submitted by Boston Borough Councils' Environmental Health Department on the grounds that they were satisfied that allowing the premises to be used in accordance with the Notice would undermine the prevention of public nuisance licensing objective. A copy of the objection notice submitted by Environmental Health is attached at **appendix 5**.
- 2.1.7 On 03 June 2024 an objection to the Notice was received from the Chief Officer of Lincolnshire Police on the grounds that they were satisfied that allowing the premises to be used in accordance with the Notice would undermine the prevention of crime and disorder, public safety, and prevention of public nuisance licensing objectives. A copy of the objection notice submitted by Lincolnshire Police is attached at **appendix 6**.

## **2.2 Considerations**

- 2.2.1 The Sub - Committee must consider the Notice given by Mr Duarte Lima and the objection notices given by Environmental Health and Lincolnshire Police. Having regard to the licensable activities to be authorised by the Notice and the objection notices received, the Sub - Committee must make a decision which is appropriate for the promotion of the licensing objectives.
- 2.2.2 In determining the options available 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 Section 182 Guidance made under the Act of which a copy of the relevant sections is attached at **appendix 7**.
  - The Licensing Authority's Licensing Policy Statement a copy of the relevant sections is attached at **appendix 8**.
  - The options available to promote the licensing objectives;
  - The objection notices and/or submissions (including supporting information, if any) presented by all parties.
- 2.2.3 The Local Authority must fulfil its obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their function as a Licensing Authority. Section 17 places a duty on the Local Authority to do all it reasonably can to prevent crime and disorder in their area. The possible crime and disorder implications are relevant factors in the consideration of temporary event notices where a Police objection has been made. In giving "due regard" to these possible implications the Licensing Sub - Committee must consider and weigh up all the information made

available at the hearing and the submissions made by the Police and premises user.

2.2.4 The Licensing Sub-Committee cannot modify the Notice in any way, for example reduce the hours of the Notice; only the Police, Environmental health and the premises user can agree to modify a Notice. As no such agreement has been made, it must be determined in its original format.

2.2.5 The Licensing Sub-Committee's determination should be justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

## **2.3 Options**

2.3.1 There are three distinct options available to the Sub - Committee:

- If the Licensing Sub-Committee, acting as the licensing authority, are satisfied that the licensing objectives will be promoted as the Notice stands, they must take no action and permit the event in the manner described in the Notice with no additional conditions.
- The Licensing Sub-Committee, acting as the licensing authority, may decide to impose on the Notice one or more conditions appended to the existing premises licence if the Licensing Sub-Committee considers it appropriate for the promotion of the licensing objectives. The conditions imposed must not be inconsistent with the carrying out of the licensable activities under the Notice. The conditions the committee can consider imposing are detailed in the premises licence at appendix 3.
- The Licensing Sub-Committee, acting as the licensing authority, can issue a counter notice preventing the event from going ahead if considered appropriate for the promotion of the licensing objectives.

## **2.4 Human Rights & Equalities**

2.4.1 In considering the objection notices the Licensing 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.

2.4.2 The Licensing 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 9**.

## **2.5 Appeal**

The premises user and the Police may appeal the decision made by the Licensing Sub-Committee, regarding the Notice, to the Magistrates Court. However, the decision 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. No appeal may be brought later than 5 working days before the day on which the event period specified in the Temporary Event Notice begins.

### **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 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**

None

#### **Corporate Priorities**

None

#### **Staffing**

None

#### **Workforce Capacity Implications**

None

#### **Constitutional and Legal Implications**

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

#### **Data Protection**

None

#### **Financial**

None

#### **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**

None

#### **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 Wellbeing**

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**

None

### **Links to 12 Missions in the Levelling Up White Paper**

None

### **Acronyms**

None

### **Appendices**

Appendices are listed below and attached to the back of the report:

Appendix 1	Location plan
Appendix 2	Public Space Protection Order
Appendix 3	Premises Licence
Appendix 4	Temporary Event Notice
Appendix 5	Objection Notice – Environmental Health
Appendix 6	Objection Notice – Lincolnshire Police
Appendix 7	Licensing Act – Section 182 Guidance
Appendix 8	Extract from Boston Borough Council, Statement of Licensing Policy
Appendix 9	Section 149 of the Equality Act

### **Background Papers**

None

### **Chronological History of this Report**

None

### **Report Approval**

Report author:	Anna McDowell – <a href="mailto:anna.mcdowell@boston.gov.uk">anna.mcdowell@boston.gov.uk</a>
Signed off by:	Christian Allen – <a href="mailto:Christian.allen@boston.gov.uk">Christian.allen@boston.gov.uk</a>
Approved for publication:	Councillor Broughton – <a href="mailto:dale.broughton@boston.gov.uk">dale.broughton@boston.gov.uk</a>