



Report To: Licensing Sub-Committee

Date: Thursday 18th July 2024 – 13.00 hours

Subject: Arbor Club, 10 South Street, Boston

Purpose: To consider an application for a premises licence where relevant representations have been received.

Key Decision: N/A

Portfolio Holder: Councillor Dale Broughton

Report Of: Senior Licensing Officer

Report Author: Anna McDowell

Ward(s) Affected: None

Exempt Report: No

Summary

This is a hearing to consider an application for the grant of a Premises Licence, the applicants being The Arbor Club Ltd following the receipt of relevant representations.

The Licensing Act 2003 requires that the Licensing Sub-Committee determine an application where relevant representations have been received.

Recommendations

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. The steps are set out in the Licensing Act 2003 Section 18 (4) and are detailed in the main body of the report.

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 On 16 May 2024 an application for the grant of a premises licence, under section 17 of the Licensing Act 2003, was received from The Arbor Club Ltd.
- 1.2 The Local Authority requires that the applicant serves a copy of the application on the Responsible Authorities, advertises the application in a local news publication and places notice of the application details outside the premises. The Licensing Authority must also publish a notice on its website. It is confirmed that these requirements were complied with. However, the placement of the advertisement in the local press was not carried out within the required timescale and for this reason the consultation date was extended to meet the statutory requirements.
- 1.3 A Responsible Authority or other person may submit a representation during the statutory consultation period.
- 1.4 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.
- 1.5 Where relevant representations are received the Licensing Authority encourages all parties to mediate, and will assist in the facilitation of mediation discussions. Where agreement cannot be reached, the Licensing Act 2003 requires that a hearing is held to determine the application.

2. Report

2.1 The application

- 2.1.1 An application for a Premises Licence was received for the Arbor Club, 10 South Street, Boston. The premises is located in Boston town centre in a mixed use area consisting of commercial, recreational, and domestic properties. A location plan is attached at **appendix 1**.

2.1.2 The activities and hours applied for are detailed below and a copy of the application is attached at **appendix 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: 12.00 hours until 00.00 hours
Friday & Saturday: 10.00 hours until 03.00 hours the following day

Indoor live music

Monday – Thursday: 12.00 hours until 00.00 hours
Friday – Sunday: 10.00 hours until 00.00 hours

Indoor recorded music

Sunday – Thursday: 12.00 hours until 00.00 hours
Friday – Saturday: 10.00 hours until 03.00 hours the following day

Indoor late night refreshment

Friday & Saturday: 23.00 hours until 03.00 hours the following day

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

Monday – Thursday: 12.00 hours until 00.30 hours the following day
Friday & Saturday: 10.00 hours until 03.30 hours the following day
Sunday: 10.00 hours until 00.30 hours the following day

2.1.3 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

2.1.4 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.

2.2 Relevant representations

2.2.1 On 05 June 2024 a relevant representation was received from the Chief Officer of Lincolnshire Police. The representation raised concerns that the applicant had not identified appropriate measures to promote all four licensing objectives. Lincolnshire Police suggested a number of measures that the applicant could adopt in order to facilitate the promotion of those objectives. Subsequently the applicant accepted the suggested measures, and they are not matters for the consideration of the Sub-Committee. However, the measures in the representation will be added as conditions to any licence granted and have been attached for the Sub-Committees information at **appendix 3**.

2.2.2 On 01 July 2024 relevant representations raising concerns regarding the hours for the provision of regulated entertainment was received from an interested party on behalf of a number of persons other than a responsible authority and a copy of those

representations is attached at **appendix 4**. Furthermore, the application has indicated that they wish to proceed with the application as applied for and that mediation is not a consideration.

2.2.3 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.

2.3 Options

2.3.1 In making their determination and having had regard to all information presented, the Sub-Committee must 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 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.

2.4 Considerations

2.4.1 A Premises Licence has previously been in force at the Arbor Club between April 2022 and June 2023 with similar licensable activities. A copy of the relevant pages of the previous licence is attached at **appendix 5** for the committees' information.

2.4.2 A search of Licensing and Environmental Health records did not reveal any history of complaints regarding the premises.

2.4.3 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

Any live or recorded music that falls within the scope of the Live Music Act is not a matter for the Sub-Committees consideration.

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.

2.4.4 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. This does not require a licensing authority to decide that no lesser step will achieve the aim, but 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.

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 and determination must be based on an assessment of the evidence of both the risks and benefits either for or against making the determination.

2.4.5 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 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.

2.4.6 In determining the application, 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. Relevant extracts of which, are attached at **appendix 7**.

2.5 Human Rights & Equalities

2.5.1 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.

2.5.2 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.

2.5.3 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 8**.

2.6 Appeal

2.6.1 The applicant 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.

2.6.2 The 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.

3. Conclusion

3.1 The 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.

3.2 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.

3.3 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.

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

3.5 In making its' determination, the Sub-Committee must evidence that they have had due regard for all that they have read and heard, to the Licensing Authority's Statement of Licensing Policy, the guidance issued under Section 182 of the Licensing Act 2003, and their public sector duty under Section 149 of the Equality Act 2010.

Implications
South and East Lincolnshire Councils Partnership

None

Corporate Priorities

None

Staffing

None

Workforce Capacity Implications

None

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 people submitting representation has been redacted from the public agenda pack for data protection purposes.

Financial

None

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

None

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

None

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: None

Health and Wellbeing

None

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	Premises licence application
Appendix 3	Mediated representation – Lincolnshire Police
Appendix 4	Representation
Appendix 5	Previous premises licence
Appendix 6	Extract - Statement of licensing policy
Appendix 7	Extract – Section 182 Guidance
Appendix 8	Section 149 – Equality Act 2010

Background Papers

None

Chronological History of this Report

None

Report Approval

Report author:	Anna McDowell – anna.mcdowell@boston.gov.uk
Signed off by:	Christian Allen – christian.allen@boston.gov.uk
Approved for publication:	Councillor D Broughton – dale.broughton@boston.gov.uk