

**Licensing Act 2003****Representation by a Responsible Authority**

**Note:** Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the Licensing Panel hearings.

Representations may be made at any time during a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority.

Representations are only relevant to an application if they relate to at least one of the four Licensing Objectives listed below:

1. **The Prevention of Crime and Disorder**
2. **Public Safety**
3. **Prevention of Public Nuisance**
4. **The Protection of Children from Harm**

Please enter your details below:

Responsible Authority:	Lincolnshire Police
Contact Officer:	Pc 642 McConville
Address:	Lincolnshire Police – Licensing Lincolnshire Police HQ Po Box 999 Lincoln LN5 7PH
Telephone Number:	101 – Lincolnshire – Alcohol Licensing
E-mail:	countylicensing@lincs.police.uk

Please provide details of the application to which your representation refers:

Name:	Home Office Immigration
Address:	Bombay Brasserie, 53 West Street, Boston
Application Details:	Review Application
Date Application Received:	3/7/24

Please provide details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box(es):

- **The Prevention of Crime and Disorder** **X**
- **Public Safety**
- **Prevention of Public Nuisance**
- **The Protection of Children from Harm**

In relation to this application, the following guidance, policies, and legislation has been considered.

***Revised Guidance issued under Section 182 of the Licensing Act 2003***

*Section 2.1, Licensing authorities should look to the police as the main source of advice on crime and disorder.*

*Section 2.6, The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.*

*Entitlement to work in the UK for EEA citizens since 1 July 2021*

*Section 4.21, References to 'EEA citizens' in this guidance means EU, EEA and Swiss citizens unless stated otherwise. The UK has left the European Union (EU) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement on 31 December 2020. There followed a grace period of six-months , during which relevant aspects of free movement were saved to allow eligible EEA citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme (EUSS). This period ended on 30 June 2021.*

*Section 4.22, Since 1 July 2021, EEA citizens and their family members require immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirms their nationality, to prove their right to work. They are required to provide evidence of lawful immigration status in the UK, in the same way as other foreign nationals.*

*Section 9.12, Each responsible authority will be an expert in their own field....for example the police have a key role in managing the night-time economy.....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.*

*Section 11.20, In deciding which of these powers to invoke, it is expected that licensing authorities should so far as 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.*

*Section 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 made by that individual.*

*Section 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, 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 upon the licensing objectives.*

*Section 11.23, Licensing authorities should also note that modifications of conditions and exclusions 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 holding the licence 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 authority's 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.*

*Section 11.24, A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.*

*Section 11.26, The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.*

*Section 11.27, There is certain criminal activity that may arise in connection to licensed premises which should be treated particularly seriously –*

- for employing a person who is disqualified from that work by reason of their immigration status.*

*Section 11.28, It is envisaged that licensing authorities, the police, The Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determined that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

**Boston Borough Council Licensing Act 2003 Statement of Licensing Policy**  
**Effective 24 November 2020 to 23 November 2025**

3.1 The Boston Borough Council aims to make the Boston area a safer place to live, work and visit by reducing crime and the fear of crime and reducing antisocial behaviour.

3.4 .....Licensing is concerned with the fitness of the operator and detailed issues concerning the operation and management of the premises that are not addressed by the planning control process.

3.6 In reaching a decision of whether or not to grant a licence, the Licensing Authority will take account of any non-compliance with other statutory requirements brought to its attention, particularly where these undermine the licensing objectives. Non-compliance with statutory requirements may demonstrate that the premises are unsuitable for the activities proposed or that the management of the premises is not adequate to protect the public from harm or nuisance.

4 Licensing Objectives. Each of the four licensing objectives is of equal importance and no one objective will take precedence over others when considering applications. The Licensing Authority considers the effective and responsible management of premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the licensing objectives. For this reason these elements should be specifically considered and addressed within the applicants operating schedule

11.1 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of regulated entertainment and late night refreshment. Because of this, the Licensing Authority will normally expect that the DPS for a licensed premise will be able to demonstrate that they are in day to day control of the premises and playing an active role in its operation through a regular personal presence.

11.2 The main purpose of the Designated Premises Supervisor is to ensure that there is always one specified individual, among the personal licence holders at the premises, who can be readily identified for the premises where the sale of alcohol is permitted. The premises licence holder will normally have given that person day-to-day responsibility for running the premises.

**Crime and Disorder Act 1998 Section 17**

*Duty to consider crime and disorder implications.*

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and

(b) the misuse of drugs, alcohol and other substances in its area, and

(c) re-offending in its area

*(2) This section applies to each of the following—  
a local authority .....*

---

This representation from Lincolnshire Police is in support of the review application from Home Office Immigration in respect to Bombay Brasserie, 53 West Street, Boston.

In 2012 illegal workers were encountered by Police and Immigration at the premises and a warning letter was sent to the premises licence holder (who is different to the one in place now – Mr Miah), which was common at the time, as the East Lindsey stated case regarding illegal working had yet to occur and the Licensing Act 2003 and Sec 182 Guidance was not as it is now regarding illegal working.

On 29<sup>th</sup> February 2024 a joint operation with officers from Lincolnshire Police, Trading Standards, Gangmasters and Labour Abuse Authority, and Immigration attended the Bombay Brasserie, 53 West Street, Boston. Front of house and kitchen staff were checked to see if they had the right to work, and whether they were being paid correctly. 2 female kitchen staff from EU countries who were performing functions of vegetable peeling and cleaning were found to not have applied to stay in the UK, and therefore did not have the right to work. They were paid cash and not documented as employees, getting wage slips, paying nation insurance, tax, nor were there employer contributions, they were also paid less than minimum wage.

The premises licence holder Mr Miah stated [REDACTED] was the company operating from the premises, which therefore benefited from the premises licence. A check showed this company is VAT registered to 53 West Street, Boston since January 2020, with the sole director being [REDACTED] with its nature of business being licenced restaurants. It seems other active companies are registered to the address, including one with Mr Miah is director but none are VAT registered. Mr Miah's business is Linx Way Ltd, with its nature of business being other food services. It is not VAT registered and its micro accounts show 1 employee in 2022 and 2023. Mr Miah stated his role was manager and he was paid to hold this position by [REDACTED]. If this is the case it appears that [REDACTED] or the company [REDACTED] would have fulfilled the criteria of premises licence holder, not Mr Miah.

It was for these reasons, with [REDACTED] being the only VAT registered company operating from 53 West Street that the civil penalty for employing workers without the correct permissions was issued to them.

It has been 3 years since the grace period ended with Brexit free movement. It can't be assumed that because someone is from an EU country that they have the right to work in the UK, even if they were living and working in the UK before Brexit.

There were no premises licence conditions on the premises licence for 53 West Street for the premises licence holder or DPS to be compliant with.

Mr Miah appears to have been involved with 53 West Street for some time. Having had the company Bombay Boston Ltd there from 14/2/2013 to 28/10/2014. The previous visit where 3 illegal workers were found occurred on 2/2/12, and the same premises licence holder that got the warning letter remained in position until 15/10/13 at a time when Mr Miah can also be placed there with a cross over period of 8 months. Mr Miah then went onto incorporate Linx Way Ltd at 53 West Street in April 2017. Mr Miah then became premises licence holder and DPS in April 2023. The premises licence had seen no changes since a transfer in 2013, having been granted in 2005, despite numerous companies in different names appearing to operate from there on Companies House.

In 2022 53 West Street, Boston, with Mr Miah being on site appearing to be the operator, was visited by the Council Housing Team and Police Community Cohesion Officer PC Hurley-Rowe on a few occasions regarding the living accommodation above the premises and it was noted that he was operating the licenced premises and that the individuals on the premises licence were no longer involved and had moved on. Council Licensing were informed and this prompted the transfer of the premises licence to Mr Miah in 2023.

Regarding the living accommodation it is understood that remedial works needed to be done for the accommodation to be habitable. On subsequent visits, with 24hrs notice being given, no persons appeared to be living in the accommodation, the remedial work wasn't done, and there was no necessity for it to be done if no one was living in the accommodation. During the visit on 29/2/24, which was unannounced, there appeared to be workers living in the accommodation again, with personal items, clothes, washing items, made up beds, with one worker retrieving their passport from under the mattress. The Council Housing Team were informed.

*The Revised Guidance issued under section 182 of the Licensing Act 2003 states  
Who can apply for a premises licence?*

*8.15 Any person (if an individual aged 18 or over) who is carrying on or who proposes to carry on a business which involves the use of premises (any place including one in the open air) for licensable activities may apply for a premises licence either on a permanent basis or for a time-limited period.*

*8.16 "A person" in this context includes, for example, a business or a partnership. Licensing authorities should not require the nomination of an individual to hold the licence or determine the identity of the most appropriate person to hold the licence.*

*8.17 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(1)(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities. In the case of public houses, this would be easier for a tenant to demonstrate than for a pub owning company that is not itself carrying on licensable activities. Where licences are to be held by businesses, it is desirable that this should be a single business to avoid any lack of clarity in accountability.*

*8.18 A public house may be owned, or a tenancy held, jointly by a husband and wife, civil partners or other partnerships of a similar nature, and both may be actively involved in carrying on the licensable activities. In these cases, it is entirely possible for the husband and wife or the partners to apply jointly as applicant for the premises licence, even if they are not formally partners in*

*business terms. This is unlikely to lead to the same issues of clouded accountability that could arise where two separate businesses apply jointly for the licence. If the application is granted, the premises licence would identify the holder as comprising both names and any subsequent applications, for example for a variation of the licence, would need to be made jointly.*

If Mr Miah (or his business) was not the individual carrying on a business which involves the use of the premises for licensable activities, it could be argued that he didn't fulfil the remit of premises licence holder and therefore shouldn't have held the premises licence. It's suspected that the 1 employee on Mr Miah's Linx Way Ltd business is Mr Miah and his business is his management role in hospitality.

If [REDACTED] or his business fulfilled this remit, then it could be argued that either should have been premises licence holder.

Following the Boston Bombay Brasserie visit on 29/2/24 a visit was also conducted on the same night to a connected licenced premises, [REDACTED] with the adjoining restaurant [REDACTED] in [REDACTED], within [REDACTED] area. Both premises operate under one premises licence. An individual was found working as a chef without the correct permissions, which Lincolnshire Police believe is also relevant to the review due to [REDACTED] connections to 53 West Street, Boston.

Enquiries on the night with staff and since have led Police and Immigration to believe [REDACTED] was operating both the [REDACTED] restaurant at [REDACTED]. There was non-compliance with premises licence conditions (Sec 136 Licensing Act 2003), an unsupervised 17 year old working behind the bar, when the only person who could supervise with the right to work was working in the kitchen and not dressed in a way which would have been acceptable front of house.

The premises licence holder for the [REDACTED] no longer operated from the premises and so surrendered the premises licence. Alcohol continued to be sold, despite being aware of the surrender, another breach of the premises licence (Sec 136 Licensing Act 2003). The premises licence was then transferred to [REDACTED], which through investigation Pc Braithwaite discovered was linked to [REDACTED] as his partner was the sole director. Lincolnshire Police objected to the transfer, and it was refused at hearing. The objection can be found at appendix A along with the minutes and decision notice at appendix B. It is not noted on the minutes who attended the hearing to represent [REDACTED] however Lincolnshire Police attended and can confirm [REDACTED] – Director of [REDACTED] partner of [REDACTED] and manager of [REDACTED] proposed DPS, all attended.

During the hearing to that objection to transfer [REDACTED] admitted to having another business of the same name in Boston, as per Pc Braithwaite's notes made during the hearing.

Regardless of who was and who should have been premises licence holder at 53 West Street, which in itself causes issues, it shows at best poor management and a lack of understanding and at most deliberate deceit and avoidance of accountability. It has had a premises licence and been



benefitting from it whilst employing people without the right to work. Mr Miah admitted employing the individuals without checks and paying them cash. [REDACTED] has a similar relevant history in a neighbouring council area along with concerning management regarding the sale of alcohol.

There appears to be a great lack of care of administration by all those involved, with no want to have the correct people in positions that fits their remit. Changes have only been brought about through Council, Immigration and Police involvement, driving that change.

The Lincolnshire Police are unable to offer any suitable conditions which would prevent the recurrence of such criminal activity. Not employing certain staff correctly, who also don't have the right to work and are less likely to complain, is a deliberate act, when other staff are employed correctly.

11.27 of Section 182 Guidance states that even in the first instance for illegal working, a revocation of the licence should be seriously considered. This is not the first instance of illegal working occurring under this premises licence. A warning was given to the premises licence holder who went on to be at the premises at a time Mr Miah can be linked there. Others also concerned with the premises have a history of the same elsewhere. Lincolnshire Police request that in this case revocation is seriously considered, as this employment was not a mistake, there is a deliberate intention to work outside of the law, these two staff members were not on the books, no payment of NI contributions by them or the employer and no payment of tax, no set up of PAYE, no wage slips, giving an unfair advantage over other businesses as the employer benefits financially for the work done, whilst also benefiting from a premises licence. Section 11.23 of the 182 Guidance states *'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.'*

If possible, please suggest alterations to the application that would resolve the problem mentioned above, again paying attention to the **Licensing Objectives**:

None.

Have you contacted the applicant to discuss this representation?

Yes

No

X

Do you consider mediation could resolve the issue?

Yes

No

X

Do you propose to attend or be represented at any Licensing Panel hearing?

Yes

X

No

Please tick this box if you consent to any notice of any hearing being sent to you to via the e-mail address provided by you above.

X

(Please note if any notice is sent to you by electronic means, you will also receive confirmation of the same in writing).