

Reviewed 29/4/19

APPENDIX 3

Boston Borough Council

**Application for the review of a premises licence or club premises certificate under the
Licensing Act 2003**

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
If you are completing this form by hand please write legibly in block capitals. In all cases ensure
that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.
You may wish to keep a copy of the completed form for your records.

I Bill Skelly, Chief Constable of Lincolnshire Police

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the
premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Boston Supermarket 8 George Street	
Post town Boston	Post code PE21 8XF

Name of premises licence holder Boston European Supermarket Limited

Number of premises licence 32UBB16007

Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible
authority (please read guidance note 1, and complete (A)
or (B) below) ☐
- 2) a responsible authority (please complete (C) below) ☒
- 3) a member of the club to which this application relates
(please complete (A) below) ☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

Please tick ✓ yes

I am 18 years old or over

☐

Current postal
address if
different from
premises
address

Post town

Post Code

Daytime contact telephone number

E-mail address
(optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

Chief Constable
Lincolnshire Police
Police Headquarters
Nettleham
PO Box 999

Telephone number (if any)

E-mail address (optional)

This application to review relates to the following licensing objective(s)

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

X
X

Please state the ground(s) for review (please read guidance note 2)

This review application relates to the premises Boston Supermarket, which is a large supermarket which benefits from a premises licence authorising the sale of alcohol off the premises from 0700 hours to 2300 hours Monday to Sunday. Its opening hours are the same as its licensable hours.

The Police have obtained evidence which indicates that the management of these premises have been operating the premises whilst deliberately and knowingly abstracting the electricity which is an offence under Section 13 of the Theft Act 1968, thereby committing crime and endangering employees and the public due to the unregulated nature of abstraction.

The Licensing Act 2003 is clearly intended to prevent crime and disorder from occurring in relation to licensed premises but also to deter and prevent criminals from operating a premise under the auspice of a Premises Licence granted by the local authority.

Revised Guidance issued under Section 182 of the Licensing Act 2003

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

2.7 Licence Holders have a responsibility to ensure the safety of those using their premises, as part of their duties under the 2003 Act.

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 guilt or innocence of any individual but to ensure that promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premise licence need to be delayed pending the outcome of any criminal proceedings. Some reviews will arise after conviction in the criminal courts of certain individuals, but not all. In any case it is for the licensing authority to determine whether the problem associated with alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interest of the wider community and not those of the individual licence holder.

11.28Where reviews arise and the licensing authorities determines 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.

Please provide as much information as possible to support the application (please read guidance note 3)

Western Power executed a warrant at Boston Supermarket on 27th March 2019 in order to conduct a site visit and access the electricity meter. They discovered a bypass of the meter (2 of the 3 phases) and a hidden isolation switch enabling all the incoming electricity to bypass the meter. It has been calculated that £31,947.92 of electricity had been abstracted. Additional costs of £269.96 and £786 for engineer and revenue protection attendance were added once a tamper had been confirmed. These additional payments and the monies owed due to the abstraction have not been contested by the customer.

BES Utilities has the customer at Boston Supermarket as Harem ALI. It is understood that Harem Ali is the son of the director of Boston European Supermarket Ltd, Salar Ali KARIM who is also the Designated Premises Supervisor. Harem ALI describes himself store manager in numerous statements provided in relation to shop thefts.

The premises has been closely monitored by BES Utilities since April 2018 when it was noted that the usage was greatly reduced. At the time the customer advised that lights were being kept off at night however this didn't explain the periods of zero usage being recorded, as being a supermarket, fridges and freezers would need to be on overnight.

On 31st July 2018 an engineer attended without notice and reported no issues in relation to tampering with the meter. Due to the findings not matching the data recorded a senior engineer was requested to visit.

On the 15th August 2018 an agreed appointment date of 7th September 2018 was made for a meter inspection. On the 16th August 2018 an engineer attended the premises without notice and staff would not allow access. A review of usage from the 15th August 2018 took place on 20th August 2018 and it showed that there was an increase covering the full 24 hours.

At the pre-arranged meter inspection on 7th September 2018 the engineer discovered that the seals were broken on the current transformer chamber, which is in a separate box to the meter. (This chamber houses current transformers for low voltage metering applications. They are required to transform high voltage to low voltage for multi-occupancy or commercial properties. When the supply to the site needs to be greater than 100A then the electricity meter works with current transformers housed within their own chamber). The engineer suspected that the customer had bridged the metal arms coming out of the current transformer which would give free electricity and the zero readings recorded, however due to the pre-arranged nature of the visit he suspected that the evidence had been removed prior to his arrival. The equipment was re-sealed, so that any future tampering could be monitored. Two days after this visit periods of zero usage were again recorded.

A no notice visit was then conducted on 1st October 2018, the engineer reported 3-4 intimidating males in the premises, not in uniform, but who appeared to be employees. After some delay the engineer was eventually allowed access to the meter. The engineer could see that the seals to the current transformer chamber were broken. The manager stated to the engineer that they had had an electrician out in the last 2 weeks doing some work. The engineer stated that there would be no need for an electrician to cut the seals to do the work the manager was saying had been done. Staff told the engineer that the fridges are only switched on for half a day and switched off at night (which is a concern in regards to perishable foods and constant temperature – reported to Environmental Health Boston Borough Council by Lincolnshire Police when made aware of the claims). The engineer noted that they visited at 1800hrs and the fridges were on and the drinks cans were cold. Staff would not let the engineer inspect inside the current transformer chamber. Vinyl seals were fitted, as the engineer didn't have any current transformer seals. The next day the usage was recorded as having increased back to a full 24 hours. This then reduces by half on 8th November 2018.

Usage was then monitored over the Christmas period. It showed increased usage but not the full 24 hours, indicating that rather than the abstraction being on or off there were different phases being bypassed to show some energy use.

On 8th March 2019 an external, real-time screen shot of usage was taken, it showed 0amps running through 2 of the 3 phases. BES Utilities would have expected to see 100amp per fuse not 100amp on only one fuse. The same was seen on 26th March 2019.

On the 27th March 2019 prior to the execution of the warrant an external, real time screen shot of usage was taken, this again confirmed only one phase was in use. The warrant was executed and 2 of the 3 phases were found to be bypassed in the current transformer chamber. The individual phases read far greater amperage than what was going through the meter. This would show as light usage to BES Utilities, far lower than the amount expected for a supermarket.

The engineer also found an illegal connection to the current transformers, which went through the wall to an isolation switch in the room next door. This switch was hidden from view, behind wooden boarding, with an access panel which was concealed by a health and safety poster. In front of the boarding were boxes of alcohol stacked to the ceiling, the engineer noted that he had seen staff going into the room with the isolation switch with boxes of alcohol whilst he had been busy in the room next door which housed the meter and CT chamber, and suspected it was an attempt by staff to conceal the access panel. The isolation switch was attached with to the original cables fitted to the current transformers. It would enable the operator to turn the phases on or off through the current transformers. When off, the result was a full bypass, so no amperage would show going through the meter, enabling the zero reading which had been recorded. When on, it would allow flow through the meter where 2 of the 3 phases were bypassed resulting in a partial bypass. With this set-up the meter could give either a low reading or a zero reading, whilst in reality the premises was using a far greater amount of electricity. The engineer described the bypass as complex and one of the most sophisticated he had ever seen, enabling the operator to either partially or fully bypass the meter. Despite the large amount of temperature controlled stock in the premises, which was taken into consideration, the engineer felt the bypass was so unsafe that it required immediate disconnection as it was a danger to life. Please see appendix A for photographs taken by the electrician for the abstraction and hidden isolation switch.

Staff explained to the engineer during the warrant that they believe the fridge engineers who fix the fridges were responsible for what was found. The engineer reports that the complexity of the bypass and it's hidden nature do not substantiate the above claim. There would be no requirement for fridge engineers to touch the current transformer chamber, and noted that the usage increased and decreased in relation to engineer visits.

A £15,000 payment towards the bill was made to BES Utilities on 28th March 2019 and a payment plan (weekly) was set up to pay the remainder, which, at the time of this review submission had not been adhered to. A crime of abstraction was recorded with Lincolnshire Police however, due to the repayment BES Utilities stated they had no interest in pursuing a criminal complaint and were satisfied that the matter is resolved.

Section 13 of the Theft Act 1968, Section 13 states - A person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity commits an offence.

The Police are unable to offer any suitable conditions which would prevent the recurrence of such criminal activity. In light of this, and of Section 11.28 of the Guidance to the Licensing Act 2003, Police request that serious consideration be given to revocation of the Premises Licence.

Please tick ✓ yes

Have you made an application for review relating to the premises before

☐

If yes please state the date of that application

Day			Month			Year		
1	1	1	1	1	1	1	1	1

If you have made representations before relating to the premises please state what they were and when you made them

Please tick ✓ yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate **X**
- I understand that if I do not comply with the above requirements my application will be rejected **X**

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature

.....

Date **29/04/19**

.....

Capacity **Pc 642 McConville – Alcohol Licensing Officer**

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Appendix A

Photo on arrival

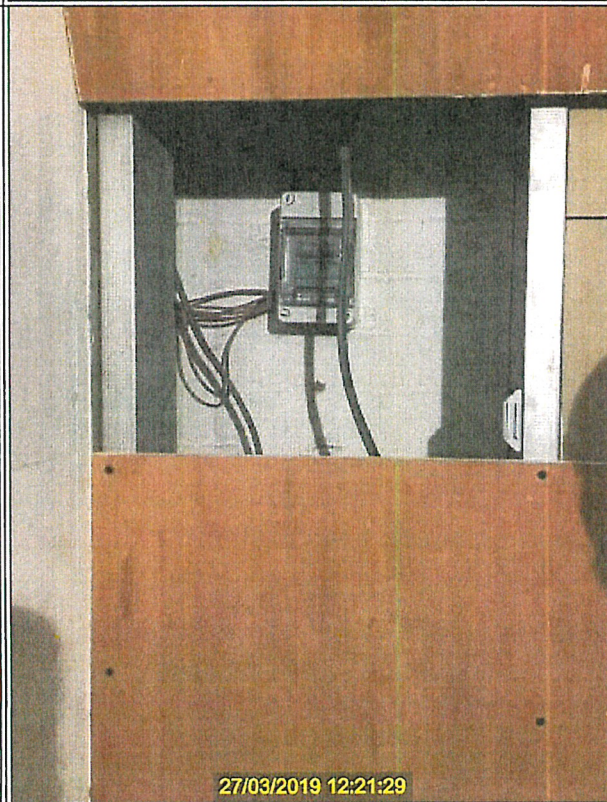
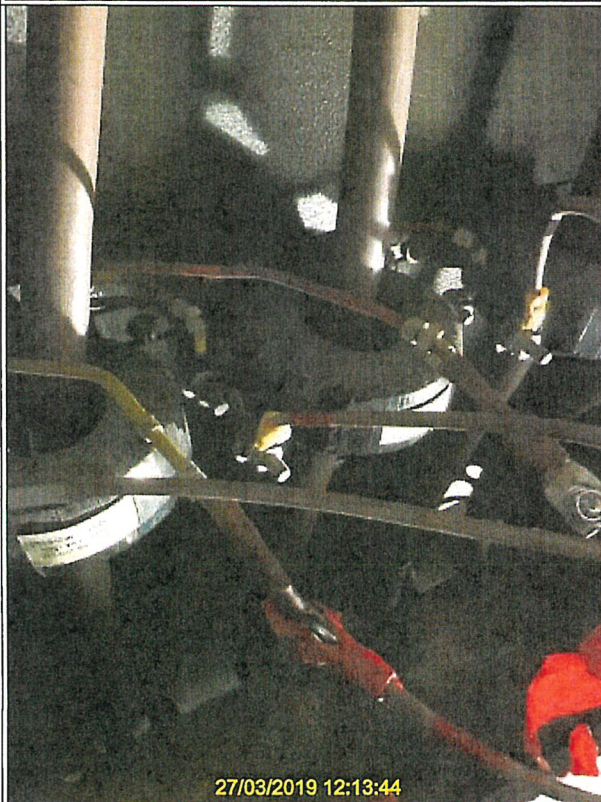
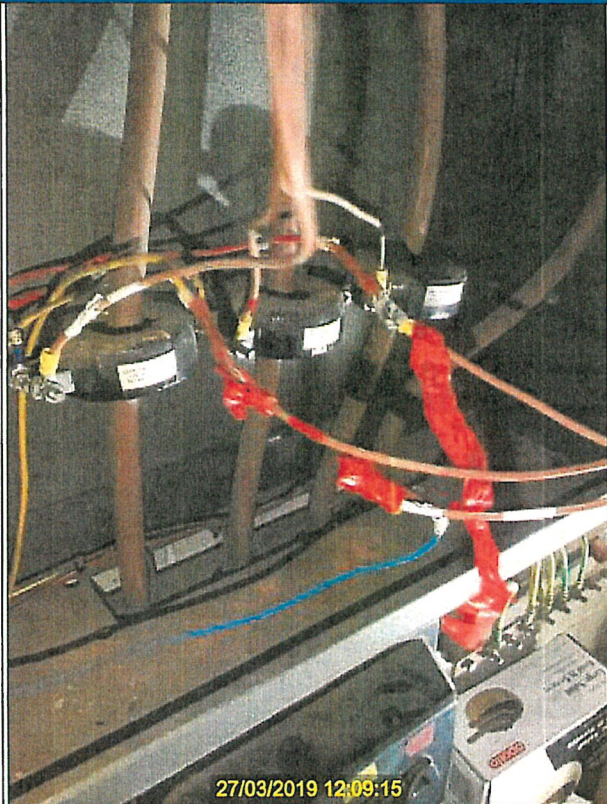
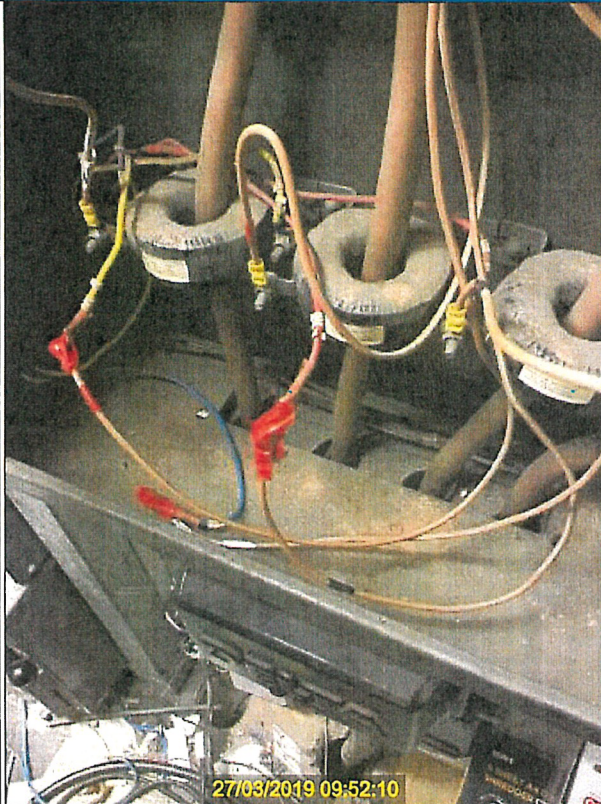


Photo on arrival



