

BOSTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE APPLICATION FOR A PREMISES LICENCE

Licence number: 32UBB19006

Applicant: Miss Zehra Cagdas

Premise: 4-6 New Street, Boston

Hearing Date: 1000hrs – 1 October 2019

Summary

This is a hearing to consider an application for a Premises Licence, the applicant being Miss Zehra Cagdas, who is also the proposed designated premises supervisor. In summary, the applicant seeks a licence for the sale of alcohol for consumption on and off the premises from 1100hrs until 2300hrs every day.

A relevant representation has been received from the Chief Officer of Lincolnshire Police.

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

Options

The Licensing Sub-Committee must determine the application, in accordance with the Licensing Act 2003, having regard to the guidance issued under Section 182 of the Act and the Licensing Authority's Statement of Licensing Policy. The sub-committee must, having regard to any relevant representations, take such steps as considered appropriate for the promotion of the licensing objectives. These steps are summarised as follows:

- To grant the licence, as applied for;
- To grant the licence with modified conditions;
- To exclude from the licence any of the licensable activities applied for;
- To refuse to specify a person as the designated premises supervisor;
- To reject the application.

The sub-committee must give full reasons for its decision.

1. Premises History

- 1.1 Tates Fish and Chip shop is a long established premises at 4-6 New Street Boston. The premises has recently changed hands (date unknown). The new owner wishes to sell alcohol for consumption both on and off the premises.

2. The Application

- 2.1 An application for a premises licence, under section 17 of the Licensing Act 2003, was submitted for Tates at 4-6 New Street. The applicant and proposed Designated Premises Supervisor is Miss Zehra Cagdas. A plan indicating the premises location is attached at Appendix 1.
- 2.2 The application describes the premises as being a fish and chip shop which provides eat-in and takeaway service. Customers eating in are served by waiters/waitresses. A copy of the application, including a list of proposed volunteered conditions, is attached at Appendix 2 and a plan of the premises is attached at Appendix 3. The licensable activity applied for is the sale of alcohol for consumption on and off the premises from 1100hrs until 2300hrs every day. The applicant has confirmed that whilst the opening hours on the application form state 1100hrs until 1100hrs (24 hours) this should read 1100hrs until 2300hrs. For the purpose of correction to be recorded, it is suggested that the sub-committee asks the applicant to confirm that this is the case at the hearing.
- 2.3 An outside eating area is included on the plan at Appendix 3. Alcohol consumed in this area will be an “on” sale and as such would not impact on the provisions of the Public Spaces Protection Order, provided that customers consuming alcohol do not “step out” of the marked area..
- 2.4 In submitting the application the applicant is required to describe any steps intended to be taken to promote the 4 licensing objectives, namely:
- The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance

- The Protection of Children from Harm

- 2.5 The steps the applicant intends to take to promote the licensing objectives, should the licence be granted, are in accordance with the operating schedule appended to the application. Should the application be granted, conditions consistent with the steps outlined in the operating schedule will be appended to the licence.
- 2.6 As required under the terms of the Licensing Act 2003 the application form was correctly completed and a copy was served on all “Responsible Authorities”. The application was advertised in a local newspaper and outside the premises. Notice of the application was posted on the council website. Responsible Authorities and other persons are permitted to submit a representation regarding the application during the 28 day period starting on the day after the day the application is given.

3. Representations

- 3.1 The Licensing Act 2003 states that “relevant representations” means representations that are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.
- 3.2 A representation has been received from Lincolnshire Police. A copy of the representation and supporting information is attached at Appendix 4.
- 3.3 Any party who has submitted a representation may choose to rely on their written submission or may attend the hearing to also 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.

4. Considerations

- 4.1 The application must be considered on its own merits; standardised conditions cannot be applied.
- 4.2 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. Whilst this does not require a licensing authority to decide that no lesser step will achieve the aim, 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. However, 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. The sub-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.

- 4.3 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.
- 4.4 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 4 licensing objectives is not, in accordance with the Licensing Act 2003, relevant and therefore cannot be considered.
- 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 being 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.
- 4.6 The sub-committee’s attention is drawn, in particular to the following paragraphs of the Section 182 Guidance:

Paragraph 2.1

“Licensing Authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).”

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 night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority’s 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

- 4.7 In determining the 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. Extracts from the Statutory Guidance are reproduced at Appendix 5;
 - Boston Borough Council’s Statement of Licensing Policy; Extracts from the policy are reproduced at Appendix 6;
 - The steps that are appropriate to promoting the licensing objectives;
 - The relevant representation including supporting information, if any, presented.

Should the sub-committee depart from the statutory guidance or the Statement of Licensing Policy reasons for doing so must be given.

5. Human Rights & Equalities

- 5.1 In determining the application 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 that is incompatible with the European Convention on Human Rights.
- 5.2 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 7.

6. Decision

- 6.1 The sub-committee's determination should be evidence-based, justified as being appropriate and reasonable to achieve promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 6.2 The sub-committee must consider the application, the relevant representation along with any supporting evidence/information and any submissions made by any party at the hearing. The sub-committee must determine the application, in accordance with the Licensing Act 2003, having regard to the guidance issued under Section 182 of the Act and the Licensing Authority's Statement of Licensing Policy. The sub-committee must, having regard to the relevant representation, take such steps considered appropriate for the promotion of the licensing objectives. These steps are:
- To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application and any mandatory conditions;
 - To grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application, having modified the conditions to such extent as the authority considers appropriate for the promotion of the licensing objectives. Conditions are modified if any of them is altered or omitted or any new condition is added. Grant of the licence would also be subject to the mandatory conditions prescribed in the Licensing Act 2003;
 - To 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.

This is a matter for the sub-committee to determine in light of the above information and any other information it considers material.

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

7 Appeal

- 7.1 It should be noted the applicant and any party making a representation may appeal the decision made by the sub-committee to the Magistrates' Court. However, the decision made by the sub-committee takes immediate effect. Any appeal must be made within 21 days of the day on which all parties were notified of the decision to be appealed against.

8 List of Associated Papers

Appendix 1	Location Plan
Appendix 2	Application Form
Appendix 3	Plan of premises
Appendix 4	Representation from Chief Officer of Lincolnshire Police
Appendix 5	Extract from s.182 Guidance
Appendix 6	Extract from Licensing Policy.
Appendix 7	Section 149 of the Equality Act 2010