

Licensing Act 2003Representation 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, Myle Cross Centre Macaulay Drive Lincoln LN2 4EL
Telephone Number:	[REDACTED]
E-mail:	[REDACTED]

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

Name:	Europe Wine
Address:	36 Red Lion Street Boston PE21 6PZ
Application Details:	Premises Licence Application
Date Application Received:	4 th September 2019

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 X
- Prevention of Public Nuisance X
- The Protection of Children from Harm X

In relation to this application, the following Guidance issued under Section 182 of the Licensing Act 2003 has been considered –

From 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.

From Section 11.24, which is in relation to reviews but deemed relevant to this representation.....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.

From Section 11.26, which is in relation to reviews but deemed relevant....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.

From Section 11.27, which is in relation to reviews but deemed relevant....there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for employing a person who is disqualified from that work by reason of their immigration status in the UK and the sale or storage of smuggled tobacco and alcohol.

From Section 11.28, which again is in relation to reviews, but deemed relevant.....It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is 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.

As well as Boston Borough Council's Statement of Licensing Policy

2.7 These conditions will relate to the premises and other places being used for licensable activity and the impact of those activities in the vicinity. In this regard the Licensing Authority will primarily focus on the direct impact of any activities taking place on those living, working or otherwise engaged in the area concerned. Vicinity has not been given a definition within the Act and may vary in distance from the premises depending on the nature of the area. Considerations which will be taken into account when assessing in the vicinity include but are not limited to:

- The nature of the licensable activity
- The nature and locality of the premise
- The time of day of the proposed licensable activity
- The frequency of the activity

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 anti-social behaviour.

3.3 There are a number of wider issues which may need to be given due consideration when dealing with applications. The Licensing Committee may therefore receive and may act upon relevant reports concerning (amongst others)

- crime and disorder
- community safety issues
- any other reports considered appropriate to the licensing function

~~3.4 The Licensing Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency. There are several key differences between licensing and planning control. 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. Planning control relates to use of the premises. The grant of planning permission should not be a presumption that a premises licence will automatically follow and vice versa. Additionally, there is no legal basis for the Licensing Authority to refuse a licence application because it does not have planning permission.~~

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.

5.2 As far as the Licensing Authority's overall approach to licensing hours is concerned it is not intended that any form of zoning will be introduced. Experience in other areas shows that this can lead to the significant movement of people across boundaries in search of premises opening later

and puts greater pressure on the centre than is necessary and can lead to unnecessary disorder and nuisance. Applicants should note that the Licensing Authority will give careful consideration to applications for premises situated in predominantly residential areas, where relevant representations have been received and the proposed hours of operation are between 11.00pm and 7.00am. In the absence of any representation the application must be granted.

5.3 Shops, stores and supermarkets should generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes in accordance with paragraph 5.2 above. However, in the case of individual shops that are known to be or are in an area which is known to be a focus of disorder and disturbance, or in largely residential areas where the proposed operation is likely to result in noise nuisance, subject to receiving relevant representations, a further limitation on licensing hours may be appropriate.

Lincolnshire Police will now document the history of the premises and the history of the applicant.

36 Red Lion Street has a licensing history. In October 2018 Lincolnshire Police and Trading Standards attended the premises and located illegal cigarettes in a box on top of a fridge unit on the shop floor. Present in the shop was Marta Sumenuka. The premises had a history of selling illegal cigarettes on test purchases and even went on to sell illegal cigarettes just before the subsequent review hearing. The premises licence was revoked.

In January 2019, a premises licence application for 36 Red Lion Street was received, Lincolnshire Police were not able to show a link with the previous licence holder however presented evidence of the applicant's history of obtaining a premises licence on behalf of another and being involved with premises where illegal cigarettes were stored. The Licensing Sub-Committee refused the application.

Lincolnshire Police then received an enquiry regarding another premises licence application for 36 Red Lion Street in July 2019. This was from a licencing agent acting on behalf of Ms Sumenuka. Knowing Ms Sumenuka's link to the premises, Lincolnshire Police informed the agent that rigorous checks would be completed on the applicant. No application was forthcoming. Ms Sumenuka has since applied for a premise licence at 42 High St, Boston, which Lincolnshire Police made representations to due to the sale and storage of illegal cigarettes. The application was subsequently withdrawn.

The applicant, Mr Talib Abdul KARIM is known to Lincolnshire Police as he is the current premises licence holder and designated premises supervisor at 2 Alfred Street, Boston. He also held a premises licence for a short time at 28 West Street.

On 20th May 2019 Lincolnshire Police received a premises licence application for 43 Wide Bargate, through licensing agent Mr Paul Byatt, the applicant was Mr Karim.

Pc 642 McConville attended 43 Wide Bargate on 21st May 2019 unannounced and discovered the

sole worker in the premises had no right to work and was therefore working illegally. The application was withdrawn. Subsequent enquiries led Lincolnshire Police to believe that Mr Karim was acquiring a premises licence for another, who also didn't have the right to work, and therefore had no intention of having responsibility for the business.

On 30th April 2019 a visit to 7 Day Supermarket, 44 King Street, Thetford, by Police, HMRC, Breckland Council Licensing, and Trading Standards occurred. A large quantity of illegal tobacco was found in a vehicle at the rear of the premises and in a storage container. The vehicle and container were linked to the store and the premises licence holder. A review of the premises licence was submitted and on 25th June 2019, the premises licence was revoked. During the hearing it became obvious that the designated premise supervisor (DPS) no longer had anything to do with the premises. He then formally withdrew from the position. As there is a 3 week appeal period, the premises can continue selling alcohol, if there is DPS in place. On 5th July an application was received by Breckland Council putting Mr Karim as the DPS, enabling the premises to sell alcohol again. An appeal was then received, enabling the premises to continue selling alcohol after the appeal period. On 18th September 2019, Police and Breckland Council Licensing attended 44 King Street and located a bag of 10X cartons of foreign 200 Marlboro Gold cigarettes secreted behind the counter, these were seized. Mr Karim was not present at the time.

It is an offence under Section 144 of the Licensing Act 2003 to have smuggled goods on licensed premises. Mr Karim had been the DPS for 2.5 months and was the person in control of the day to day alcohol sales at the premises and the person who is on the ground, making sure the licensing objectives, namely the prevention of crime and disorder are actively promoted. He is either part of the criminality or he's failed in his duty as DPS.

Following the above information from Norfolk Police, Lincolnshire Police and Trading Standards carried out a test purchase at EU International, 2 Alfred St, Boston. The premises did not sell illegal cigarettes, but it did sell a single can of 7.6% ABV Perla lager, contrary to the premise licence conditions. The test purchaser also witnessed the selling of alcohol to a drunk.

On 25th September 2019 Lincolnshire Police and Trading Standards attended 2 Alfred St, Boston and carried out a compliance visit. Mr Karim was present. It was noted that he knew nothing about a fire risk assessment (as required by law) all his fire extinguishers were out of date as of 2012, 2 of which had stock stacked in front of them, 1 of which was set off by the applicant in an attempt to manoeuvre it as the pin was removed. There was no first aid kit on the premises. Failures with both the fire extinguishers and first aid kit are breaches of Annex 2 premises licence conditions – Fire Safety has been informed. Section 2.7 of the 182 Guidance states *Licence Holders have a responsibility to ensure the safety of those using their premises, as part of their duties under the 2003 Act.*

It was noted that the foreign beers weren't price marked, which is an offence under the Price Marking Order, yet the more standard beers and lagers were priced.

Under Annex 3 of the premises licence – conditions placed on the licence following a hearing on 5/6/19, Mr Karim was non-compliant with the following –

- Offering for sale and selling beers/lagers over 6.5% ABV. Lincolnshire Police seized these items
- Selling single cans – selling less than multiples of 4 cans
- CCTV non-compliance – not recording for 31 days – only recorded for 23 days. The time was 16 minutes out. No letter of compliance, 12 months maintenance check.
- Not litter bin outside
- No notice asking customers to leave quietly
- No staff training record

A breach of licence conditions is an offence under Section 136 Licensing Act– unauthorised Licensable activities.

In regards to this application Mr Karim has been asked to provide proof of business ownership, including such paperwork as a lease, bank statement showing purchase, companies house registration, food registration, utilities, rates etc. As of 2/10/19 Mr Karim has provided 4 pages of a lease which failed to show which property it related to, who the lease was between, what date the contract was signed or who signed it.

Lincolnshire Police has intelligence that it intends to show to the Licensing Sub-Committee on the day of the hearing. Under Regulation 14 of the Licensing Act 2003 (Hearings) Regulation 2005 Lincolnshire Police request that this intelligence is not shown or disclosed to the public, and that this includes the applicant and/or any representative acting on behalf of or connected to the premises.

36 Red Lion Street is within the Public Space Protection Order for alcohol and therefore needs an experienced and knowledgeable licence holder who is aware of the issues within Boston and who will make sure that their premises will not add to them. The committee need to be confident that the applicant will not undermine the licencing objectives, breach conditions and add to the well documented street drinking and anti-social behaviour issues within Boston.

Lincolnshire Police have no confidence in the applicant upholding the licensing objectives. He has failed to demonstrate he is capable of running a licenced premises lawfully, both here and in Norfolk. Mr Karim is linked to serious criminality in Norfolk and is being investigated there. In Boston he has attempted to obtain a premises licence previously under suspicious circumstances, and due to the short time period from the previous application enquiry in July, and the lack of evidence showing a genuine business take over it is suspected he may be doing so again.

36 Red Lion Street has history of illegal cigarette sales. The last few applicants and premises licence holder have been linked to illegal cigarettes and now Mr Karim is also linked to illegal cigarettes. Lincolnshire Police request that this application is refused due to the overwhelming evidence that Mr Karim will fail to promote the licensing objectives.

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

Lincolnshire Police cannot suggest any appropriate conditions as the applicant has demonstrated complete disregard previously, so much so that there is no confidence that any conditions placed upon the licence will be adhered to.

Have you contacted the applicant to discuss this representation?

Yes X No

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).