

. The Licensing Act 2003

2.1 Boston Borough Council as Licensing Authority (hereinafter referred to as the Licensing Authority) is responsible for the licensing of all licensable activities under the Licensing Act 2003 (the Act). This document sets out the policies and principles that the Licensing Authority will apply when making decisions on applications for:

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club;
- The provision of regulated entertainment; and
- The provision of late night refreshment.

The term licensee/licence holder is deemed to include licence holders, designated premises supervisors and club premises certificate holders.

This policy is intended to provide clarity to applicants, responsible authorities and other persons on how this Licensing Authority will determine applications to supply alcohol, provide regulated entertainment and operate late night refreshment premises. Guidance and best practice is available to assist applicants; this guidance does not form part of this Policy. The Licensing Authority will take this Policy into account if its discretion is engaged (i.e. at a hearing following relevant representations or a review hearing)

2.2 The Licensing Authority has a duty under the Act to carry out its functions with a view to promoting the 4 licensing objectives. These are: -

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

2.3 It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as solving all problems within the community. The Licensing Authority will therefore continue to work in partnership with the Borough Council, its neighbouring authorities, the Police, Responsible Authorities, local businesses and local people towards the promotion of the objectives.

2.4 In preparing this policy statement the Licensing Authority has consulted with the following: -

- Lincolnshire Police
- responsible authorities as defined by the Act
- representatives of licence holders and club premises certificate holders
- local businesses and their representatives
- local residents and their representatives
- Boston Borough Council Elected Members

- Parish Councils
- Other persons and organisations that the Authority considered could contribute to this Policy

A full list of consultees is available from the Licensing Section on request.

Appropriate weight has been given to the views of all those consulted prior to this policy statement taking effect on 20 July 2015.

- 2.5 In developing this Policy, the Licensing Authority took into account the legal requirements of the 2003 Act and our duties under:

Section 17 of the Crime and Disorder Act 1998 to take all reasonable steps to reduce crime and disorder within the Borough

The Regulators' Compliance Code (set out under the Legislative and Regulatory Reform Act 2006) not to impede economic progress by the regulations we set out and to particularly consider the impact of regulations on small businesses; and

The Provision of Services Regulations 2009 to ensure requirements are:

- Non- discriminatory.
- Justified by an overriding reason relating to the public interest.
- Proportionate to that public interest objective.
- Clear and unambiguous.
- Objective.
- Made public in advance, and
- Transparent and accessible.

- 2.5(a) The Act describes two "bodies" that may make representations to licence applications and may apply for an existing premises licence to be reviewed by the Licensing Authority, Responsible Authorities and "other persons". Responsible Authorities are defined in the Act.

- 2.5(b) "Other persons" means any individual, body or business who is affected by the operation of a licensed premises regardless of their geographical location. Although they may be in any geographical location, any representation they make must be relevant to one or more of the licensing objectives and must not be considered to be frivolous or vexatious. Additionally, any application to review a premises licence must not be repetitious.

- 2.5(c) The Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or a review, this authority will examine the content of the representation particularly closely. The authority will expect the author to explain in detail how, in terms of the licensing objectives, they would be affected by the application. The Licensing Authority will consider rejecting any representation or review application which does not include sufficient detail to outline harm or disturbance which may be caused.

- 2.6 The purpose of licensing is to control licensed premises and other events within the terms of the Act. Where responsible authorities and other persons do not raise any representations about the application made to the Licensing Authority, it is the duty of the Authority to grant a licence or certificate subject to conditions that are consistent with the operating schedule and any mandatory conditions prescribed in the 2003 Act itself. The Licensing Authority will not impose any further conditions unless its discretion has been engaged following the making of relevant representation(s). It may then only impose such conditions as are appropriate to promote the licensing objectives arising out of the consideration of the representation(s).
- 2.7 These conditions will relate to the premises and other places being used for licensable activities 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 premises
 - The time of day of the proposed licensable activity/activities
 - The frequency of the activity/activities
- 2.8 In undertaking its licensing function, the licensing authority will have regard to other legislation, including but not exclusively: -
- Section 17 of the Crime and Disorder Act 1998 – requiring a local authority to do all that it reasonably can to prevent crime and disorder in its locality and to consider crime and disorder in its decision making process
 - The European Convention on Human Rights, which is given effect by the Human Rights Act 1998 which places a duty on public authorities to protect the rights of individuals in a variety of circumstances.
 - The Health and Safety at Work etc. Act 1974 and subsidiary regulations
 - Environmental Protection Act 1990
 - The Anti-social Behaviour Act 2003
 - Fire Safety legislation
 - Anti-Social Behaviour, Crime & Policing Act 2014

- 2.9 The Licensing Authority will discharge its responsibilities identified by other Local and Government strategies and policies, so far as they impact on the objectives of the Licensing Act. Some examples of these strategies and policies are:
- The Community Plan
 - Action Plan for Tackling Alcohol Related Crime, Disorder and Nuisance;
 - Safer Clubbing
 - Local Government Regulation (LGT)TSI Code of Best Practice on Test Purchasing.
 - Alcohol Harm Reduction Strategy for England
 - Community Safety Strategy.
 - The Child Protection Plan
 - Drugs and Alcohol Strategy
 - Home Office Designated Public Place Order (DPPO) Guidance to be replaced by Public Space Protection Order (PSPO) Home Office guidance or any successor to this.
- 2.9(a) The Licensing Authority also recommends that applicants and licence holders have regard to the following guidance documents, when drafting licence applications and undertaking licensable activities
- Home Office – Practical Guide for Preventing and Dealing with Alcohol Related Problems.
 - Home Office Safer Clubbing Guide.
 - Home Office Section 182 Guidance to Licensing Authorities.
 - The Event Safety Guide and any documents available on the Lincolnshire Event Safety Partnership website at <http://www.lincolnshire.gov.uk/lincolnshire-prepared/Lincolnshire-Event-Safety-Partnership>
 - Managing Crowds Safely.
 - 5 Steps to Risk Assessment.
 - The Guide to Safety at Sports Grounds.
 - Safety Guidance for Street Arts, Carnivals, Processions and Large-Scale Performances.

2.10 The Licensing Authority takes the following approach to the decision making process:

- Each case will be decided upon its merits. This Authority will not apply a rigid rule to its decision making;
- Other persons can include residents'/ tenants' associations, community associations, trade associations and elected members. Councillors may represent other persons, providing they do not also sit on the Licensing Sub-Committee determining the application in question.
- We will give clear reasons for our decisions.

Where valid representations are made applications will be considered by a Licensing Sub-Committee (consisting of Councillors); we give applicants, responsible Authorities and other persons an equal opportunity to state their case in accordance with our protocol, which is available from the Licensing Section.

2.11 The licensing function is not to be seen as the primary mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. Whilst there are a range of statutory powers available to deal with such behaviour, these powers will not always be sufficient to control negative impacts on the licensing objectives on the vicinity. Therefore, the fact that such impact may occur is a relevant factor in the consideration of licensing applications. This may lead to a refusal of the application or the addition of conditions to meet the concern(s) contained in a relevant representation

2.12 The Licensing Authority is committed to the implementation and application of this policy in such a manner and to ensure that no applicant or other person is treated less favourably on the grounds of sex, marital status, race, nationality, ethnic or national origin, colour, disability or age, nor is disadvantaged by the application of a rule, condition or requirement, which has a discriminatory effect which cannot be justified either in licensing terms or as a requirement of law. An Equality Impact Assessment has been undertaken with respect to this policy

2.13 The Licensing Authority is fully committed to promoting equal opportunities and non-discriminatory practice. The Licensing Authority will comply, in the exercise of all its functions, with Race Relations legislation which places a legal obligation on public authorities to have due regard for the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups (Race Relations Act, 1976 as amended by the Race Relations (Amendment) Act, 2000).

3. Integrated Strategies and the Avoidance of Duplication

- 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.
- 3.2 By consulting widely prior to this policy statement being published the Licensing Authority has endeavoured to secure proper integration with local crime prevention, planning, transport, tourism and cultural strategies.
- 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:-
- crime and disorder
 - community safety issues
 - needs of the local tourist economy
 - employment situation in the area and the need for new investment and employment where appropriate
 - planning considerations which might affect licensed premises
 - local transport arrangements
 - impact of licensing on regulated entertainment and particularly live music and dancing with reference to any cultural strategy
 - 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.
- 3.5 Applicants are strongly encouraged to make any necessary applications for Planning permission /Building Regulations approval permission before or at the same time as they make an application for a licence/club premises certificate. Furthermore, to reduce the risk of being subject to planning enforcement, applicants are advised to ensure that:
- the activity to be authorised by the premises licence or club premises certificate is a lawful planning use; and
 - the hours sought do not exceed those authorised by any 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.
- 3.7 In order to avoid duplication with other existing legislation and regulatory regimes the Licensing Authority will not attach conditions to the licence unless they are considered appropriate for the promotion of the licensing objectives. Conditions will be considered unnecessary if they are already adequately covered by other legislation.
- 3.8 Conditions (other than mandatory conditions and those in the applicant's operating schedule) may not be attached to a premises licence or club premises certificate unless the application has been the subject of a relevant representation.

4. The Licensing Process

- 4.1 The functions of the Licensing Authority under the Act may be carried out by the Licensing Committee, by a Sub-Committee or by one or more officers acting under delegated authority in accordance with the provisions of the Act. Delegated powers are in accordance with the table at Appendix 1. This table does not form part of the policy and may therefore be amended without consultation with statutory consultees.
- 4.2 Each application for licensing will be considered on its own merit. Nothing will undermine any person from applying for a variety of permissions under the Act.
- 4.3 Other than electronic applications applicants are reminded that documents submitted as part of an application which bear a signature, criminal record certificates, criminal conviction certificates, subject access documents and licensing qualifications must be original documents. Faxes and photocopies are not acceptable unless with the prior agreement of the Licensing Authority.
- 4.4 Applicants for any authority or permission are expected to make their application in accordance with the Act and any regulations made there under. Failure to meet this requirement may result in the application being returned. The Licensing Authority will endeavour to explain why the application is considered to be deficient and will invite the applicant to re-submit the application with all the required information. Application forms will not be returned where they contain obvious and minor factual errors that can easily be amended. Applications for a premises licence or club premises certificate must be copied to each of the appropriate Responsible Authorities. Where applicants fail, after being reminded, to copy applications to Responsible Authorities, or they resubmit applications which are still deficient, the application will be rejected. Re-submission of an application following rejection will be subject to the statutory advertising requirements.

- 4.4(a) A main part in ensuring compliance with the Act, and in particular showing how the four licensing objectives are to be achieved, is the "operating schedule" for the licensed premises. The operating schedule forms part of the licence application. The schedule will aid any Responsible Authority or other party to assess whether the steps to be taken to promote the licensing objectives are satisfactory. The schedule will form part of the conditions of the licence or certificate, if granted. The Licensing Authority will work with the licensees and applicants by providing guidance notes on the completion of the schedules. However, the responsibility for drawing up the operating schedule rests with the applicant. The operating schedule should detail the manner in which the business will be run and the steps/controls put in place to meet the licensing objectives. Any individual preparing an operating schedule is free to volunteer any measure as a step he or she intends to take to promote the licensing objectives. The operating schedule must specify all types of entertainment which will take place at the premises
- 4.5 Applications for minor variations may be subject to consultation with the appropriate responsible authorities and will be refused if any responsible authority indicates that they would make a representation on the proposed minor variation.
- 4.6 In an effort to avoid unnecessary hearings, applicants are strongly advised to prepare risk assessments and from these formulate any steps they consider necessary to promote the licensing objectives and then to consult with the responsible authorities as defined within the Act before submitting their applications. Failure to do so may lead to representations which can only be determined by the Licensing Sub-Committee. In respect of minor variations applicants are strongly advised to contact the appropriate responsible authorities before formally submitting their application in order to avoid unnecessary expense.
- 4.7 Account will be taken of the need to encourage and promote all types of entertainment, including live music, dancing and theatre for the wider cultural benefit of the community as a whole. If representations are made concerning the potential for limited disturbance from these activities in a particular neighborhood, the Licensing Authority's consideration will be balanced against the wider benefits to the community.
- 4.8 The guidance issued by the Home Office indicates that representations can be made in opposition to, or in support of, an application. With this in mind the Licensing Authority would remind all parties that all representations (both for and against an application) must relate to the promotion of the licensing objectives.
- 4.9 PREMISES LICENCES/CLUB PREMISES CERTIFICATES - Applicants will be required to submit their application in the form detailed in regulations made under the Act. Applicants will be required to submit, with their application for a premises licence, club premises certificate, Provisional Statement or a variation to their existing premises licence or club registration certificate, an Operating Schedule detailing: -
- The licensable activities to be conducted on the premises;

- The times during which it is proposed that the relevant licensable activities are to take place;
- Any other times when the premises are to be open to the public or to members of a club;
- Where the licence is required only for a limited period, that period;
- Where the licensable activities include the supply of alcohol, the name, address and licence number of the individual to be specified as the designated premises supervisor;
- Where the licensable activities include the supply of alcohol, whether the alcohol will be supplied for consumption on or off the premises or both; and
- The steps which the applicant proposes to take to promote the licensing objectives.
- All supporting documentation to satisfy the four licensing objectives.

4.10 Applications will be determined having regard to:

- This Policy
- The Licensing Act 2003 and subordinate legislation.
- Guidance issued by the Home Office
- Any relevant representations received (provided they are not determined to be frivolous or vexatious).

4.11 **LARGE SCALE EVENTS** - Organisers of large events, major festivals and carnivals should approach the Licensing Authority and Responsible Authorities at the earliest opportunity to discuss arrangements for the licensing of those activities falling within the provisions of the Licensing Act 2003. In respect of some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within the premises. Anyone wishing to hold such an event should notify the Licensing Authority no less than 6 months before the event is due to happen. This will allow time for the preparation of a substantial operating schedule, by the applicant, which may be required to ensure promotion of the licensing objectives. The Licensing Authority will expect applicants applying for permissions to stage events, which draw in large numbers of people and/or have an impact on the road network, to have consulted with the Boston Safety Advisory Group and Lincolnshire County Council (as the Highways Authority).

4.12 **PERSONAL LICENCE** - A person wishing to sell or supply, or authorise the sale or supply of alcohol, for consumption on or off a licensed premises will need to apply for a Personal Licence. The Licensing Authority strongly encourages premises licence

holders, where alcohol is being sold, to ensure that there are sufficient personal licence holders present at the premises to ensure adequate supervision of the sale of alcohol. In circumstances where the Personal Licence holder has delegated the responsibility for the sale of alcohol, they will still have a duty of responsibility for the actions of those they have authorised to make those sales.

- 4.13 Applicants for a personal licence are expected to make their application in accordance with the Act and any regulations made there under. Failure to meet this requirement may result in the application being returned.
- 4.14 Where an application for a personal licence reveals a disclosable conviction for a relevant offence under the Act, the Licensing Authority recommends that the Police carry out full and proper enquiries (including interviewing applicants as necessary) so as to provide evidence as to the reasons the crime prevention objective will be undermined by the grant of the licence before exercising its discretion to make an objection.

5. Licensing Hours

- 5.1(a) Under the Act there are no standard permitted hours for the sale of alcohol. Applicants are able to suggest in their operating schedule the hours they wish to be open for the sale of alcohol and to apply to vary their existing licences if they wish to sell alcohol beyond their current hours. However, there is no general presumption in favour of lengthening licensing hours in any area of the Borough and the four licensing objectives will be the paramount consideration at all times.
- 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 more 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 subject to 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.

6. 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.

The Licensing Authority recommends that applicants carry out their own risk assessments in relation to the four licensing objectives in order to assist them in deciding whether any steps are required to be taken in order to meet those objectives.

In accordance with the Home Office Guidance to Licensing Authorities, this Authority expects applicants to demonstrate knowledge of the area within which the licensed premises is situated. This would include, for example, proximity to residential properties, areas where children congregate and any risk posed to the local area by the applicant's proposed licensable activity.

6.1 Prevention of crime and disorder

- 6.1.1 The Licensing Authority will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees/certificate holders/designated premises supervisors take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises.
- 6.1.2 In addition to the requirement for the Licensing Authority to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect on, and do all it reasonably can to prevent, crime and disorder in the Borough.
- 6.1.3 When addressing crime and disorder the applicant should initially identify any particular issues (having regard to their type of premises and/or activities) which are likely to adversely affect the promotion of the crime and disorder objective. Such steps as are required to deal with these identified issues should be included within the applicant's operating schedule.

The Licensing Authority encourages applicants to include in their operating schedule the steps they propose to take to reduce/deter crime and disorder. These steps will vary from premises to premises according to the type of licensable activities that are to be carried on. Examples of measures the Licensing Authority encourage applicants to consider and address include

- Physical security features e.g. use of toughened, polycarbonate or plastic drinking glasses

- Procedure for risk assessment of alcohol promotions to ensure they do not promote irresponsible drinking or potentially breach the mandatory condition on irresponsible drinks promotions
- The use and number of Security Industry Authority (SIA) registered door supervisors
- Amount of seating to be provided to reduce the risk of high volume vertical drinking
- Training given to staff in crime prevention and drug awareness measures
- Measures agreed with the Police to reduce crime and disorder
- Measures to prevent the use or supply of illegal drugs
- Search procedures
- Participation in the use of the radio network scheme
- Membership of Boston Pubwatch or a similar scheme
- Formalisation of a dispersal policy
- Measures to prevent glasses and bottles being taken away from the premises
- Training given to staff to prevent the sale of alcohol to those who are under age or appear drunk

CCTV remains one of the most effective measures for reducing crime and disorder. The Licensing Authority expects premises that retail alcohol for consumption on or off the premises will have an effective CCTV system installed that operates in compliance with the requirements of Lincolnshire Police

- 6.1.4 The British Beer and Pub Association (BBPA) has consolidated good practice on combating violence in licensed premises into a guide to risk assessment. This is available on the BBPA's website: www.beerandpub.com.
- 6.1.5 Pub Watch – The Licensing Authority recognises the important role of licensees working together to create a safe and secure environment for customers, thereby reducing crime and disorder in the area. The Licensing Authority will therefore do all that it can to support the effective working of Pub Watch and other trade associations in the borough.

6.2 Public Safety

- 6.2.1 The Licensing Authority will carry out their licensing functions with a view to promoting public safety and will seek to ensure that licensees/certificate holders/designated premises supervisors take measures to protect the safety of performers and persons attending licensable activities. The risk to public safety will vary according to the type of premises and the activities carried out.

The Licensing Authority encourages applicants to include in their operating schedules the steps they propose to take to promote public safety.

- 6.2.2 Where an applicant identifies an issue in regard to public safety, which is not covered by existing legislation, the applicant should identify in their operating schedule the steps which will be taken to ensure public safety.

6.2.3 Depending on the individual style and characteristics of the premises and/or events the following issues may be of relevance:

- Use of equipment and effects
- Levels of door supervision
- Measures to prevent the supply and use of illegal drugs
- Free availability of potable water where this is not covered by the mandatory condition.
- Physical safety features e.g. use of toughened glass, polycarbonate and plastic containers
- Fire evacuation procedures
- Provision of CCTV (see para 6.1.3)

N.B. In relation to free potable water applicants and licence holders are reminded of the mandatory licence condition, in relation to on licensed alcohol premises, which require the provision of free potable water to customers.

6.2.4 It will be the responsibility of licence/certificate holders/designated premises supervisors to ensure they have complied with all Health and Safety legislation.

6.2.5 Where a premise is on a vessel for which a current Passenger Ship Certificate is in force, the public safety objective can generally be considered to be met in respect of the layout, structure, access arrangements and operation of the vessel.

6.2.6 Whilst the Licensing Authority cannot require documentation regarding risk assessments to be attached to the operating schedule, it considers such risk assessments to be good practice. Risk assessments are a useful tool in the instruction and training of staff, as well as a sound basis for review by the licence holder, in the event of needing to make an application for variation of a premises licence or in response to changing circumstances/conditions at the premises.

6.3 Prevention of Public Nuisance

6.3.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

6.3.2 The Licensing Authority intends to interpret "public nuisance" in its widest sense and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

6.3.3 When addressing public nuisance the applicant should initially identify any particular issues (having regard to their type of premises and/or activities) which are likely to adversely affect the promotion of the objective to prevent public nuisance. Such steps as are required to deal with these identified issues should be included within the applicant's operating schedule. For example the Licensing Authority expects an applicant to identify how public nuisance will be controlled in outside areas,