

Received 21/11/19

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

I am 18 years old or over

Please tick ✓ yes

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 Lincolnshire Police Alcohol Licensing Myle Cross Centre Macaulay Drive LN2 4EL
Telephone number (if any) 101 - Lincolnshire - [REDACTED]
E-mail address (optional) [REDACTED]

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

- | | |
|---|---------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | X |
| 2) public safety | X |
| 3) the prevention of public nuisance | |
| 4) the protection of children from harm | 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.

Lincolnshire Police have obtained evidence which indicates that the management of these premises have been operating the premises in such a manner that a number of offences have been committed.

That the premises has employed illegal workers, someone who is in the country legally but who has not been granted the right to work, thereby also failing to declare an employee to HMRC Tax & Revenue Authority. Those who employ an adult without leave or who is subject to conditions as to employment will be liable to a civil penalty under Section 15 of the Immigration, Asylum and Nationality Act 2006 and pursuant to Section 21 of the same act, will be committing an offence where they do so in the knowledge, or with reasonable cause to believe, that the employee is disqualified.

The premises has found to have bottles of vodka which were not displaying a UK duty stamp, both on sale and in a store room, in contravention of the Customs and Excise Management Act 1979 (fraudulent evasion of duty). The keeping of smuggled goods on licensed premises is an offence under Section 144 of the Licensing Act 2003.

That the premises has been non-compliant in regards to the Annex 3 premises licence conditions, which were placed on the licence by the licensing sub-committee at the previous review hearing following an abstraction of electricity, thereby conducting unauthorised licensable activity - Section 136 Licensing Act 2003.

That medicine without English on the original packaging were found being offered for sale at the premises, thereby endangering consumers. Some of these medicines are suspected of requiring a prescription and some are suspected of being pharmacy only medicines. Human Medicines Regulations 2012 has offences in relation to unlicensed medicine. Statement to follow from Controlled Drugs Officer, Lincolnshire Police.

That there was non-compliance, insufficiency and inadequacy in relation to fire regulations, fire prevention and firefighting equipment thereby endangering staff and the public. Investigation to be conducted by Lincolnshire Fire and Rescue.

That the abstraction of electricity as previously reviewed was a known and deliberate act by Mr Karim, the premises licence holder due at a statement he made to an HM Revenue and Customs officer.

That employees are being paid less than minimum wage for the hours worked and that declarations to HM Revenue and Customs have been false. Further investigation to be conducted by HM Revenue and Customs.

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. The actions or lack thereof by the premise licence holder have intentionally undermined the licensing objectives for the prevention of crime, public safety and the protection of children from harm.

Relevant Legislation, Guidance and Policies

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.

11.27 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.

11.28 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.

Boston Borough Council's Statement of Licensing Policy

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.~~

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

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

Boston Supermarket was recently at review following the abstraction of electricity. Please see the decision notice at appendix A. During that investigation the following information came to light, some of which was provided prior to the review hearing.

On 13/1/19 a vehicle was stopped in Langrick, near Boston by Police. It contained three males, one of whom is a relation of Mr Karim. One of the males (not the relation), who was the driver was arrested for immigration and traffic offences. When the arresting officers attended Boston Police Station with the prisoner Mr Karim presented himself at the rear gates of the Police Station. He told Pc Virth he was the owner of Boston Supermarket and that the prisoner was an employee at Boston Supermarket.

When a prisoner is booked into custody they are asked what their employment is. It is recorded on the prisoner's (who was arrested in Langrick) custody record that he is a sales assistant at Boston Supermarket.

The prisoner was interview by Immigration officer Stacey Donnelly about his employment. He claimed not to be working; however he was wearing a Boston Supermarket jumper. He stated that he just makes the tea and coffees.

The prisoner was in the country illegally and had no right to work, whether by payment or otherwise. This was discussed at the review hearing and Mr Karim stated he was well aware of his obligations to check employee's right to work.

Boston Borough Council received a vary designated premises supervisor (DPS) application for Boston Supermarket on 13th September 2019, placing [REDACTED] in the role with immediate effect. Lincolnshire Police didn't receive a copy in good time, so it was forwarded to Lincolnshire Police by the Licensing Team at the Council on 16th September 2019, and was unblocked and viewable to Police on 17th September 2019. A right to work check by Immigration was requested by Police on 17th September 2019 and a reply was received on 18th September 2019. It detailed Mr [REDACTED] didn't have the right to work. Victoria Cartmell, solicitor for Mr Karim who'd submitted the application on behalf of Mr Karim was immediately emailed. A DPS variation was received the following day. Mr [REDACTED] held the position of DPS for 7 days at Boston Supermarket, whilst having no right to work.

A multi-agency visit was conducted at the premises on 8th October 2019. In attendance were Trading Standards, HM Revenue and Customs, Fire and Rescue, Home Office Immigration and Lincolnshire Police. Mr Karim wasn't present in the store at the time of entry, he arrived later. On entry Sgt 1040 Enderby asked staff to take him to the manager, he was taken to Harem Ali, Mr Karim's eldest son who, according to Mr Karim at the previous review hearing had been sacked and no longer worked at the premises. Mr Ali denied being the manager and working that the premises.

During this visit Mr Karim stated to a HM Revenue and Customs officer that he had been aware of the previous abstraction and explained the circumstances. Statement to follow from the officer.

2 individuals were found on the premises who, when checked did not have the right to work. They were encountered conducting activities that would be considered to be work by any reasonable person observing. One was encountered in the bakery, removing bread from an industrial oven, the other was knelt down at the rear of the store using a pricing machine, and in the possession of a store radio.

The baker was the same male who was arrested on 13/01/19 at Langrick.

A civil penalty of £10,000 was issued in relation to one of the males. The threshold of issuing a civil penalty is particularly high.

Mr Karim was unable to provide any documentation to show he had conducted the necessary right to work checks for either of the above 2 individuals, despite stating at hearing that he was aware of his obligations in this matter.

A box of Vodka was discovered on the floor of the store room, it was immediately accessible. Please see the photographs at appendix B. The bottles had a foreign duty stamp from another country, but didn't contain a UK duty stamp. More bottles of the same Vodka were found on the shelf for sale on the shop floor. A total of 25 bottles, 17.5 litres of Vodka was seized by HM Revenue and Customs.

The premises was non-compliant with Annex 3 conditions of the premises licence. Following the abstraction the electricity review hearing the following conditions were added to the licence.

- *A maintenance contract will be entered into and at all times be valid with a qualified electrician. This contract should be made available to the police and licensing authority on request.*
- *In so far as it complies with access requirements by the utility company, the cupboard where the electricity supply is kept will be locked and 2 keys supplied. One key will be retained by the electrician named in the maintenance contract. The other key to be retained by a named responsible person. The names of the key holders to be made available to responsible authorities upon request.*

Pc 642 McConville's body camera shows that on checking through the premises following the initial entry the door to the small room which houses the electricity equipment, was unlocked. Mr Karim wasn't present in the premises at the time of this discovery. The door should have been locked. The key was later discovered in a cup on top of the filing cabinet to the right of the door. Mr Karim explained that's where the key was kept so that people could access the room when necessary.

Lincolnshire Police requested to see the contract with the electrician. Mr Karim showed an invoice with a quarterly inspection cost – to be paid in full upfront, please see appendix C. There was no maintenance contract, with named key holder, planned inspection dates etc.

A large amount of foreign labelled medicines were on display at the premises, please see a photograph at appendix D. These have been passed to Lincolnshire Police Controlled Drugs Officer to catalogue and provide a statement in regards to their classifications and whether or not they are being sold lawfully.

Lincolnshire Fire and Rescue are carrying out their own investigation into the issues they found.

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

X

If yes please state the date of that application

Day	Month	Year
2	9	04
2	0	19

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

A review application was submitted on 29/04/2019 in relation to an abstraction of electricity. The decision notice can be found at appendix A.

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
- I understand that if I do not comply with the above requirements my application will be rejected

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 21/11/19

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

**Boston Borough Council
Licensing Act 2003
Review of a Premises Licence
Decision Notice**

Date of hearing	6 August 2019
Members of Sub-Committee	Councillor Frank Pickett, Councillor Colin Woodcock Councillor Stephen Woodliffe
Premises Licence Holder	Boston European Supermarket Ltd
Premises Address	Boston Supermarket, 8 George Street, Boston
Date Application Received	29 April 2019
Details of Application	Review of a premises licence in accordance with the Licensing Act 2003 – submitted by The Chief Constable of Lincolnshire Police.

The Parties:

Lincolnshire Police requested a review of the Premises Licence for Boston Supermarket, 8 George Street, Boston, on 29 April 2019. No representations in respect of the review were received. The Licence holder is Boston European Supermarket Ltd. The Designated Premises Supervisor for Boston Supermarket is Salar Ali KARIM who is also the sole director of Boston European Supermarket Ltd.

Policy and Guidance:

In reaching its decision the Sub-Committee has considered the statutory guidance issued under section 182 of Licensing Act 2003 and Boston Borough Council's Statement of Licensing Policy.

Licensing Objectives: The Sub-Committee has found that the licensing objectives of prevention of crime and disorder and public safety are relevant to this application.

Decision and Reasons:

The Sub-Committee has read and heard all of the information before them.

The Sub Committee is aware of and has taken into account any implications that may arise from the Human Rights Act 1998.

The Sub-Committee in reaching its decision has had due regard for its public sector equality duty under section 149 of the Equality Act 2010 and consider that in reaching their decision today, that they have had due regard for the duty placed upon them by s.149.

The Sub-Committee heard from the Licensing & Land Charges Manager, Lincolnshire Police and Ms Cartmell on behalf of the premises licence holder.

The sub-committee has noted the offence of abstraction of electricity that occurred during 2018/2019. It notes that the majority of money has now been paid back to the utility company. The sub-committee has noted that during the time of the abstraction Mr Karim was the DPS at the property. Mr Karim's representative has advised the sub-committee that whilst he was in control during the time of the abstraction due to a back problem he had passed more control to his son. Mr Karim advised the committee that he was unaware of the abstraction and this was undertaken by his son. Mr Karim states he has since sacked his son and he no longer works at the premises

The sub-committee note that there have been some minor issues in respect of licence compliance but there had been no major concerns.

The sub-committee has grave concerns regarding Mr Karim's ability to undertake the role of DPS given the offence happened whilst acting in that role. With this in mind the sub-committee has decided it is proportionate to remove Mr Karim as DPS.

In addition the sub-committee has heard that following the abstraction changes were made to the monitoring of the electricity supply and a maintenance contract had been entered into with an electrician. The sub-committee has therefore decided it is proportionate to include the following conditions on the licence:

- A maintenance contract will be entered into and at all times be valid with a qualified electrician. This contract should be made available to the police and licensing authority on request.
- In so far as it complies with access requirements by the utility company, the cupboard where the electricity supply is kept will be locked and 2 keys supplied. One key will be retained by the electrician named in the maintenance contract. The other key to be retained by a named responsible person. The names of the key holders to be made available to responsible authorities upon request.

Further the sub-committee has decided to issue a strict warning as to future conduct.

Appeal:

The Premises Licence Holder and Lincolnshire Police have a right of appeal to the Magistrates' Court under Section 181 of the Licensing Act 2003.

The appeal must be commenced by notice of appeal to the Justices' Chief Executive for the Magistrates Court within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision being appealed against.

Any appeal should be sent to: Lincoln Magistrates Court, 358 High St, Lincoln LN5 7QA

This decision does not take effect until the end of the appeal period or if the decision is appealed, when the appeal is disposed of.

Upon hearing an appeal the Magistrates' Court may

- a) Dismiss the appeal,
- b) Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
- c) Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court,

And make such order as to costs it thinks fit.

Signed:

A black rectangular redaction box covering the signature of Fiona White.

Fiona White
Licensing & Land Charges Manager
On behalf of the Licensing Sub-Committee
7 August 2019

Appendix B



WHISKEY

JACK DANIEL'S
Tennessee
WHISKEY

JACK DANIEL'S
Tennessee
WHISKEY

FOR MORE INFORMATION
CALL 1-800-4-A-JACK-DANIEL'S
OR VISIT US ONLINE AT
WWW.JACKDANIELS.COM

ran's

JACK DANIEL'S
Tennessee
WHISKEY



ORIGINAL
Krupnik
VODKA
Produced in Poland
40% Alc/Vol (80 Proof)
100% Grain Neutrals
Distilled from Potatoes
Bottled in Poland



Appendix C

[Redacted]

[Redacted]

[Redacted]

Invoice.

[Redacted]

Service to
Boston Supermarket

Invoice No: 9055
Date: 18.06.19
Valid For: 7 Days

Emergency works

All out of hours work done up to and including 18.06.19	£170 @ £30	490.00
Work done on 3rd June 0900-1100	2hrs @ £25	50.00
To repair all urgent work related to get up to date and ready for the meeting on Friday including all materials, test sheets and documentation relevant for the council		1500.00
To attend the meeting on Friday and represent Boston Supermarket		400.00
Cost of a quarterly inspection to the property which must be paid in full upfront before the inspection and test is carried out	£300	

TOTAL £2,450.00

Bank details	
Account no	[Redacted]
Sort code	[Redacted]

Many Thanks [Redacted]

Appendix D



