

## BOSTON BOROUGH COUNCIL

Licence Number:	32UBB05100
Hearing Type:	Review of a Premises Licence
Applicant:	Chief Constable - Lincolnshire Police
Premise:	Beira Alta Deli, 18 West Street, Boston
Premises Licence Holder:	Mrs P I Dos Santos Pereira
Hearing Date:	1430hrs – 29 July 2020 – by Video Conference

### Summary

This is a report to consider an application for review of the Premises Licence for Beira Alta Deli, 18 West Street, Boston. The review was submitted by the Chief Constable of Lincolnshire Police under the provisions of Section 51 of the Licensing Act 2003.

The application to review the Premises Licence relates to the licensing objectives of:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm

### 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 give appropriate weight to the review application, any supplementary information provided before the hearing and any submission made by any party at the hearing. Having regard to the review application, and any further information received or heard, the Sub-Committee must take such steps, if any, it considers appropriate for the promotion of the licensing objectives. The steps are:

- to modify the conditions of the licence (either permanently or for a period not exceeding 3 months)

- to exclude a licensable activity from the scope of the licence (either permanently or for a period not exceeding 3 months)
- to remove the designated premises supervisor from the licence
- to suspend the licence for a period not exceeding 3 months
- to revoke the licence

Alternatively the Sub-Committee may consider that no action is required or that a warning should be issued and/or recommend improvement within a particular period of time. Such informal warnings, in writing, are an important mechanism for ensuring the licensing objectives are effectively promoted.

The Sub-Committee must give full reasons for their decision.

## **1. The Premises History**

- 1.1 Beira Alta Deli is licensed for the sale of alcohol for consumption on and off the premises, from 0600hrs until 2300hrs. The opening hours are 0500hrs until 2300hrs. The licence was granted in February 2014 and transferred to the current licence holder, Mrs P I Dos Santos Pereira in May 2018. At the same time an application was received to specify Mrs Pereira as the Designated Premises Supervisor.
- 1.2 At the time of granting the transfer and variation of Designated Premises Supervisor applications, a letter was enclosed advising Mrs Pereira that until verification was received that she held a personal licence, all sales of alcohol must stop and any alcohol on view must be removed.
- 1.3 On 15 June 2018 an application to specify Mr J Carmezim as the Designated Premises Supervisor was received. This application was granted on 29 June 2018 and Mr Carmezim has since been the Designated Premises Supervisor.
- 1.4 The Licensing Authority does not hold any record of Mrs Pereira making any further application to specify herself or any other person as the Designated Premises Supervisor since granting the application to specify Mr Carmezim.
- 1.5 A copy of the Premises licence is attached at Appendix 1 and a plan indicating the location of the premises is attached at Appendix 2.

## **2 Review Application**

- 2.1 An application for review of the Premises Licence for Beira Alta Deli was received on 3 June 2020 from the Chief Constable of Lincolnshire Police. The Chief Constable, being a Responsible Authority as defined by the Licensing Act 2003, may apply for review of a licence where it would be relevant to one or more of the licensing objectives to do so. A copy of the application for review and supporting information is attached at Appendix 3.

2.2 The review application relates to the licensing objectives of:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- Protection of children from harm

The application outlines the grounds for review of the Premises Licence.

2.3 On 7 July 2020 an email was sent from Lincolnshire Police to Mrs Pereira providing a copy of the statement from Mr A Gray, Environmental Health Manager (Included in the police review information at Appendix 3). Mrs Pereira responded to that email, a copy of her response is attached at Appendix 4.

### **3. Consultation**

3.1 The Licensing Act 2003 requires that the applicant sends a copy of their review application to the Premises Licence holder and all Responsible Authorities. The Licensing Authority must post a notice providing the details of the review at the Council Offices, on the Council website and prominently displayed at, or near to, the premises for 28 consecutive days starting on the day after the application was received by the Licensing Authority. It is confirmed that this requirement was complied with.

### **4. Relevant Representations**

4.1 A “Responsible Authority” or other person or business may submit a representation during the 28 consecutive day consultation period.

No representations have been received.

### **5. Human Rights & Equalities**

5.1 In determining the review 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 which is incompatible with the European Convention on Human Rights.

5.2 When determining the application the sub-committee should be satisfied that any decision which interferes with the rights of the licence holder, or of any other person, only does so insofar as it is necessary to protect the rights of others and that no alternative decision would be more appropriate.

5.3 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 5.

## 6 Considerations

6.1 In determining the review 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.
- Boston Borough Council's Statement of Licensing Policy
- The steps that are appropriate to promoting the licensing objectives;
- The submissions, including supporting information, if any, presented by all parties.

Should the sub-committee depart from the Section 182 Guidance or the Statement of Licensing Policy reasons for doing so must be given.

6.2 Relevant extracts from the Section 182 guidance are appended to this report at Appendix 6. The sub-committee's attention is drawn in particular to the following paragraphs.

### 6.2.1 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)."*

### 6.2.2 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 at a hearing."*

This paragraph applies when determining applications and therefore the committee should consider how much weight to give this guidance when applying it to review applications.

### 6.2.3 In relation to the reviews arising in connection with crime:

#### *Paragraph 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 the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.*

#### *Paragraph 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 premises licence need to be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the 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.*

#### *Paragraph 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 interests of the wider community and not those of the individual licence holder.*

#### *Paragraph 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 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.”*

6.3 A copy of the Licensing Authority’s Statement of Licensing Policy, with respect to the licensing objectives identified in the review application and with respect to reviews attached at 7.

6.4 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 behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in a prescriptive format.

## **7 Options**

7.1 With respect to the review the Sub-Committee must determine whether or not the licence holder has operated with a view to promoting the licensing objectives. In deciding any action to implement, it is expected that the sub-committee will, as far as possible, seek to establish the cause or causes of the concern that the review application identifies. The remedial action taken should generally be directed at those concerns and should always, giving appropriate weight to any supporting evidence and the submission made by any party at the hearing, be no more than an appropriate and proportionate resolution. The licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

7.2 Having regard to the application the Sub-Committee must take such steps, if any, it considers appropriate for the promotion of the licensing objectives. The steps are:

- to modify the conditions of the licence (either permanently or for a period not exceeding 3 months)
- to exclude a licensable activity from the scope of the licence (either permanently or for a period not exceeding 3 months)
- to remove the designated premises supervisor from the licence
- to suspend the licence for a period not exceeding 3 months
- to revoke the licence

Alternatively the Sub-Committee may consider that no action is required or that a warning should be issued and/or recommend improvement within a particular period of time. Such informal warnings, in writing, are an important mechanism for ensuring the licensing objectives are effectively promoted.

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.

## **8 Appeal**

8.1 The applicant for review and/or the holder of the premises licence may appeal the decision made by the Sub-Committee to the Magistrates Court. Any appeal must be made within 21 days of the day on which the appellant is notified, in writing by the Licensing Authority, of the decision to be appealed against.

8.2 The hearing determination does not take effect until the end of the period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

## **9 Appendices**

- Appendix 1 Copy of Premises Licence
- Appendix 2 Location plan of premises
- Appendix 3 Review application from Chief Constable of Lincolnshire Police
- Appendix 4 Email from Mrs Pereira
- Appendix 5 Section 149 – Equality Act 2010
- Appendix 6 Relevant extracts of Section 182 Guidance
- Appendix 7 Relevant extracts of Boston Borough Council Statement of Licensing Policy.