

SUBJECT:	APPLICATION FOR A PREMISES LICENCE STATUS 13-14 SILVER STREET LINCOLN LN2 1HJ
REPORT BY:	DIRECTOR OF RESOURCES

1. Purpose of Report

- 1.1 To determine an application for a premises licence and consider a representation made in respect of premises known as Status 13-14 Silver Street Lincoln LN2 1HJ.

2. The Application

- 2.1 Under the provisions of section 17 of the Licensing Act 2003 on the 15th June 2015, agents acting for Innovation Pub Management Limited, made an application for a premises licence for premises known as Status, 13-14 Silver Street, Lincoln, LN2 1HJ. A copy of the application can be seen at Appendix A.
- 2.2 On the 8th July 2015 the Chief Officer of Police for Lincolnshire has made a representation objecting to the grant of the licence stating that the following licensing objectives were at risk:

Preventing crime and disorder;
Public safety; and
Prevention of public nuisance

A copy of the representation and supporting statements and can be seen at Appendix B.

3. Relevant Representations – Responsible Authorities

- 3.1 There have been no representations from other responsible authorities.

4. Relevant Representations - Other Persons

- 4.1 There have been no representations from other persons.

5. Background

- 5.1 The premises were originally a Chicago Rock Café being converted from the 1964 licensing regime into the current regime in 2005. This licence lapsed due to the licence holders going into administration.
- 5.2 On the 18th October 2010 Cavendish Bars and Trading Limited applied for a new licence.

- 5.3 Grimsby Pubs Limited acquired a lease to the property and transferred the licence into its name on the 30th November 2012.
- 5.4 In June 2013, Grimsby Pub Company Ltd applied to extend the hours of the licensable activities with alcohol from 0900 to 0400 the following day for all days of the week. This application was objected to by Lincolnshire Police and refused by the Licensing Sub-Committee at a hearing.
- 5.5 In November 2013 a second application was submitted by the licensee mirroring the previous one. This application was again objected to by Lincolnshire Police, however, the variation was granted following a hearing on the 18th December 2013.
- 5.6 On the 23rd March 2015 the premises licence was reviewed on application made by Lincolnshire Police which resulted in, amongst other things, a reduction in hours and an increase in the number of door supervisors required.
- 5.7 The Decision Notice can be seen at Appendix C and the Sub-Committee should note that this decision is subject to an appeal.
- 5.8 This application seeks to have hours for licensable activities from 0900 hours to 0400 hours daily.
- 5.9 The review decision was that the hours be 0900 hours to 0300 hours.
- 5.10 The application seeks to have door staff at a level below that determined by the review.
- 5.11 In anticipation of difficulty in comparing the provision of door supervisors, a table at Appendix D may help in comparing the applicant's suggested levels, against the police's suggestion and the review decision's level.
- 5.12 These premises are within the area known as the Cumulative Impact Area defined in the special policy within the Council's own Statement of Licensing Policy.
- 5.13 Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area
- 5.14 Paragraph 6 of the policy describes the effect of the cumulative impact area has on the licensing process. An extract from the policy can be seen at Appendix D.

6. Promotion of Licensing Objectives

- 6.1 The duty of the Licensing Authority is to promote the licensing objectives having regard to the Act and Regulations made there under, Guidance issued under S182 of the Act by the Home Office and the Council's own Licensing Policy.

7. Considerations

7.1 Section 182 Guidance and Licensing Authority Policy

7.1.1 Copies of the Statutory Guidance issued by the Secretary of State, known as Section 182 guidance and a copy of the Council's Statement of Licensing Policy will be available for consultation at the hearing.

7.1.2 S182 paragraph 1.17

Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy.

7.1.3 These premises are situated within the area defined and of a type described in the special policy on Cumulative Impact (Section 6) within the Council's own Licensing Policy.

7.1.4 S182 paragraph 8.33

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

7.1.5 S182 paragraph 8.35

Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.

7.1.6 Policy paragraph 6.3

With the intention of seeking to control the impact the operation of premises licensed to sell alcohol for consumption on the premises may have, the Licensing Authority has agreed that, in respect of such premises, there will be a rebuttable presumption that applications for new premises licences or club premises certificates or variations seeking to create such premises or to increase the licensed area of this type of premises by 10% or more, or any variation or extension of licensable activities between the hours of 23:00 – 06:00 within a specified area of the City will normally be refused, if a relevant representation to that effect is received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact

already being experienced.

7.1.7 The Licensing Act 2003 normally establishes a presumption of granting applications unless it can be shown that refusal is necessary for the promotion of the licensing objectives. Therefore, the onus falls upon those making representations to prove that there is a risk.

7.1.8 However, in the case of an application for a licence or a variation of a licence such as described in the policy and which the premises fall within the cumulative impact area, that presumption is reversed. The police have made a relevant representation, therefore, the onus now falls upon the applicant to show that the operation of the premises as described in the application will not add to the cumulative impact experienced in the area.

7.1.9 The Police have described incidents within their representation which demonstrate their concerns and due regard has to be had for their concerns. The Sub-Committee must also have due regard to the statutory guidance, the Statement of Licensing Policy, the application, any representations made by or on behalf of the applicant and to the individual characteristics of the premises concerned.

7.1.10 S182 paragraph 2.1 states:

Licensing authorities should look to the police as the main source of advice on crime and disorder.

7.1.11 S182 paragraph 9.12 states:

In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. 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 be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

7.1.12 If the Sub-Committee has concerns that the licensing objectives are at risk it is entitled to refuse or attach conditions on the grounds of the existence of premises in the cumulative impact area even though there has been no issue with the individual premises.

7.1.13 The Sub-Committee should note that if it departs from its policy then reasons for so doing should be given.

S182 paragraph 13.36 states:

After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case.

7.1.14 If the Sub-Committee is minded to place further conditions or modify existing conditions on the premises licence, then they may only be imposed where they are appropriate for the promotion of one or more of the four licensing objectives, in this case the licensing objectives being:

- Prevention of Crime and Disorder;
- Public Safety; and
- Prevention of Public Nuisance

Conditions may not be imposed for other purposes.

7.1.15 Such conditions should be expressed in unequivocal and unambiguous terms in order that they are understood and not subject to legal challenge.

7.1.16 Lord Justice Scott Baker in the case of *Crawley Borough Council v Stuart Attenborough and Angela Attenborough* said, *“Let me say a brief word in general terms. It is important that the terms of a premises licence and any conditions attached to it should be clear; not just clear to those having specialized knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all.”*

7.17 The purpose of licensing is to control licensable activities and authorisations within the terms of the Act. The Licensing Authority cannot attach conditions to licences, certificates or provisional statements unless they are mandatory, volunteered by the applicant or imposed by it following a hearing resulting from the receipt of relevant representations from a responsible authority or interested party.

In order to avoid duplication with existing legislation or regulatory regimes the Licensing Authority will not attach conditions to licences if they are already adequately covered by other legislation.

7.2 **Human Rights Act**

7.2.1 Article 6 – right to a fair hearing

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice

the interests of justice.”

The right to engage in commercial activities is a civil right –

Kaplan v United Kingdom 1980

Pudas v Sweden 1987

7.2.2 Article 8 – right to respect for private and family life

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Removal or restriction of a licence may affect a person’s private life.

7.2.3 Article 1, Protocol 1 – peaceful enjoyment of possessions

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The right to engage in commercial activities under the benefit of a licence or registration is a possession

Tre Traktorer Aktiebolag v Sweden 1989

7.2.4 The holding of this hearing where the applicant and those making representations can give written or oral evidence either personally or through a representative ensures that the requirements of the Human Rights Act has been complied with.

7.3 Other Considerations

7.3.1 The Sub-Committee is charged with furthering the objectives of the legislation in the decisions that it makes. It is not bound by the civil or criminal procedure rules. It should consider the material which has been placed before it, question any statement made either in favour of or against the application by way of fact finding with a critical mind and then make a decision which appears to it to be logical, sensible and appropriate to advance the policy of the legislation in its area.

7.3.2 That decision must be based on evidence, but that means no more than it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant.

- 7.3.3 The Sub-Committee is entitled to, and indeed obliged to, consider any relevant material that appears useful in coming to a decision, including its own local knowledge.
- 7.3.4 The weight the Sub-Committee put on such material is for it to decide.
- 7.3.5 The Licensing Authority published its Statement of Licensing Policy within which contains a presumption of refusal of the application under certain circumstances, specifically premises selling alcohol for consumption on the premises within the Cumulative Impact Area. This application comes within the scope of the type of premises caught by the policy.
- 7.3.6 The effect of the presumption is that the licence application will be refused. In order to depart from its policy, the Sub-Committee should look for evidence from the applicant and any person making representations on its behalf that the grant of the licence will not put the licensing objectives at risk.
- 7.3.7 If the Sub-Committee decides there is a significant risk to the licensing objectives identified in the representation made by the police, it should consider refusing the application. It should then look to the applicant to establish if these risks can be removed and consider methods on how that can be achieved. It should also ask the applicant why the Sub-Committee should depart from its policy.
- 7.3.8 Any intervention the Sub-Committee wishes to take must be appropriate to promote the licensing objectives. If it decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the identified licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.
- 7.3.9 This application is complicated by the fact that the application seeks to replace an existing licence which was subject to an appeal and which the Sub-Committee considering the review decided required intervention. That intervention, in part, is subject to an appeal.
- 7.3.10 However, this application is further unusual in that it is made by the same licensee, requesting the same hours as the existing licence (i.e. those granted on the 18th December 2013) with modified provision of door supervisors (although, not meeting the requirement made by the review Sub-Committee).
- 7.3.11 The appeal centres on the terminal hour for licensable activities and the provision of door supervisors.
- 7.3.12 The current application takes into account most of the other conditions imposed by the review Sub-Committee.
- 7.3.13 The police have proposed conditions which they believe would satisfy them for the premises to operate. These can be seen within Appendix B and can be compared against the application suggestion and review determination at

Appendix D.

7.3.14 For convenience, a table (Appendix E) has been prepared of the chronology of events contained within the representation made by the police.

7.3.15 Notices of this hearing were forwarded to all parties on the 14th July 2015.

8. Options

8.1 The Sub-Committee must, having regard to the application and representation, take such of the steps mentioned below as it considers appropriate, rational and reasonable for the promotion of the licensing objectives.

8.2 The following options are available to the Sub-Committee:

- Refuse the application;
- To partially grant the application in respect of the permitted activities and hours of the permitted activities;
- Grant the application with additional conditions or modified conditions attached to alleviate the concerns raised through the representation. (NB Conditions cannot be attached with respect to any part of the application on which no representation has been received.)
- Grant the application as applied for, with no additional conditions

8.3 The Sub-Committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).

8.4 If the Sub-Committee refuses the application, it must give reasons why it refused and why conditions would not have been effective in this instance.

9. List of Associated Papers

9.1	Appendix A:	Application for premises licence
	Appendix B:	Representation and supporting statements and documents
	Appendix C:	Review Decision Notice
	Appendix D	Table Door Supervisor Provision
	Appendix E	Table of Incidents

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