

LICENSING SUB-COMMITTEE

Monday, 25 September 2023

11.00 am

Committee Room 1, City Hall

Membership: Councillors Loraine Woolley (Chair), David Clarkson and Pat Vaughan

Substitute member: Councillor Martin Christopher

Officers attending: Rob Cuffling, Democratic Services and Legal Services

A G E N D A

SECTION A

Page(s)

1. Declarations of Interest

Please note that, in accordance with the Members' Code of Conduct, when declaring interests members must disclose the existence and nature of the interest, and whether it is a disclosable pecuniary interest (DPI) or personal and/or pecuniary.

2. Procedure for Hearings

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3. Application for Review of Premises Licence - Lincoln Food and Wine,
281 Boultham Park Road, Lincoln LN6 7ST

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LICENSING SUB-COMMITTEE

Procedure for Hearings

- (1) The Chair will introduce him/herself and will introduce the other members of the sub-committee, the Licensing Officer, the Clerk to the sub-committee and any other officers present to advise the sub-committee.
- (2) The Chair will request all parties taking part in the proceedings to introduce themselves to the Sub -Committee.
- (3) The Chair will then ask the Licensing Officer to open the proceedings by:
 - stating the nature of the matter to be considered;
 - giving the name of the applicant or licence holder; and
 - where appropriate, the name of the premises or place concerned; and
 - outlining the application and the relevant representations and/or notices made and/or given in respect of the application.
- (4) The Chair will then ask the Licensing Officer to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with.
- (5) If not satisfied as to any formal requirements, the sub-committee will decide whether to:
 - continue with its consideration of the matter; or
 - adjourn the proceedings to enable the formal requirements to be completed; or
 - dismiss the application.
- (6) The Chair will then explain the procedure the sub-committee intends to follow at the hearing and shall advise the parties of the period of time each will be allowed to make their application and/or representation. If the Chair considers that there is no need for a time limit, he should say so.
- (7) The sub-committee will then consider any representations in regard to the period of time allowed for the parties and any request made by a party for permission for another person to appear at the hearing to assist the licensing authority in regard to that party's application, representations or notice (such permission will not be unreasonably withheld).

- (8) The procedure for the hearing shall be as follows:
- (a) The applicant, or their representative, will present their case. In presenting the case the applicant, or their representative, may give evidence and may call any other person, given permission to appear by the sub-committee, to assist in the proceedings. Each shall, in turn:
 - give evidence;
 - may be questioned by any other party;
 - may be questioned by members of the sub-committee;
 - may, if necessary, be re-questioned by the applicant or their representative calling them.
 - (b) If a time limit has been imposed, the applicant and/or their representative shall not, in presenting the case, exceed the period of time allowed for this purpose.
 - (c) The other party or parties, or their respective representatives, will each, in turn, present their case(s). Where there is more than one other party, in the absence of agreement, the sub-committee will decide the order in which the cases shall be presented. In presenting the case any party, or their representative, may give evidence and may call any other person, given permission by the sub-committee to appear, to assist in the proceedings. Each shall, in turn:
 - give evidence;
 - may be questioned by any other party;
 - may be questioned by members of the sub-committee;
 - may, if necessary, be re-questioned by the applicant or their representative calling them.
 - (d) If a time limit has been imposed each other party and/or their representative shall not, in presenting the case, exceed the period of time allowed for this purpose.
 - (e) Once all parties have put their cases to the sub-committee, each party will be given the opportunity of summing up their case in the order they were presented. The Chair may propose that no more than 5 minutes will be allowed to each party for this purpose, but may take representations if any are made.
 - (f) Members of the sub-committee may ask the parties, or any persons present to assist, for any additional information or clarification required.
- (9) The Chair will then advise the parties that the sub-committee will retire to determine the application. The sub-committee will be accompanied by the Clerk to the sub-committee, whose only role will be to record the decision and the reasons for that decision. The sub-committee may, after retiring, call upon the Licensing Authority's legal representative if it requires clarification on a point of law.
- (10) The sub-committee will consider its decision. The decision of the majority of the sub-committee shall be the decision of the sub-committee.

- (11) There are timescales, depending on the nature of the application, by which the sub-committee must determine an application and the timescale will be included in the officer's report.
- (12) If the hearing requires a decision at the conclusion of the hearing then having reached a decision, the sub-committee shall reconvene to announce the decision to the parties. Before doing so, where legal advice has been sought, the legal representative will inform the parties of what advice was given and the parties shall be afforded the opportunity to comment on that advice.
- (13) If the decision does not have to be made at the conclusion of the hearing the sub-committee must make its decision within five working days beginning with the day or last day on which the hearing was held. This does not preclude the Sub-committee making its decision on the day or last day of the hearing.
- (14) The Chair will announce the sub-committee's decision together with the reasons for the decision. This will, where applicable, include details of any conditions imposed and the reasons for their imposition or, where no conditions have been imposed, the reason(s) for not doing so.

POINTS TO NOTE RELATING TO HEARINGS

- (a) Members of the sub-committee must remain throughout all of the hearing.
- (b) Members of the sub-committee must confine themselves to questions and **NOT** embark on discussions upon the merits or otherwise of the application or evidence until they consider their decision.
- (c) The strict rules of evidence do not apply so hearsay evidence is admissible.
- (d) Where a large number of interested parties are involved in a particular hearing, they will be encouraged to appoint a spokesperson or spokespersons so as to avoid duplication of evidence.
- (e) A general assumption will be made that all parties have read and understood the relevant paperwork and background documents before attending the hearing. There should be no need for parties to duplicate word for word the contents of their written submissions.
- (f) Unless indicated otherwise, the hearing will take place in public. If the public are to be excluded then full reasons for doing so will be given by the Chair.
- (g) In determining applications and representations members of the sub-committee will give appropriate weight to:
 - The argument and evidence presented by all parties;
 - The four licensing objectives of the Licensing Act 2003, namely
 - (a) the prevention of crime and disorder,
 - (b) the prevention of public nuisance,
 - (c) public safety, and
 - (d) the protection of children from harm;
 - The Statement of Licensing Policy of the City of Lincoln Council;
 - Section 182 Statutory Guidance issued by the Home Office;
 - Any steps necessary to promote the licensing objectives; and
 - Information contained in any operating schedule submitted by the applicant.
- (h) The general principles under which members of the sub-committee will consider all licensing applications are:
 - A fair and unbiased mind;
 - On its own merits;
 - Any pre-conceived opinions and resolutions will be put aside;
 - They will act without any prejudice or partiality;
 - They will consider both the interests of the public and the rights of the applicant; and
 - They will treat all applicants fairly and equally.
- (i) 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).
- (j) If, in making its decision, the Sub-Committee considered it proper to depart from the Section 182 Guidance or its own Licensing Policy it is also required to give full reasons for so departing.

LICENSING SUB-COMMITTEE

25 SEPTEMBER 2023

SUBJECT:	APPLICATION FOR REVIEW OF PREMISES LICENCE LINCOLN FOOD AND WINE, 281 BOULTHAM PARK ROAD, LINCOLN, LN6 7ST
REPORT BY:	COMMUNITIES & ENVIRONMENT
LEAD OFFICER:	ROB CUFFLING, LICENSING OFFICER

(Please note the Appendices to this report are restricted documents and not in the public domain).

1. Purpose of Report

- 1.1 To determine an application for review of a premises licence made by Lincolnshire Police in respect of premises known as Lincoln Food and Wine, 281 Boultham Park Road, Lincoln, LN6 7ST.

2. The Application

- 2.1 On the 9th August 2023, the Chief Constable of Lincolnshire Police made an application under Section 51 Licensing Act 2003 ("the Act") for a review of the premises licence held by Niththila Krishnarajah in respect of the above premises. A copy of the application can be found at **Appendix A**.
- 2.2 Section 51 makes provision for a responsible authority or any other person to apply to the Licensing Authority for a review of the premises licence. In this case Lincolnshire Police, being a responsible authority, believe that due to the employment of an illegal worker and breaches of Annex 2 conditions, the licensing objective of prevention of crime and disorder has been undermined.
- 2.3 The Police's review application is supported by a number of statements and documents within annexes to **Appendix A**.

Appendix A(i)	Review application (Lincolnshire Police)
Appendix A(ii)	Police Annex A – Immigration Visit Report (Employee)
Appendix A(iii)	Police Annex B – Immigration Visit Report (Employer)
Appendix A(iv)	Police Annex C – Civil Penalty Referral
Appendix A(v)	Police Annex D – Statement of PC Casey
Appendix A(vi)	Police Annex E – Photographs

3. Relevant Representations – Responsible Authorities

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

4. Relevant Representations – Licence Holder / Other Persons

- 4.1 At the time of writing this report there have been no representations from the licence holder.

5. Background

- 5.1 Niththila Krishnarajah has held the premises licence since July 2010 when it was transferred from the previous licensee.
- 5.2 She has also been the designated premises supervisor (DPS) since May 2015.
- 5.3 A copy of the premises licence can be seen at **Appendix B**. The licence authorises the sale by retail of alcohol for consumption off the premises.
- 5.4 The conditions attached to the licence are the mandatory conditions attached to an alcohol off licensed premises and conditions offered by a previous licence holder upon initial application.
- 5.5 The notice advertising the application for the review was placed at the premises and on the Council's notice board and website on the 10th August 2023. As far as is known the notices were in place for the full 28 day period.
- 5.6 Notices of this hearing, together with relevant documentation, were forwarded to all parties on the 7th September 2023.

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

- 7.2 Chapter 11 of the S182 Guidance describe the Review process and paragraphs 11.16 to 11.23 gives guidance on the powers of a licensing authority on the determination of a review (See **Appendix C**).
- 7.3 Paragraphs 11.27 gives guidance on certain criminal activities which may trigger a review; one of which is *for employing a person who is disqualified from that work by reason of their immigration status in the UK*.
- 7.4 Chapter 10 of the Council's Statement of Licensing Policy refers to Reviews (See **Appendix D**).
- 7.5 Chapter 5 of the Council's Statement of Licensing Policy refers to the Licensing Objectives and paragraph 5.2 refers to crime and disorder (See **Appendix E**).
- 7.6 The conditions attached to the premises licence are the mandatory conditions

attached to all licences with the activity of retail sale of alcohol for consumption off the premises as well as conditions offered by the previous licence holder upon initial application for the premises licence. If the Licensing Authority is minded to place further conditions on the premises licence, then they may only be imposed where they are appropriate and proportionate for the promotion of one or more of the four licensing objectives (in this case crime and disorder). Conditions may not be imposed for other purposes.

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

7.8 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.*”

7.9 Paragraphs 1.8 of the Council’s Licensing Policy states:
The purpose of licensing is to control licensable activities and authorisations within the terms of the Act. Each licence application or authorisation will be considered on its own merits in the context of the four licensing objectives...

8. Human Rights Act

8.1 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

8.2 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.

- 8.3 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

9. Other Considerations

- 9.1 The Sub-Committee must determine this application and take what actions, if any, are appropriate and proportionate for the promotion of the licensing objectives identified.
- 9.2 The Sub-Committee’s determination should be made on this case’s individual merits by;
- Considering the points raised in the review application concerning the incidents and the operation and management of the licensable activities; and should be evidence-based.
- 9.3 The onus falls upon those making the application to show that the promotion of the licensing objectives is at risk.
- 9.4 The Sub-Committee should expect original evidence to be put before it by any party. It is not enough for the Sub-Committee simply to rely upon material submitted; it must apply a critical mind to the quality and reliability of that material for itself.
- 9.5 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end.
- 9.6 If the Sub-Committee is minded to impose further conditions on the licence, then any such conditions should be achievable, realistic, necessary, appropriate, proportionate and within the control of the licence holder. They should be based on a proper, common sense consideration of the risks to the licensing objectives identified in the application and what can realistically be done to mitigate them.
- 9.7 This hearing is subject to Regulation 26 of the Licensing Act 2003 (Hearings) Regulations 2005 and the Sub-Committee must make its determination within a period of five working days beginning the day or the last day on which the hearing was held.

9.8 Therefore, the Sub-Committee does not have to make its determination at the conclusion of the day or last day of the hearing as the case may be.

10. Options

10.1 The authority must, having regard to the application and representations made, take such of the steps mentioned below as it considers appropriate, for the promotion of the licensing objectives.

10.2 Section 52(4) Licensing Act 2003, the following options are available to the Sub-Committee:

- a) to modify the conditions of the licence;
- b) to exclude a licensable activity from the scope of the licence;
- c) to remove the designated premises supervisor;
- d) to suspend the licence for a period not exceeding three months;
- e) to revoke the licence; or
- f) take no action.

10.3 The Sub-Committee should note:

Conditions of the licence are modified if any of them are altered or omitted, or any new condition is added. This could include modification of the licensing hours.

10.4 Should the Sub-Committee consider taking a step mentioned in either a) or b) in paragraph 10.2 above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

10.5 A determination of a review does not have effect until the end of the period for appeal against the decision (within 21 days from the date of receipt of the notification of the decision).

10.6 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).

11. List of Associated Papers

11.1	Appendix A(i)	Review application (Lincolnshire Police)
	Appendix A(ii)	Police Annex A – Immigration Visit Report (Employee)
	Appendix A(iii)	Police Annex B – Immigration Visit Report (Employer)
	Appendix A(iv)	Police Annex C - Civil Penalty Referral
	Appendix A(v)	Police Annex D - Statement by PC Casey
	Appendix A(vi)	Police Annex E – Photographs
	Appendix B	Copy of premises licence

Appendix C	Chapter 11 S182 Guidance
Appendix D	Paragraph 10 Statement of Licensing Policy
Appendix E	Paragraph 5 Statement of Licensing Policy

Lead Officer:

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