

SUBJECT:	APPLICATION FOR REVIEW OF PREMISES LICENCE STATUS, 13-14 SILVER STREET, LINCOLN, LN2 1DY.
REPORT BY:	DIRECTOR OF RESOURCES
LEAD OFFICER:	KEVIN BARRON, LICENSING MANAGER

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 Status, 13-14 Silver Street, Lincoln, LN2 1DY.

2. The Application

- 2.1 On the 21st January 2015, the Chief Officer of Lincolnshire Police made an application under Section 51 Licensing Act 2003 (“the Act”) for a review of the premises licence held by Innovation Pub Management Limited in respect of the above premises. A copy of the application form 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 alleged criminal acts that have taken place on the premises, namely assaults and breaches of licence conditions and poor, irresponsible and ineffectual management the licensing objectives of preventing crime and disorder and promoting public safety have been undermined.
- 2.3 The Police’s review application is supported by a number of statements, incident reports and photographs within annexes to Appendix A.

3. Relevant Representations – Responsible Authorities

- 3.1 On the 17th February 2015 a representation was received from the City of Lincoln Council Food Health and Safety Team which is the Enforcing Authority within the meaning given by Section 18 of the Health and Safety at Work etc Act 1974. A copy can be seen at Appendix B.
- 3.2 In their representation, the City of Lincoln Council Food Health and Safety Team, being a responsible authority, believe that, due to lack of management control, the licensing objective of promoting public safety has been undermined.

4. Relevant Representations – Licence Holder / Other Persons

4.1 There have been no representations from any other person.

5 Background

5.1 In November 2012 the premises licence was transferred from the landlord to the Grimsby Pub Company Limited. On the 26th June 2014 the licence was transferred to the current licensee, however, the company management has remained essentially the same.

5.2 In June 2013, the then licensee, 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.

5.3 In November 2013 another application was submitted by the licensee mirroring the previous one. This application was objected to by Lincolnshire Police; however, the variation was granted following a hearing on the 18th December 2013. An additional condition in respect of the number of door supervisors was added to the list of conditions on the licence.

5.4 The Sub-Committee's Decision Notice can be seen at Appendix C and the Licence at Appendix D.

5.5 Since the granting of this variation there has been 6 different premises supervisors, 3 of which were with the present licensee.

5.6 In the representation made by the City of Lincoln Council Food Health and Safety Team there is mention and inclusion of a series of photographs. These photographs came to the attention of the Licensing Authority via a third party, however, the identity of the photographer is not known to the Authority.

5.7 A supervisory and enforcement visit conducted by the Authority was conducted on the night of the 17th/18th October 2014 and new barriers were put in place to restrict the smoking area on Silver Street.

5.8 The Police have mentioned in their application an emergency meeting on the 20th October 2014. This was attended by officers representing the Licensing Authority.

5.9 The Notice advertising the application for the review was placed on the premises, on the Council's notice board and website on the 21st January 2015.

5.10 Notices of this hearing, together with relevant documentation, were forwarded to all parties on the 19th February 2015

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 E).

7.3 Paragraph 11.23 gives advice on the decision making of the sub-committee.

7.4 Paragraphs 11.24 to 11.28 deal with reviews resulting from criminal activity. Note should be made of paragraph 11.26 which states, "... 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."

7.5 Chapter 9 of the Council's Statement of Licensing Policy refers to Reviews (See Appendix F).

7.6 Chapter 5 of the Council's Statement of Licensing Policy refers to the Licensing Objectives and paragraphs 5.2 and 5.3 refer to crime and disorder and public safety. (See Appendix G)

7.7 If the Licensing Authority is minded to place further conditions or modify existing 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 and public safety). Conditions may not be imposed for other purposes.

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

7.9 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.*"

7.10 Paragraphs 1.7 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

8.4 The holding of this hearing where the premises licence holder and the applicant for the review 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.

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;
 - taking into account the representations that have been received not only from responsible authorities or other persons but also from the licensee; and
 - should be evidence-based.
- 9.3 The onus falls upon those making the application and making the representation 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 and 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 representations 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	Review application (Lincolnshire Police)
	Annex 1	List of Recorded Incidents 1/9/14 to 31/12/14
	Annex 2	Various Charts
	Annex 3	Incident 42 - 4/10/14
	Annex 4	Statement Sgt Skinner
	Annex 5	Various Photographs outside Status
	Annex 6	Photograph – alleged direct dispensing within Status
	Annex 7	Copy Incident Reports
	Annex 8	Proposed Conditions
	Annex 9	Statement Ken Stone
	Annex 10	Incident 498 – 24/10/14
	Annex 11	Statement Inspector Pat Coates
	Annex 12	Incident 15 – 5/11/14
	Annex 13	Incident 9 – 5/11/14
	Annex 14	Incident 434 – 19/11/14
	Annex 15	Incident 22/11/14
	Annex 16	Alleged spiking incident 25-26/11/14

Annex 17	Alleged spiking incidents 2/12/14 and Fresher's week 2014
Annex 18	Facebook pages
Annex 19	Statements observations 19-20 December 2014
Annex 20	Statements Constable Mumby and Inspector Pat Coates
Appendix B	Representation City of Lincoln Council Food, Health and Safety Team
Appendix C:	Copy Decision Notice 18 th December 2013
Appendix D:	Copy premises Licence
Appendix E:	Chapter 11 S182 Guidance
Appendix F:	Paragraph 9 Statement of Licensing Policy
Appendix G:	Paragraph 5 Statement of Licensing Policy

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