

South Holland District 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 Hot & Spicy 36 New Road	
Post town Spalding	Post code (if known) PE11 1DN

Name of premises licence holder or club holding club premises certificate (if known) Rais ABBAS

Number of premises licence or club premises certificate (if known) 32UFB05239d
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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)

X

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

Please tick ✓ yes

I am 18 years old or over

**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
Chief Constable
Licensing (Alcohol)
Myle Cross Centre
Macaulay Drive
Lincoln
LN2 4EL

Telephone number (if any)
101- Lincolnshire - 3298438

E-mail address (optional)
Countylicensinggroup@lincs.pnn.police.uk

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

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

X
X
X

Please state the ground(s) for review (please read guidance note 2)

This building has the benefit of a premises licence issued by South Holland District Council authorising the provision of late night refreshment from 2300hrs to 0300hrs daily. The premises operates as a take-away.

This review application is submitted as being relevant to the prevention of crime and disorder, public safety and public nuisance licensing objective.

Lincolnshire Police have acquired evidence in relation to a number of offences –

That the premises has employed an illegal worker, someone who is in the country illegally and has not been granted the right to work.

That the premises has been non-compliant in regards to the Annex 2 premises licence conditions.

That the premises sold food not as requested or expected.

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 premises under the auspices of a Premises Licence granted by the local authority.

Revised Guidance issued under Section 182 of the Licensing Act 2003

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

11.23...But where the premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

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, or 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 of law. 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.

11.25...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.

11.26 Where the licensing authority is conducted 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 and the prevention of illegal working in the interests 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 the licensed premises:

- for employing a person who is disqualified from that work by reason of their immigration status in the UK.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration) 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.

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

Lincolnshire Police and Trading Standards Officers attended the premises on 23th January 2020 to carry out a food test purchase, a compliance check of the premises licence conditions and have a discussion regarding the updating the CCTV system, the conditions on the premises licence and the introduction of door staff following numerous incidents of disorder both within and outside the premises which were captured on the South Holland District Council CCTV. The check uncovered the following issues:-

The premises sold a ham and pineapple pizza (as ordered) which didn't contain ham, the meat was turkey. There is no ham and pineapple listed on the menu, however if someone is to order ham and pineapple they should be told that the meat ingredient is turkey and not ham. The premises failed to do this. Mr Abbas was previously warned regarding this in 2016, when a pizza was bought, tested and found to contain turkey rather than ham. There is a safety concern regarding the selling of food stuff, which is different to those ordered and expected.

Section 14 of the Food Safety Act 1990 concerns the selling of food not of the nature or substance or quality demanded.

- (1) Any person who sells to the purchaser's prejudice any food which is not of the nature or substance or quality demanded by the purchaser shall be guilty of an offence.

Non-compliance in regards to the premises licence conditions.

The CCTV condition on the licence is poor. The CCTV was found to be recording from the 5th January 2020, (Lincolnshire Police would request a minimum of 31 days), it was of poor quality, it did not give an adequate evidential picture of a customer's face, it did not cover the outside area. A memory stick was provided on the morning of 5th January 2020 with a request for footage to be downloaded following a serious assault that morning was made, despite officers being told that the footage would be ready for collection on 6th January 2020 this was not done. Police time has been spent chasing up the footage, which has never been provided. Mr Abbas put this down to system error. However when viewed by Police on 23 January 2020, it appeared that the hard drive was at full storage capacity and the footage had been overwritten that morning.

There was no marking/colour coding of food containers.

Non-compliance with premises licence conditions is an offence under Section 136 Licencing Act 2003 – unauthorised licensable activity, thereby carrying out unauthorised licensable activity each time hot food or drink is provided between 2300hrs and 0300hrs.

A worker within the premises who was witnessed preparing food and packing orders was found to have had no right to be in the country and no right to work, he was also circulated as wanted for a breach of court order. Mr Abbas provided a copy of the workers passport, which was for a country which wouldn't automatically give a right to work. He had no further documents showing right to work. There was no date on the copy of the passport, showing when the copy was taken. The passport expired in 2017. Mr Abbas explained that he employed the worker last year for about a month. The worker then contacted him again just after Christmas asking for work and Mr Abbas employed him again for a few weeks until the Police and Trading Standards visit. Mr Abbas confirmed he is aware of right to work checks, although his knowledge of what documentation was required is poor. He informed Lincolnshire Police that he was dealt with previously for employing an illegal worker whose visa had expired 2 weeks prior to him being found illegally working.

It is an offence to employ an illegal worker under section 21 of the Immigration, Asylum and Nationality Act 2006, as amended by section 35 of the Immigration Act 2016, if the employer knows or has reasonable cause to believe that they are employing an illegal worker. The employer by law has to carry out various checks to ensure that their staff are legally allowed to work.

Where an employer pays wages to illegal workers off record with no tax or national insurance deductions which are then deliberately omitted from an employers End of Tax Year P35 returns to HMRC, the employer may be dealt with by means of the Fraud Act 2006. Similarly, HMRC may take action as a civil proceedings case and raise a tax debt against the business.

Illegal workers are more than likely poorly paid for the hours they are required to work and are not subject to the benefit of a minimum wage or restricted hours as prescribed in law. Nor are they afforded the benefit of the protections offered by UK employment legislation and are therefore often exploited.

Home Office Immigration have all the information Lincolnshire Police have uncovered during this investigation and are looking to serve a civil penalty (generally £20,000 per worker) on the person they are satisfied with being responsible. This had not been decided by the time this review paperwork was submitted. However, a civil penalty does not have to be issued for the crime to have taken place; a crime has been committed as a person who is legally in the country but with no right to work has been found working, with a further issue being that the premises was licenced, and therefore should have been preventing crime and disorder not actively committing it to benefit themselves and at a detriment to others.

Lincolnshire Police request that the Licensing Sub-committee seriously consider a revocation of the premises licence.

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

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, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

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 29/01/20

Capacity Alcohol Licensing Officer, Lincolnshire Police

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.