

# Southend-on-Sea Borough Council

Report of Corporate Director of Enterprise, Tourism and  
the Environment  
to

Licensing Sub-Committee (B)

on  
2<sup>nd</sup> April 2012

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Agenda  
Item No.

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## Application for the Grant of Personal Licence

### LICENSING ACT 2003

#### *A Part I Public Agenda Item*

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#### **1. Purpose of Report**

1.1 This report considers an application, for the grant of a Personal Licence.

#### **2. Recommendation**

2.1 That the Sub-Committee determines the application.

2.2 Appendix 1 contains the relevant extract from The Governments Guidance to Local Authorities.

#### **3 Background**

3.1 Any qualifying person can apply to the Licensing Authority (for the area in which they normally reside) for a Personal Licence which gives them the authority to sell or supply alcohol in accordance with a Premises Licence.

3.2 It is not a requirement for specific premises, that the Personal Licence holder is the same as the Premises Licence holder

3.3 A qualifying person is anyone living in England or Wales who is Over 18 and has passed the 'National Certificate for Personal Licence Holders' – level II

#### **4 Proposals**

4.1 The application was given to the Licensing Authority on 26<sup>th</sup> March 2011 and is for the grant of a Personal Licence.

4.2 The hearing was delayed while the applicant considered his position

- 4.3 As the delay was significant the Licensing Authority requested the applicant submit an updated Criminal Records Bureau Check. This was subsequently forwarded to Essex Police.

## **5 Application Procedures**

- 5.1 Applicants for grant of a personal licence are required by law to provide the Licensing Authority with a Criminal Record Bureau check which is less than one month old. Where that check shows one or more 'Relevant Offence' as designated by the Act, the Licensing Authority is required to pass a copy of the application to the Chief Officer of Police.
- 5.2 As a result of that procedure a representation has been received from the Police
- 5.3 The second Criminal Record Bureau check was forwarded to Essex Police who indicated that they maintained their objection.
- 5.4 A copy of the representation has been provided to the Sub-Committee Members. In accordance with the legislation, all parties have been invited to attend the hearing.

## **6 Matters for Consideration**

- 6.1 Formal objection having been made and not withdrawn or resolved, the Licensing Authority is obliged to hold a hearing to consider it. Further, having regard to such representation, the Authority is required to take steps (if any) as it considers necessary for the promotion of the Licensing Objectives.

Thus, the Authority may:

- a) Grant the licence,
  - b) Refuse the application.
- 6.2 In the case of a personal licence application, the Licensing Act 2003 requires that the Licensing Authority carries out its functions under the Act with a view to promoting the Licensing Objective of the prevention of crime and disorder.
- 6.3 In carrying out its licensing functions, the Licensing Authority must also have regard to:
1. Its Licensing Statement, and
  2. The guidance issued by the Secretary of State.
- 6.4 Copies of these documents have been made available to all Licensing Committee Members.

## **7 Background Papers**

- 7.1 Council's Statement of Licensing Policy.

## **8. Appendices**

- 8.1 Appendix 1 - Extract of the Governments Guidance to Local Authorities

## EXTRACT FROM THE GOVERNMENT GUIDANCE TO LOCAL AUTHORITIES

### CRIMINAL RECORD

4.5 In the context of applications made under Part 6 of the 2003 Act, the Act itself does not prescribe how any individual should establish whether or not they have unspent convictions for a relevant offence or foreign offence. Regulations require that, in order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, an applicant must produce a criminal conviction certificate or a criminal record certificate or the results of a subject access search of the police national computer by the National Identification Service to the licensing authority. This applies whether or not the individual has been living for a length of time in a foreign jurisdiction.

4.6 It does not follow that such individuals will not have recorded offences in this country. All applicants are also required to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or an equivalent foreign offence. This applies both to applicants ordinarily resident in England and Wales and any person from a foreign jurisdiction. Details of relevant offences as set out in the 2003 Act should be appended to application forms for the information of applicants, together with a clear warning that making any false statement is a criminal offence liable to prosecution. Relevant offences are listed in Annex C to this Guidance.

4.7 Licensing authorities are required to notify the police when an applicant is found to have an unspent conviction for a relevant offence defined in the 2003 Act or for a foreign offence. The police have no involvement or locus in such applications until notified by the licensing authority.

4.8 Where an applicant has an unspent conviction for a relevant or foreign offence, and the police object to the application on crime prevention grounds, the applicant is entitled to a hearing before the licensing authority. If the police do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it.

4.9 The Secretary of State recommends that, where the police have issued an objection notice, the licensing authority should normally refuse the application unless there are exceptional and compelling circumstances which justify granting it. For example, certain offences can never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that they no longer have any propensity to re-offend, a licensing authority may consider that the individual circumstances of the case are so exceptional and compelling and any risk to the community so diminished that it is right to grant the application.

4.10 If an application is refused, the applicant will be entitled to appeal against the decision. Similarly, if the application is granted despite a police objection notice, the chief officer of police is entitled to appeal against the licensing authority's determination. Licensing authorities are therefore expected to record in full the reasons for any decision that they make.