

Southend-on-Sea Borough Council

Report of Deputy Chief Executive (Place)
to
Licensing Sub-Committee (A)
on
1st July 2019

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Agenda
Item No.

Application for the Grant of Personal Licence

LICENSING ACT 2003

A Part I Public Agenda Item

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 'Award for Personal Licence Holders' – level II. Providers of courses for this qualification must be certified as approved by The Home Office.

4 Proposals

4.1 The application was given to the Licensing Authority on 20th May 2019 and is for the grant of a Personal Licence.

4.2 The hearing was delayed at the request of the applicant in order to facilitate it being listed on a Monday in order to avoid disrupting his employment.

5 Application Procedures

- 5.1 Applicants for grant of a personal licence are required by law to provide the Licensing Authority with a Disclosure and Barring Service 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 was received from the Police on 24th May 2019
- 5.3 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- 6.1 Formal objection having been made and not withdrawn or resolved, the Licensing Authority is obliged to hold a hearing to consider it.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 appropriate for the promotion of the Licensing Objective of the prevention of crime and disorder.

Thus, the Authority may:

- a) Grant the licence,
 - b) Refuse the application.
- 6.2 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.
- 6.3 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

(note: numbers from this point forward refer to sections of 'the guidance')

Criminal record

4.19 Regulations made under the 2003 Act require that, in order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, an applicant for the grant of a personal licence must include a criminal conviction certificate, 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.

4.20 The requirement for an individual to establish whether or not they have unspent convictions for a relevant offence or foreign offence applies whether or not the individual has been living for a length of time in a foreign jurisdiction. 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.

4.21 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.

4.22 Civil penalties received after 6 April 2017 for immigration matters are treated in the same way as relevant offences. Licensing authorities are required to notify the Secretary of State for the Home Department (through Home Office Immigration Enforcement) when an applicant declares that they have been issued with an immigration penalty or convicted of an immigration offence or a foreign offence comparable to an immigration offence. The Home Office may object to an application on grounds that granting the personal licence would be prejudicial to the prevention of illegal working in licensed premises. Civil penalties for immigration matters were added to the Licensing Act with effect from 6 April 2017, and penalties received before that date cannot be taken into account in respect of grant, revocation or suspension of a personal licence.

4.23 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. The applicant is also entitled to a hearing if the Home Office (Immigration Enforcement) object to the application on the grounds of the prevention of illegal working where the applicant has an unspent conviction for a relevant immigration offence or has been required to pay an immigration penalty. If the police or Home Office (Immigration Enforcement) do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it. Home Office (Immigration Enforcement) can object only with respect to convictions and civil immigration penalties received on or after 6 April 2017.

4.24 A number of relevant offences never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that the applicant no longer has a propensity to re-offend, a licensing authority may consider that it is appropriate to grant the application on the basis that doing so would not undermine the crime prevention objective.

4.25 If an application is refused, the applicant will be entitled to appeal against the decision they make. Similarly, if the application is granted despite a police objection notice or an objection from the Home Office (Immigration Enforcement), the chief officer of police or Home Office are entitled to appeal against the licensing authority's determination. Licensing authorities are therefore expected to record in full the reasons for any decision which they make.