

Meeting of: LICENSING ACT SUB-COMMITTEE

Date: 17 October 2012

Report of: The Licensing Manager

Reference: WP

Title: Mr Jason Garside

Members of the Sub-Committee have the following documents attached to this report:

1. Application form
2. Copy of the objection notice from the Chief Officer of Police, Lancashire Constabulary
3. Notice of hearing

Details of Application

Mr Jason Garside has submitted an application under Section 117 of the Licensing Act 2003 for the grant of a personal licence.

Police Objection

In accordance with Section 120 of the Licensing Act 2003 the chief officer of police for the Lancashire constabulary has submitted an objection to the grant of this application.

In accordance with that Section,

- (2) The authority must grant the licence if it appears to it that –
 - (a) the applicant is 18 or over,
 - (b) he possesses a licensing qualification or is a person of a prescribed description
 - (c) no personal licence held by him has been forfeited in the period of five years ending with the day the application was made, and
 - (d) he has not been convicted of any relevant offence or any foreign offence.
- (3) The authority must reject the application if it appears that the applicant fails to meet the condition in paragraph (a), (b) or (c) of subsection (2)
- (4) If it appears to the authority that the application meets the conditions in paragraphs (a), (b) and (c) of that subsection but fails to meet the condition in paragraph (d) of that subsection, the authority must give the chief officer of police for its area a notice to that effect

(5) Where having regard to –

- (a) any conviction of the applicant for a relevant offence, and
- (b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,

the chief officer of police is satisfied that granting the licence would undermine the crime prevention objective, he must, within the period of 14 days beginning with the day he received the notice under subsection (4), give the authority a notice stating the reasons why is so satisfied (an “objection notice”).

Notice of Hearing

In accordance with the relevant Regulations, the parties have been given notice of the hearing. It was not felt necessary to request any clarification from the parties. The parties have been required in accordance with the Regulations to indicate at least five working days before the hearing whether they intend to attend and/or be represented at the hearing and if they wish any witness to appear at the hearing. Any responses and any further documentation submitted by any of the parties after the circulation of this agenda will be circulated to Members in advance of the meeting. Members are reminded that documentary or other information submitted on the day of the hearing may only be taken into account with the consent of the Sub-Committee and all the parties.

Matter for Decision

The Sub-Committee is requested to consider the application and the objection notice.

This is in accordance with Section 120 (7) of the Act which provides-

- (a) the authority must hold a hearing to consider the objection notice, unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and
- (b) having regard to the notice must –
 - (i) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and
 - (ii) grant the application in any other case.

Members are reminded that the licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

Government Guidance under Section 182 of the Licensing Act 2003

Members may wish to note that the Guidance issued by the Government under Section 182 of the Licensing Act 2003 states that -

- 4.10 Certain offences can never become spent. However, where an applicant is able to demonstrate that an 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 circumstance of the case are so exceptional and compelling and any risk to the community so diminished that it is right to grant the application.
- 4.11 If an application is refused, the applicant will be entitled to appeal against the decision
- 4.12 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 the full reasons for any decision that they make.

Relevant Parts of the Council's Statement of Licensing Policy

With regard to the prevention of crime and disorder, the Policy provides as follows:

9. The prevention of crime and disorder

- 9.6.1 Following the receipt of relevant representations, the Licensing Authority will not normally allow a person to be specified as a designated premises supervisor where that is likely to undermine the prevention of crime and disorder by reason of that person's known past conduct. A person is likely to be considered unsuitable if he has previous unspent convictions for a relevant offence, notwithstanding that he may have been granted a personal licence. However, each case would be considered on its own merits in the light of representations received.

Natural Justice and Human Rights

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

Conclusion

Members should consider whether to grant or refuse the application. Members are reminded that they should state the reasons for their decision.