

# LICENSING ACT SUB COMMITTEE

## Licensing Act 2003 Application for a Personal Alcohol Licence – Ryan Fish Determination of Application Following Relevant Representation 17<sup>th</sup> April 2018

### Report of Licensing Enforcement Officer

#### PURPOSE OF REPORT

To enable Members to determine an application for a Personal Licence under Section 117 of the Licensing Act 2003 submitted by Mr Ryan Fish following the receipt of a relevant representation.

**This report is confidential by virtue of Section 100A (2) of the Local Government Act 1972.**

#### RECOMMENDATIONS

The Sub Committee is requested to determine, in the light of the representation made, and having regard to the Council's Statement of Licensing Policy, the Licensing Act 2003 and any Regulations made under that Act, as well as Government Guidance, whether to grant the application as requested, or to reject the whole application. Members are reminded that they should state the reasons for their decision.

#### 1.0 Introduction

1.1 On 6<sup>th</sup> March 2018, Mr Ryan Fish submitted an application under Section 117 of the Licensing Act 2003 for the grant of a personal alcohol licence.

Details of the application for his personal licence are set out in the application form, which is attached as Appendix No.1 to this report.

1.2 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 he is so satisfied (an “objection notice”).

For members’ information the list of “relevant offences” are contained in Schedule 4 of the Licensing Act 2003 and are attached at this report at Appendix No. 2.

## **2.0 Representation**

- 2.1 On 6<sup>th</sup> March 2018 notification of objection to the grant of a personal alcohol licence to Mr Fish was received from PC 2338 Andrew Taylor, acting on behalf of the Chief Officer of Police. The reason given is that Lancashire Constabulary believe in light of relevant offences that granting a personal licence to Mr Fish would have the potential to undermine the crime and disorder licensing objective.

In the representation PC 2338 Andrew Taylor states;

*“Mr Fish was a registered SIA door supervisor in the Lancaster area. On 29<sup>th</sup> October 2016 whilst off-duty Mr Fish did assault 3 separate persons in a licensed premises where there were 4 crimes associated with these attacks. This resulted in Mr Fish being convicted at Lancaster Magistrates Court on 6<sup>th</sup> December 2016 for Battery x 2 and assault occasioning actual bodily harm. As a result of these convictions Mr Fish had his SIA security badge revoked and was put on a 2 year pub-watch ban in Lancaster which he is still currently serving and expires on 3<sup>rd</sup> November 2018. Mr Fish has breached his ban on 2 separate occasions. Mr Fish also has 2 x PNDs for being drunk and disorderly in a public place, one on 18<sup>th</sup> June 2013 and one on 3<sup>rd</sup> September 2013”*

The table below lists the details of Mr Fish’s relevant offence;

	Date Of Conviction	Date of Offence	Offence	Disposal	Court
1.	6 <sup>th</sup> Dec 2016	29 <sup>th</sup> Oct 2016	1. Battery	<p>Suspended imprisonment 26 weeks wholly suspended 12 months</p> <p>Costs £85.00</p> <p>Victim surcharge £115.00</p> <p>Unpaid work rqd</p> <p>Compensation £75.00</p>	Lancashire Magistrates
			2. Assault occasioning actual bodily harm	<p>Suspended imprisonment 26 weeks wholly suspended 12 months</p> <p>Unpaid work rqd</p> <p>Compensation £400.00</p>	
			3. Battery	<p>Suspended imprisonment 26 weeks wholly suspended 12 months</p> <p>Unpaid work rqd</p> <p>Compensation £75.00</p>	
			4. Battery	<p>Suspended imprisonment 26 weeks wholly suspended 12 months</p> <p>Unpaid work rqd</p>	

				Compensation £75.00	
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The Police objection notice is attached at Appendix No. 3

### **3.0 Notice of Hearing**

In accordance with the relevant Regulations, the parties have been given notice of the hearing. A copy of the Notice of Hearing is attached for Members' attention at Appendix No. 4.

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.

### **4.0 Matter for Decision**

4.1 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 appropriate for the promotion of the crime prevention objective to do so, and
  - (ii) grant the application in any other case.

4.2 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.

### **5.0 Government Guidance under Section 182 of the Licensing Act 2003**

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

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 reoffend, 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.

If an application is refused, the applicant will be entitled to appeal against the decision to the Magistrates' Court.

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.

## **6.0 Relevant Parts of the Council's Statement of Licensing Policy**

With regard to Personal Licences, the Policy provides as follows:

*25.2. Provided that an applicant fulfils the requirements of Section 120 (2) (a), (b) and (c) of the Act, a licence will be granted unless the applicant has a relevant conviction or a foreign conviction as defined in the Act. In the event of such a conviction, the application will be referred to the Police, and if the Police give an objection notice, a hearing will generally be held. Whilst each application and objection will be considered on its merits, the application will normally be rejected if the Licensing Authority considers this appropriate for the crime prevention objective.*

## **7.0 Natural Justice and Human Rights**

7.1 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.

7.2 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.

## **8.0 Conclusion**

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

<b>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>
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None.

**FINANCIAL IMPLICATIONS**

Financial Services have not been consulted as there are no financial implications.

**LEGAL IMPLICATIONS**

Legal implications are contained within the report. In accordance with Section 181 and Schedule 5 of the Licensing Act 2003, the parties have a right of appeal to the Magistrates' Court within 21 days

**BACKGROUND PAPERS**

None

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