

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Wednesday 6 July 2011, at the Town Hall, Royal Leamington Spa at 10.00am.

PANEL MEMBERS: Councillors Mrs Grainger, Guest and Kinson.

ALSO PRESENT: John Gregory (Council's Solicitor), David Davies (Licensing Services Manager), Emma Millward (Licensing Services Officer) and Peter Dixon (Committee Services Officer).

1. APPOINTMENT OF CHAIRMAN

RESOLVED that Councillor Guest be appointed as Chairman for the hearing.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under Section 100A of the Local Government Act 1972, the public and press be excluded from the meeting for the following item, by reason of the likely disclosure of exempt information within the paragraphs 1 and 3 of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006.

4. APPLICATION FOR A PERSONAL LICENCE UNDER THE LICENSING ACT 2003

A report from Community Protection was submitted which sought a decision on a personal licence application where the Chief Officer of Police had served an objection notice.

The Chairman introduced the members of the Panel and the officers present and then asked all other parties to introduce themselves.

Mr Duncan attended to represent Warwickshire Police as the responsible authority objecting . Mr Besant, solicitor, attended to represent the applicant, who was also present and accompanied by his partner.

The Council's Solicitor read out the procedure that would be followed at the meeting.

The Licensing Services Manager outlined the report, asked the Panel to consider all the information contained within it and determine if the application for a personal licence should be approved.

LICENSING PANEL HEARING MINUTES (Continued)

The report referred to those matters to which the Panel had to give consideration, the statutory guidance issued by the Secretary of State, the Council's Licensing Policy Statement and the Licensing objectives.

The Council's Licensing Policy Statement provided that the authority would take an objective view on all applications and would seek to attach appropriate and proportionate conditions to licences, where necessary, in order to ensure compliance with the four licensing objectives. Their decision in this instance had to be based on the objective of prevention of crime and disorder.

The Panel noted that when an applicant for a personal licence had declared relevant offences on an application form, the Licensing Authority was required under Section 124(4) of the Licensing Act 2003 to give the Chief Officer of Police notice to that effect. The application in this case showed a relevant offence and the Police had been duly notified. The Chief Officer of Police had subsequently notified the Licensing Authority, within the prescribed period, that he was satisfied that granting a licence would undermine the crime prevention objective and served an objection notice.

The Council's solicitor advised the Panel that Mr Besant had questioned whether it was appropriate for some of Mr Duncan's evidence to be presented to the Panel. Therefore, in the interest of fairness, the Panel agreed that Mr Besant should be permitted to explain his concern and Mr Duncan should be allowed to respond.

Mr Besant pointed out that Section 114 of the Licensing Act 2003 stated that a conviction must be disregarded if it was spent. The application had been submitted to the Licensing Authority 8 weeks before an offence from 2006 was spent, and there was one other offence which could not be spent. However, the applicant had committed offences as a teenager which clearly were spent, which he felt should not be put before the Panel. Dependant on their interpretation of Section 114, Mr Besant suggested the Panel should consider whether Section 7(3) of the Rehabilitation of Offenders Act should apply, and made reference to a High Court decision from 1997. Mr Besant did not believe that the Panel should automatically have access to all the information which Mr Duncan wished to present, and also raised concerns that a letter attached to the agenda was prejudicial and should not have been included with the report.

Mr Duncan argued that the Police could not expect the Panel to make an informed decision without full details of relevant offences and convictions. He quoted from guidelines for Licensing Authority lawyers in support of this view.

Following both representations, the Panel retired at 10.25am to discuss the way forward.

At 10.55am all parties were invited back into the room, at which time the Council's solicitor read out the following statement clarifying the Panel's approach:

The Panel have listened carefully to both arguments and note that there is some uncertainty as to whether Section 7(3) of the

LICENSING PANEL HEARING MINUTES (Continued)

Rehabilitation of Offenders Act is excluded by Section 114 of the Licensing Act 2003. On the balance of probabilities it takes the view that Section 7(3) should have application and that spent convictions may be admitted if the Panel is satisfied that justice cannot be done otherwise.

However, the Panel have decided that it would not be appropriate for them to hear full details of each offence before they make a decision on whether Section 7(3) applies to it. Therefore, the Panel has decided that it will hear from Mr Duncan only about the name of the offence, date and penalty for each offence he considers is covered by Section 7(3). The Panel will then decide whether it is necessary in the interests of justice for it to hear full details of these offences.

The Panel fails to see how spent convictions older than 10 years can be relevant and so only wishes to consider hearing about convictions that have occurred within the last 10 years.

In line with the approach outlined above, Mr Duncan advised the Panel that there were 2 unspent convictions at the time of the application, from 2006 (battery) and 1998 (theft, affray and attempted burglary). Another conviction from 2002 (two counts of common assault) fell within the 10 year period specified by the Panel.

At 11.00am all parties present were asked to withdraw from the room again while the Panel decided which details it felt it needed to hear in order to reach a decision. Mr Besant felt there was a need for him to reconsider whether the 1998 conviction was unspent, which he agreed to do while the Panel made its deliberation.

All parties returned at 11.05am, at which time the Panel informed them that it had decided that, in order for justice to be done, it needed to hear about the offences from 2006 and 2002 as they were likely to have a bearing on the Crime and Disorder objective. It also wanted to hear about the offence from 1998 if that was judged to be unspent within the last 10 years.

Mr Besant clarified that the March 1998 conviction was not spent within the period specified by the Panel. Therefore, the Chair asked Mr Duncan to give the Panel details in relation to all three offences.

Mr Duncan expanded on details relating to the convictions specified. Mr Besant then made a representation on behalf of the applicant, explaining that the applicant had experienced a difficult childhood and problems which extended into his early 30s. Mr Besant had known the applicant for a long time and felt that the applicant had grown up, turning his back on his problematic past. He was now a family man and had 10 years of experience in the licensing trade behind him. As things stood, the applicant worked in a licenced premises but the Licensing Authority had no control over him directly. His partner held a licence and could employ him. However, the applicant was applying for a licence which would make him directly answerable to the Licensing Authority. Mr Besant argued that, apart from the fact that the convictions presented to the Panel were old, they had all carried lenient sentences, suggesting that the offences had not

LICENSING PANEL HEARING MINUTES (Continued)

been significant. Mr Besant did not think that the Crime and Disorder objective would be jeopardized, but that to not grant a licence would be a greater risk because the applicant could remain in the trade in an unlicensed capacity.

The applicant's representative responded to the Panel's questions in respect of the applicant's intentions for the future and his current employment.

In summing up, the applicant's representative stated that if the Panel granted a licence, it would be showing faith in the applicant and allow the Licensing Authority a degree of control over him.

At 11.30am the Chairman asked all parties to leave the room to enable the Panel to deliberate and reach its decision.

In taking its decision the Panel paid due consideration to the relevant legislation and guidance, application and the representations made about it.

Having heard representations from the applicant and responsible authority, the Panel was of the opinion that the application should be granted as sought.

At 11.50am all parties were invited back in to the room so they could be informed of the Panel's decision.

RESOLVED that the Licensing Panel's decision be as follows:

The Panel have listened carefully to the representations made on behalf of the Police and the Applicant.

In reaching its decision it has applied Section 120(7) of the Licensing Act 2003 which states that it must reject the application if it considers it necessary for the promotion of the crime prevention objective and grant it in any other case.

It has also considered the Home Office Guidance on the Licensing Act 2003, in particular paragraph 4.9 which states that where the Police have issued an objection the Licensing Authority should normally refuse the application unless there are exceptional and compelling circumstances which justify granting it.

Having heard representations from the applicant's solicitor today, the Panel consider that the relevant offences all took place some time ago and that the applicant has demonstrated that he no longer has a propensity to re-offend. Therefore, the Panel have decided it is not necessary to reject the application for the promotion of the crime prevention objective and have decided to grant the licence to the applicant.

LICENSING PANEL HEARING MINUTES (Continued)

The Panel would like to remind the applicant that the position of personal licence holder is one of great responsibility and hopes his future conduct reflects that.

All parties in attendance are reminded that they have the right to appeal this decision to the Magistrates Court within 21 days of formal notice of this decision.

(The meeting finished at 11.55am)