



REPORT TO: THE MORAY LICENSING BOARD 13 JUNE 2019

SUBJECT: LICENSING (SCOTLAND) ACT 2005 – PERSONAL LICENCE APPLICATION HEARING FOLLOWING DISCLOSURE OF RELEVANT CONVICTION ON APPLICATION (REFERENCE CASE NUMBER 2 OF 2019)

BY: CLERK TO THE BOARD

1. REASON FOR THE REPORT

- 1.1 This report is to notify the Board:
- 1.1.1 That notice of a relevant conviction has been disclosed on an application for a personal licence;
- 1.1.2 The Chief Constable has confirmed to the Clerk that the applicant (reference case number 2 of 2019) has been convicted of relevant offence and the Chief Constable has made no recommendation in respect of the application;
- 1.1.3 That, as a result, s.74(5A) of the Licensing (Scotland) Act 2005 states the Board may hold a hearing to consider and determine whether the licence should be granted or refused.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Board:-
- i) consider and note the existence of a relevant conviction and the fact the Board may hold a hearing following confirmation of relevant conviction by the Chief Constable;
 - ii) consider and agree whether to hold a hearing and, if so;
 - iii) hear from the parties, consider the matter and determine whether to grant or refuse the personal licence having regard to any of the licensing objectives;

3. BACKGROUND

- 3.1 On 6 September 2018 the applicant submitted an application for a personal licence. Within the application, applicants are asked to confirm whether they have been convicted of any relevant offence(s).
- 3.2 The applicant in this case did not disclose any offence. A copy of the application form from the applicant has been circulated separately to members.
- 3.3 The Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007 No. 513) prescribe which offences are relevant offences for the purposes of the Licensing (Scotland) Act 2005.
- 3.4 The Licensing (Scotland) Act 2005 requires the Board to notify the Chief Constable of the receipt of an application for a personal licence. The Chief Constable then has up to 21 days to respond to the notice of application with notice as to whether the applicant has been convicted of a relevant or foreign offence.
- 3.5 The Chief Constable has confirmed to the Clerk that the licence applicant (reference case number 2 of 2019) has in fact been convicted of a relevant offence and a copy of the Chief Constable's letter has been circulated separately to members.
- 3.6 No recommendation, on behalf of the Chief Constable, has been provided in relation to the application.
- 3.7 This report is to notify the Board that under s.74(5A) of the Licensing (Scotland) Act 2005 may hold a hearing to determine the application as a result of receipt of the Chief Constable's notice.
- 3.8 The Board's scheme of delegation requires that an application for a personal licence where the applicant has been convicted of a relevant offence must be determined by the Board.
- 3.9 The Board should first determine whether to hold a hearing.
- 3.10 If a hearing is to proceed then at the hearing the Licensing Board must, after having regard to the Chief Constable's notice and after giving the licence holder concerned and the Chief Constable an opportunity to be heard:
 - If satisfied that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence refuse the application; or
 - If satisfied that it is otherwise necessary for the purposes of any of the licensing objectives, refuse the application; or
 - If not so satisfied grant the application.

3.11 The licensing objectives are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children and young persons from harm

4. IMPLICATIONS

(a) Moray 2023 A Plan for the Future/Service Plan

The provisions of alcohol licensing directly relate to the priorities within the 10 Year Plan (Moray 2023) in relation to healthier citizens, a growing and diverse economy and safer communities. Alcohol and alcohol dependency influence the health of the population. The alcohol industry in terms of production, retail and the positive effects on tourism all aid a growing economy. Regulation of the sale of alcohol contributes to a safer community.

(b) Policy and Legal

Legal implications have been explained above.

(c) Financial Implications

None

(d) Risk Implications

The Board is to have regard to any of the licensing objectives, particularly the crime prevention objective and decide whether the risk justifies intervention on such grounds.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are no issues in this case.

(h) Consultations

Consultation is not required.

5. CONCLUSION

5.1 It is proposed that the Board note the existence of a relevant conviction and the possibility of holding a hearing following confirmation of the conviction by the Chief Constable;

5.2 It is proposed that the Board, having regard to the notice from the Chief Constable, determine whether to hold a hearing and, if so, hear from the

parties, consider the matter and determine whether to grant or refuse the licence for the purposes of any of the licensing objectives.

Author of Report: Sean Hoath, Senior Solicitor, Depute Clerk to the Licensing Board

Background Papers: There are no background papers

Ref: SAH

Signature