

Havering Council – Decisions taken by the Licensing Sub-Committee on Thursday, 8 August 2013

Agenda Item No	Topic	Decision
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Note: this decision list is for guidance only. The text of the minutes, which may be different, is definitive.

Part A – Items considered in public

A1	APPLICATION FOR A PERSONAL LICENCE	<p align="center">Licensing Act 2003 Notice of Decision</p> <p>DETAILS OF APPLICATION</p> <p>Application for a personal licence made under section 117 (1) (a) of the Licensing Act 2003 (“the Act”).</p> <p>Background</p> <p>Under the Act, an applicant is required, should they wish to provide licensable activities after the second appointed day, to apply for a licence. This application for a personal licence was submitted in accordance with s.117 of the Act on the form prescribed for such an application. The applicant provided the appropriate documentation to support the application; these were:</p> <ul style="list-style-type: none"> • Level 2 Award for Personal Licence Holders licensing qualification • disclosure of convictions and declarations • criminal record check <p>The applicant’s criminal record check indicated that he had been convicted of relevant offences as defined by Schedule 4 paragraph 7 of the Act, namely five offences contrary to s.4(3) of the Misuse of Drugs Act 1971 and one offence contrary to s.5(3) of that same Act. Due to the level of sentencing these convictions remain unspent under the Rehabilitation of Offenders Act 1974.</p>
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		<p>Details of Representations</p> <p><u>Responsible Authorities</u></p> <p>Chief Officer of Metropolitan Police (“the Police”):</p> <p>Under the Act, the Police are the only responsible authority permitted to make representation related to the granting of a personal licence. PC Jason Rose, Havering Borough Police Licensing Officer, submitted an objection notice against this application in accordance with s.120 (5) of the Act on 11 July 2013. The objection notice is based upon Police satisfaction that granting a personal licence to the applicant would undermine the crime prevention objective. PC Rose’s objection notice goes on to expand upon his concerns in relation to the application.</p> <p>Determination of Application</p> <p>Consequent upon the hearing held on 8 August 2013 the Sub-Committee’s decision regarding the application for a Personal Licence by the applicant is as set out below, for the reasons shown:</p> <p>The Sub-Committee was obliged to determine this application with a view to addressing the objections raised by the Police.</p> <p>In making its decision, the Sub-Committee also had regard to the Guidance under Sections 120 (3); 182 and Schedule 4 (Personal Licence: Relevant Offences) of the Licensing Act 2003 and Havering’s Licensing Policy.</p> <p>In addition the Sub Committee took account of its obligations under s17 of the Crime and Disorder Act 1998 and Article 1 of the First Protocol of the Human Rights Act 1998.</p>
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		<p>The Sub-Committee considered the representation of the Havering Police Licensing Officer that granting a personal licence to the applicant would undermine the crime prevention objective. The applicant's concurrent sentence of 4 years imprisonment at Southwark Crown Court on 1 March 2007 was detailed to the subcommittee. It was explained that although this conviction was over 6 years ago, under the Rehabilitation of Offenders Act 1974 this conviction cannot be classified as spent due to the length of the custodial sentence.</p> <p>The applicant was found to be supplying class A drugs, namely cocaine, on a number of occasions 16 September 2006, 30 September, 28 October and twice on 11 November 2006. He was also found guilty of possessing class A drugs, namely cocaine, with the intent to supply on 18 November 2006. On this particular date he was also found to be in possession of an offensive weapon. He was convicted for this offence along with the class A matters. The Havering Police Licensing Officer emphasised that all the convictions were committed on licensed premises, namely Legends Nightclub, Barking.</p> <p>The applicant was also convicted of possessing a controlled drug with intent to supply and supplying a controlled drug are relevant offences under Schedule 4 paragraph 7 of the Licensing Act 2003.</p> <p>The Havering Police Licensing Officer also informed the subcommittee of a reported incident that although did not result in a conviction against the applicant, but the Police feel it is extremely relevant to the reasons why police object to this application. This incident was fully investigated and resulting in the applicant's arrest on suspicion of attempt wounding with intent to cause grievous bodily harm.</p> <p>That the Police received an allegation of three staff members assaulting two males inside the OJ's premises. The assault lasted between one and two minutes. The informant stated the attack on the two males was so intense, so vicious, that the victims had no opportunity to defend themselves. They were repeatedly punched and kicked into a state of unconsciousness. Customers were ordered out of the bar after the incident even having to step</p>

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		<p>over the two victims, who were lying unconscious on the floor.</p> <p>It is further alleged that the applicant dragged one of the unconscious males out of the venue and onto the pavement area. CCTV was viewed which showed at no point were the victims given any aftercare or first aid. In actual fact a bucket of cold water was poured over one male in an attempt to rouse him. The second male was left on the floor of the pub for about 12 minutes before being carried outside by 3 people. The applicant was arrested on suspicion of GBH; he admitted his involvement in the incident giving an explanation of self-defence. The level of violence used during the attack did not support this defence.</p> <p>Although a thorough investigation was carried out, unfortunately no victims were traced at the time of the offence nor did they come forward to police. (Reason unknown). A full summary of the events was placed before the Crown Prosecution Service however due to the fact no victims had been traced they decided this undermined the case, hindering the possibility of a realistic conviction at court. The Police stated that this allegation was committed on a licensed premise.</p> <p>Although the reported incident did not result in a conviction against the applicant it was considered extremely relevant to the reasons why police object to this application. The incident was fully investigated, resulting in the applicant's arrest on suspicion of attempt/wounding with intent to cause grievous bodily harm.</p> <p>The Police suggest this application is to enable the holder of the licence to authorise the supply of alcohol. The subject is intending to work in an environment where drugs may be consumed and potentially sold. Many pubs and bars have drug related issues linked to crime. A personal licence holder is required to uphold the law and indeed have a zero tolerance to drugs, therefore the Police would argue that granting the licence would detrimentally impact on the crime prevention objective. If the applicant is not of a suitable nature to enforce robust zero</p>

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		<p>tolerance policies at licensed premises, crime will continue to flourish. Such an environment may also offer temptation to deal or allow drug use at such venues.</p> <p>The subcommittee was informed that the other offence, namely the possession of an offensive weapon by its nature indicates a degree of willingness on the part of the applicant to resort to violence. This is of concern compounded by the later violent allegation of GBH that the applicant was involved in at OJ's. The Havering Police Licensing Officer stated that he had a duty to protect the public from crime and disorder under the Act and to ensure subjects who hold such licences are able to implement measures to prevent crime at such venues. Personal licence holders should be of a nature whereby they do not encourage, antagonise or participate in violence or arm themselves with a weapon.</p> <p>Police recognise that the risk of drug use and violence at licensed premises is high. That the applicant was convicted of several drugs supply offences as well as possessing an offensive weapon. He has also been involved in a relatively recent violent clash whilst acting as manager at a licensed premise in Havering. Given these concerns the Police must strongly oppose this application at this time.</p> <p>The applicant's representative responded to the Police representation stating that the application was to enable:</p> <p>The applicant obtain a Personal licence that would enable him to resume and then seek further promotion in his former career within the Licensed Trade.</p> <p>That the objection is as a result of a fracas at OJ's Public House on Sunday evening 12 August 2012 and had nothing to do with the previous conviction of the applicant that occurred in 2006 and for which he served a substantive prison sentence. That the applicant had expressed his regret for those offences in a separate letter already submitted to the subcommittee.</p>

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		<p>In February 2011 the applicant was approached by Mr Colin Siddall the owner of Oliver's/OJ's to become Head Barman and assistant to Mr Siddall. That from his release in November 2008 until the present time the applicant has been totally clear of any contact with drugs and Mr Siddall was fully vindicated in employing him onto licensed premises for gainful employment.</p> <p>That the applicant in the company of his solicitor attended Romford Police Station 20 August 2012 but after waiting over two hours they were informed that none of the police officer knew of the incident or the reason for the applicant's attendance, on the advise of his solicitor, the applicant Mr Clark returned home. On 21 August 2012, the applicant attended the Police station, he was arrested interviewed and bailed for 14 weeks pending trial. That the Police left the case to sit open for almost the full 14 weeks, and just two days before expiry of the bail date the applicant received a telephone call to inform him there were no further charges and the matter was to be dropped.</p> <p>Mr Brown detailed to the subcommittee:</p> <p>(1) That the applicant freely volunteered the CCTV evidence, no attempt was made to either destroy or hide this.</p> <p>(2) At the time of the incident the applicant was the one being threatened by two individuals who refused to see reason and leave the premises quietly. There were not three members of staff involved in the fracas as intimated by the police. It was the applicant and two customers not staff.</p> <p>(3) As the fracas ensued, not instigated by the applicant, but another customer responding to intimidatory threats, the applicant became involved due to the previous verbal threats to</p>

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		<p>"Stab/Shoot him"</p> <p>The situation now remains that following the incident the applicant has no longer been able to fulfil his original role as Bar Manager but is still living in his flat at OJ's as Caretaker and Odd Job person for anything requiring attention on the Oliver's/OJ Premises. He has been and still is fully supported by the owner Mr Colin Siddall since joining him in November 2009 until the present time. Mr Siddall is fully aware of the applicant's past and previous involvement with drugs but is totally comfortable for him to be on his licensed premises as he is confident that the applicant has not and will never ever let him down and permit the usage of drugs in any form or by any personage on his premises. This has been borne out during the years of his unbroken employment for Mr Siddall in one form or another that sees him presently being used as Caretaker/ Odd Job Person.</p> <p>That the applicant has definitely put all of his previous drug problems behind him and shown true remorse for that unsavoury situation. On a more personal note I have solicited feedback and comments about the applicant from numbers of customers who visit the premises at OJ's and who know him well. The feedback was nothing but positive. Mr Brown stated that the applicant is applying for this Personal Licence and the chance it will give him to resume his full time return to the industry and obtain employment in other licensed premises.</p> <p>The subcommittee was informed that the applicant admitted his drugs related offences and served his penance behind bars. It is the thought of returning to a prison again that keeps him totally focussed upon keeping within the law. He has not swerved from admitting his involvement in the aforementioned affray and did provide full access to CCTV evidence as well with no attempt to destroy or hide this from the Police.</p> <p>That the applicant definitely deserves another chance to renew his full time employment in the industry and ask the subcommittee to grant him this wish by granting him a Personal licence</p>

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		<p><u>Decision</u></p> <p>Having heard the applicant representative’s responses and having carefully deliberated the matter, the Sub-Committee determined that given the notice received from the Police it has fallen to the subcommittee to consider this application which according to the Licensing Act 2003 it must reject it considers it appropriate the promotion of the crime prevention objective. To do so we have heard the serious concerns raised by the Police in terms of previous drug and weapon offenses committed in Licensed premises and the Police remain concerned at the possibility of the applicant having a position of authority upon such premises where the presence of drugs and alcohol fuelled violence is not uncommon. Whilst details of a further GBH allegation are in some dispute and no charge were laid, it is admitted that the applicant lark failed to report the incident to either the Police or the London Ambulance Service at the time instead threw cold water on the victim, which raises concern as to the applicant’s response to a situation which Bar Manager have to face too often. Despite maintaining a desire to work in the Licensed trade in a position of authority with the apparent support of his employer we have seen no evidence of recent training or qualifications gained nor any reference from the employer. Whist we agree that everyone is entitled to a second chance but for the above reasons we consider it appropriate for the promotion of crime prevention objective to reject this application.</p> <p><u>Appeal</u></p> <p>Any party to the decision or anyone who has made a relevant representation in relation to the application may appeal to the Magistrates Court within 21 days of notification of the decision. On appeal, the Magistrates Court may:</p> <ol style="list-style-type: none"> 1. dismiss the appeal; or

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		<ol style="list-style-type: none">2. substitute the decision for another decision which could have been made by the Sub Committee; or3. remit the case to the Sub Committee to dispose of it in accordance with the direction of the Court; and4. make an order for costs as it sees fit.