



Report to Licensing Sub-Committee

Item
A.2

Meeting Date: 6th September 2022
Portfolio: Finance, Governance and Resources
Key Decision: No
Within Policy and Budget Framework YES
Public / Private Public

Title: Consideration of Suspension or Revocation of a Personal Licence Following Conviction of a Relevant Offence - Licensing Act 2003
Report of: Corporate Director of Governance and Regulatory Services
Report Number: GD 50/22 **AMENDED**

Purpose / Summary:

The Licensing Authority has been made aware that Daniel Agnew a holder of a Personal Licence issued by Carlisle City Council under the Licensing Act 2003 has been convicted of an offence contrary to The Road Traffic Act 1988. This is a relevant Offence under the Licensing Act 2003.

Recommendation

It is recommended the Sub-Committee consider the suspension or revocation of the Personal Licence held by Mr Agnew in accordance with one of the options set out in paragraph 8.

1 Background

- 1.1 Mr Daniel G.D.P. Agnew was issued with a Personal Licence PA1953 by Carlisle City Council on 12th November 2019. The validity of such a licence is indefinite. (**Appendix 1**).
- 1.2 An application has been received for Mr Agnew to be Designated Premises Supervisor (DPS) of the Number 15 Gin Bar. Cumbria Constabulary have objected to the application and consideration of the objection is to be considered by the Sub-Committee elsewhere on the agenda. A DPS is responsible for the day to day running of the premises and is responsible for all sales of alcohol within the premises.

2 Circumstances leading to Sub-Committee Hearing

- 2.1 Applications were received from Rose and Thistle Carlisle Ltd (Benjamin Vickery and Daniel Agnew are Directors) to transfer the premises licence and specify Mr Agnew as the DPS for No 15 Gin Bar, Warwick Road, Carlisle.
- 2.2 In accordance with legislation the Chief of Police has 14 days to consider the application(s) and raise an objection if it is considered that granting the application would undermine the crime prevention licensing objective.
- 2.3 Relevant checks were made on the applicants in consideration of the applications by Cumbria Constabulary and it was brought the attention of the Licensing Authority that on 17th April 2021 Mr Agnew was convicted for the offence under the Road Traffic Act 1988 of Driving a Vehicle with Alcohol Concentration above the Prescribed Limit.
- 2.4 This is a relevant offence under the Licensing Act 2003 and Mr Agnew was sent a letter on 4th August 2022 to inform him of the requirement to inform the Licensing Authority of the recent conviction and that the licence should be returned in order for it to be endorsed with the conviction. (**Appendix 2**)
- 2.5 Mr Agnew returned his Personal Licence card on 9th August 2033 and was sent a further letter on that date detailing a notification that the Licensing Authority is to consider suspension or revocation of his Personal Licence and that he had 28 days to forward representations regarding this (**Appendix 3**).
- 2.6 A letter of representation was received by Mr Agnew via email on 16th August 2022 Licensing Office detailing his circumstances around the time of the offence and reasons why he did not inform the Licensing Authority at the time. (**Appendix 4**)

3 **Personal Licenses – Licensing Act 2003**

3.1 The Licensing Sub Committee are asked to consider the suspension or revocation of a personal licence following a conviction of a relevant offence by the holder of that licence.

3.2 'Relevant offence' refers to the offences listed in the Licensing Act 2003 that could, on conviction, rule out the grant of a personal licence to the applicant concerned.

The offences include:

- those involving serious crime;
- those involving serious dishonesty;
- those involving controlled drugs;
- certain sexual offences; and
- offences created by the Act.

3.3 From November 2005 when the Licensing Act came into force only Courts could suspend or revoke a Personal Licence.

3.4 Since 06 April 2017 Section 138 of The Policing & Crime Act 2017, amended the Licensing Act 2003 giving Licensing Authorities who issue Personal Licences discretionary powers to suspend (for up to 6 months) or revoke the Personal Licence when the Licensing Authority becomes aware that an individual holding a personal licence has been convicted of a "relevant offence" Offences contrary to Section 5 of The Road Traffic Act are Relevant Offences within The Licensing Act 2003.

3.5 Section 132A of the Licensing Act states that when the Licensing Authority becomes aware that a holder of a Personal Licence has been convicted of a relevant offence a Notice must be sent to the holder of the Personal Licence inviting the Personal Licence Holder to make representations regarding the conviction within 28 days. This notice cannot be forwarded until after the period for lodging an appeal against the conviction for a relevant offence has passed. Where an appeal has been lodged, it must be decided, and the conviction upheld in order for the Licensing Authority to exercise its powers. The Licensing Authority will also communicate in writing to the personal licence holder informing them that they must return their Personal Licence within 14 days to have the conviction endorsed on the licence.

3.6 A notice inviting a personal licence holder to make any representations regarding the convictions can be issued by The Licensing Manager. At the expiry of the 28 day period, the Licensing Authority must determine whether or not to suspend/revoke the licence. Where the Licensing Authority is minded not to

revoke the licence, it must notify the Chief of Police Cumbria Constabulary of this decision. The police may make representations within 14 days of being notified of the Licensing Authority's proposed decision. A final decision on the suspension/revocation of the Personal Licence can be made after the expiry of the 14 day period. The Personal Licence Holder may appeal the decision to the Magistrates Court

4 Legal Position

4.1 The License holder has a duty to notify the licensing authority of a conviction of a relevant offence under section 132 of the Licensing Act 2003 ("the Act"). The licensing authority must determine the consideration in accordance with section 132A of the Act, which outlines the circumstances whereby a hearing is required and the options available to the committee when determining the application.

(Appendix 5)

4.2 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may consider documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties at the hearing.

4.3 The Panel may accept hearsay evidence and it will be a matter for the Panel to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard but has heard or read about.

4.4 An appeal may be made to the magistrates' court against the decision of the authority by the responsible authority, interested party or premises licence holder, within 21 days from the date of the appellant being notified by the licensing authority of the decision appealed against under para 17 Part 3 Schedule 5 (5B) of the Act.

4.5 Section 4 of the Licensing Act 2003 provided that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182 (appended hereto).

4.6 The Licensing Authority has been made aware that Daniel Agnew a holder of a Personal Licence issued by Carlisle City Council under the Licensing Act 2003 has recently been convicted of offences contrary to The Road Traffic Act 1988. This is a Relevant Offences under the Licensing Act 2003. Mr Agnew was notified to return his personal licence to the Licensing Authority within 14 days in order the conviction be endorsed on the licence.

4.7 The consideration to suspend or revoke will be determined in accordance with the relevant sections of the Act, the statement of licensing policy and guidance offered by the Secretary of State.

5 Recommendation

5.1 The Licensing authority must, having regard to any relevant representations, take such steps it considers necessary for the promotion of the licensing objectives.

5.2 It is therefore recommended that the Sub-Committee determines the consideration in accordance with one of the following options:

- Take no action.
- Suspend the licence for a period not exceeding 6 months.
- Revoke the licence.

5.3 If the decision made is to take no action, or suspend the personal licence, the chief of police must be notified of decision. The Chief of Police then has 14 days to make any comments.

5.4 Members are reminded they must give written reasons for their decision.

Contact Officer: Nicola Edwards
Licensing Manager

Appendices attached to report:

1. Personal Licence PA1953 – Daniel G.D.P. Agnew
2. Letter to Mr Agnew dated 4th August 2022
3. Letter to Mr Agnew dated 9th August 2022
4. Representation by Mr Agnew
5. Licensing Act Section 132 A & Section 182 Guidance para 4.45 – 4.51

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

CORPORATE IMPLICATIONS:

LEGAL – By determining the application in accordance with the relevant sections of the Act and the statement of licensing policy and guidance offered by the Secretary of State the licensing authority is ensuring that all of the licensing objectives are considered fully.

FINANCE – none

EQUALITY – none

INFORMATION GOVERNANCE – none