

## **Item 6      Application for a Personal Licence – Police Objection as applicant has a relevant offence**

### **1      The application**

- 1.1 The application is by Mr James Moloney of Ken Cottage, Paynes Lane, Broughton, Stockbridge SO20 8AH. The applicant has applied for a new Personal Licence under section 117 of the Licensing Act 2003. As part of the application the applicant has provided a criminal records disclosure providing details of any unspent criminal convictions. The disclosure shows that the applicant has been convicted of a “relevant offence” as set out in Schedule 4 of the Act, namely that on 8 March 2005 he was convicted of driving a motor vehicle with excess alcohol. He was fined £190 plus £35 costs, his driving licence was endorsed and he was disqualified from driving for 24 months. As required by the Act, the Licensing Authority has provided these details to Hampshire Constabulary and they have objected to the application as is their right under section 120 of the Act.
- 1.2 Hampshire Constabulary are the only persons able to object to such an application thus needing the matter to be determined by a hearing.
- 1.3 The Licensing Act 2003 states that in the case of this type of application, if the chief officer of Police is “satisfied that granting the licence would undermine the crime prevention objective, he must ... give the authority notice stating the reasons why he is so satisfied”. The Act further states that where such a notice is given the licensing authority must hold a hearing (unless all parties agree a hearing is unnecessary) and having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so. Details of the Police objection notice are set out in paragraph 4.1 below.

### **2      Background**

- 2.1 The Licensing Authority has discretion whether or not to grant the personal licence only if an objection is received from the Police. Once the Police have received a notice from the authority that the applicant has a conviction for a relevant offence, they have 14 days within which to give the authority an objection notice. The Police can only object if they are satisfied that granting the licence would undermine the crime prevention objective and reasons why this would be the case must be given.

### **3 Promotion of the Licensing Objectives**

- 3.1 In this type of application only the licensing objective of prevention of crime and disorder can be considered. The applicant is not required to make any comments in relation to the steps taken to promote this licensing objective. The achievement of the licensing objective of the prevention of crime and disorder must be considered in light of the representation from the Police (see paragraph 4.1 below).

### **4 Relevant Representations – Responsible Authorities**

- 4.1 **Hampshire Constabulary** – The Police are lodging an outright objection to the application as follows: Hampshire Constabulary has an objection to the granting of a personal licence to Mr James Alan MOLONEY (14/11/1980). On 8 March 2005 Mr Moloney appeared at North West Hampshire Magistrates and was convicted of driving a motor vehicle with excess alcohol. The outcome of the court appearance was that Mr Moloney was disqualified from driving for a total of 24 months, and incurred a £190 fine. Drink driving results in many serious injury and fatal accidents each year, in many of these incidents the victims are innocent 3<sup>rd</sup> parties. The latest records show in 2006 there were 318 drink drive related injury collisions in Hampshire, 3 of which proved fatal and 53 serious. Successive Governments have sought to tackle the menace of drunken drivers with high profile media campaigns and police enforcement initiatives. The licensing trade have a major part to play in this and it is our view that the holder of a personal licence should set a clear example to others. Hampshire Constabulary believes that issuing a personal licence to Mr Moloney would not be in accordance with Government Guidance or Council Policy, and it would undermine the Prevention of Crime and Disorder objective under the Licensing Act 2003.
- 4.2 No other responsible authorities are entitled to make representations on this application.

### **5 Relevant Representations – Interested Parties**

- 5.1 Interested parties are unable to make representations on this application.

### **6 Policy Considerations**

- 6.1 It is considered that the following extracts from the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 are relevant.

#### **4.5-4.10 – Criminal Record**

A copy of the Secretary of State's Guidance will be provided at the meeting for Members of the Committee. Additional copies can be obtained from the website of the Department of Culture Media and Sport.

- 6.2 It is considered that the following extracts from the Licensing Authority's own Statement of Licensing Policy are relevant to this application:

Part 3: Personal Licences

Copies of the Statement of Licensing Policy will be provided at the hearing. Copies can also be obtained from the Licensing Section of the Administration Service or downloaded from the Council's website.

**7 Observations**

- 7.1 The Committee is obliged to determine this application with a view to promoting the licensing objective of prevention of crime and disorder. In making its decision, the Committee is also obliged to have regard to the national Guidance and the Council's own Statement of Licensing Policy. The Committee must also have regard to the representation made and the evidence it hears. The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objective:

- a) Grant the application.
- b) Reject the application.

The Committee is asked to note that it may not reject the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objective of the prevention of crime and disorder. The Committee should note that paragraph 4.9 of the secretary of State's Guidance states: 'The Secretary of State recommends that, where the Police have issued an objection notice, the licensing authority should normally refuse the application unless there are exceptional and compelling circumstances which justify granting it. For example, certain offences can never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that they no longer have any propensity to re-offend, a licensing authority may consider that the individual circumstances of the case are so exceptional and compelling and any risk to the community so diminished that it is right to grant the application'.

Background Papers (Local Government Act 1972 Section 100D)

New Personal Licence application

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	Nil		
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