

Minutes

Alcohol, Entertainment & Late
Night Refreshment Licensing
Committee

Friday, 17 February 2023



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Committee members present

Councillor Pam Bosworth (Chairman)
Councillor Dean Ward (Vice-Chairman)
Councillor Harrish Bisnauthsing
Councillor Robert Broughton
Councillor George Chivers
Councillor Breda-Rae Griffin
Councillor Paul Fellows
Councillor Nikki Manterfield

Officers

Elizabeth Reeve, Licensing Officer
Mandy Braithwaite, Legal Advisor
Lucy Bonshor, Democratic Officer

24. Apologies for absence

Apologies for absence were received from Councillor Jane Kingman, Councillor Phil Dilks and Councillor Paul Wood.

25. Disclosures of interests

None disclosed.

26. Minutes of the meeting held on 16 December 2022

The minutes of the meeting held on 16 December 2022 were proposed, seconded and **AGREED**.

27. Exclusion of Press and Public

It was proposed, seconded and **AGREED** to exclude the press and public during consideration of the following items of business because of the likelihood that otherwise

exempt information, as described in paragraphs 1 and 2 of the Local Government Act 1972 Act (as amended) would be disclosed to them.

As one of the personal licence holders was running late it was decided to deal with agenda item 6 first.

28. Licensing Act 2003: Determination of whether to revoke or suspend a personal licence

Decision

That the personal licence is revoked under Section 132a of the Licensing Act 2003 as the personal licence holder had been convicted of a relevant offence as allowed for under the Policing and Crime Act 2017 and the licence holder had also failed to notify the licensing authority of the conviction. To continue to allow the licence holder to hold a personal licence would undermine the prevention of crime and disorder licensing objective.

The holder of the personal licence under discussion was not in attendance but the Committee felt that they had enough information before them to make a decision.

The Licensing Officer presented the report which asked the Committee to consider the suspension or revocation of a personal licence under S132A of the Licensing Act as the Licensing Authority had become aware that the holder of the personal licence had been convicted of an offence.

Section 132A (7) states that before deciding whether to suspend or revoke the licence the licensing authority must take into account –

- (a) Any representations made by the licence holder
- (b) Any decision of a court under section 129 or 130 of which the licensing authority is aware, and
- (c) Any other information which the authority considers relevant.

The Licensing Officer detailed the background to the report, when the applicant had been issued with a personal licence and the email received from the Police which confirmed that the personal licence holder had been convicted in court. The licence holder had pleaded guilty and had been disqualified and fined as detailed within the report.

Under Section 132(2) of the Licensing Act 2003 a personal licence holder must:

- (a) Notify the relevant licensing authority as soon as reasonably practicable after the conviction, give the relevant licensing authority a notice containing the details of the nature and date of the conviction, and any sentence imposed on him in respect of it; and
- (b) As soon as reasonably practicable after the determination of any appeal against the conviction or sentence, or of any reference under section 36 of the

Criminal Justice Act 1988 (c.33) in respect of the case, give the relevant licensing authority a notice containing details of the determination.

The Licensing Officer confirmed that no such notification had been received. The Licence holder had been notified under Section 132A (4) and this was appended to the report. The Licence holder may make representations to the Licensing Authority within a period of 28 days beginning with the day the notice was issued. Any representation may be made regarding:

- (a) the relevant offence that has caused the licensing authority to issue the notice,
- (b) any decision of a court under section 129 or 130 in relation to the licence, and
- (c) any other relevant information (including information regarding personal circumstance).

No representations were received during the representation period 09 December 2022 to 06 January 2023 from the Licence holder, however, on 05 February 2023 an email was received from the Licence holder confirming that the Premises that he was working in at the time of the conviction and where he holds the Premises Licence had ceased trading. At the present time a Transfer of Premises Licence Holder application was still awaited.

The Legal Advisor confirmed with all Members that they had read the additional email letter, dated 09 February 2023 received from the personal licence holder.

A short adjournment took place between 10:13 and 10:16.

Members questioned the Licensing Officer about the conviction and the receipt of the email. It was confirmed that the letter had been received outside of the representation period.

The Licensing Officer then gave her closing statement and stated that the Policing and Crime Act 2017 gave Licensing Authorities a discretionary power to revoke or suspend a personal licence if a personal licence holder was convicted of a relevant offence under the Licensing Act 2017.

Under Section 132a of the Licensing Act 2003 the steps a relevant authority may take were:

- (a) Determine that no further action is required, or
- (b) Issue a warning letter
- (c) Suspend the personal licence for a period not exceeding six months
- (d) Revoke the personal licence.

In determining the matter before the Committee, the licensing authority must take into account:

- (a) Any representations made by the licence holder

- (b) Any decision of a court under section 129 or 130 of which the licensing authority is aware, and
- (c) Any other information which the authority considers relevant.

(10:23 the Licensing Officers left the meeting)

Members deliberated the application before them having regard to the relevant parts of the Council's Licensing Policy, the Licensing Act and guidance and the representation received from the personal licence holder. Members expressed concern that the personal licence holder had not contacted the Licensing Authority about his conviction and that the mitigation letter had been received outside of the representation period, they felt that he had not adhered to the rules. It was proposed, seconded and unanimously **AGREED** to revoke the personal licence.

(10:26 the Licensing Officers returned to the meeting)

The Legal Advisor read out the Committee's decision. The Committee had considered the evidence before them having regard to the relevant parts of the Council's Licensing Policy, the Licensing Act and guidance and the representations received.

Having considered the licence holders relevant and recent conviction, which was a serious offence, and both email letters of representation received from the personal licence holder, the Committee had determined that the personal licence held should be revoked on the grounds that to continue to allow the licence holder to hold a personal licence would undermine the prevention of crime and disorder licensing objective. The nature of the offence was serious and suspension was not a reasonable alternative sanction.

The decision was appealable to the Magistrates Court within 21 days.

29. Licensing Act 2003: Determination of whether to revoke or suspend a personal licence

Decision

The Committee proposed in principle not to revoke the Personal Licence and were minded to suspend the licence for six months. Before making a final decision, a notice will be issued to the Chief of Police inviting them to make representations on the issue of whether the licence should be revoked having regard to the crime prevention objective in accordance with section 132A of the Licensing Act 2003.

The Legal Advisor introduced those present and confirmed that the Personal Licence holder was in attendance.

The Licensing Officer presented the report which asked the Committee to consider the suspension or revocation of a personal licence under S132A of the Licensing Act as the Licensing Authority had become aware that the holder of the personal licence had been convicted of an offence.

Section 132A (7) stated that before deciding whether to suspend or revoke the licence the licensing authority must take into account –

- (a) Any representations made by the licence holder
- (b) Any decision of a court under section 129 or 130 of which the licensing authority is aware, and
- (c) Any other information which the authority considered relevant.

Background information was given to the Committee in relation to how long the Personal Licence had been held and when the Licensing Authority had received an email detailing the conviction from Lincoln Magistrates Court. The Licence holder had disclosed to the Court that he held a Personal Licence, however he failed to notify the Licensing Authority of his conviction and had not lodged an appeal against the conviction or sentence imposed. The offences which the Licence Holder had been convicted and sentenced were listed as relevant offences as set out in Schedule 4 of the Licensing Act 2003.

Under Section 132 (2) of the Licensing Act 2003 a personal licence holder must:

- (a) Notify the relevant licensing authority as soon as reasonably practicable after the conviction, give the relevant licensing authority a notice containing the details of the nature and date of the conviction, and any sentence imposed on him in respect of it; and
- (b) As soon as reasonably practicable after the determination of any appeal against the conviction or sentence, or of any reference under section 36 of the Criminal Justice Act 1988 (c.33) in respect of the case, give the relevant licensing authority a notice containing details of the determination.

If the relevant authority considered whether to suspend or revoke the licence, the authority must give notice to the licence holder, a notice under Section 132A (4) was issued to the licence holder on 05 December 2022.

A 28 day representation period took place from 05 December 2022 until 02 January 2023.

Following a telephone conversation between the Licence Holder and the Licensing Officer in December 2022, an email was received from the Licence Holder detailing the mitigating circumstances and this was appended to the report.

The Licence Holder then made his representation and outlined why he had not notified the Licensing Authority of his conviction and the reasons for this and he answered all Members questions in relation to the circumstances.

The Licensing Officer then gave her closing statement, stating that under Section 132a of the Licensing Act 2003 the steps a relevant authority may take were:

- (a) Determine that no further action is required, or
- (b) Issue a warning letter
- (c) Suspend the personal licence for a period not exceeding six months
- (d) Revoke the personal licence.

In determining the matter before the Committee, the licensing authority must take into account:

- (a) Any representations made by the licence holder
- (b) Any decision of a court under section 129 or 130 of which the licensing authority is aware, and
- (c) Any other information which the authority considers relevant.

The Licence Holder had nothing further to add.

(10:43 the Licensing Officers and applicant left the meeting)

Members considered the information before them having regard to the relevant parts of the Council's Licensing Policy, the Licensing Act, guidance and the representation made by the Licence Holder. Members acknowledged the situation that the Licensing Holder had found himself in and that he had sought help. Both revocation and suspension of the licence was discussed and a three month suspension was proposed. The Legal Advisor reiterated the procedure as outlined within the report if suspension was the preferred option. Further discussion followed and the three month suspension was withdrawn and a six month suspension proposed as it was felt that the extended time would allow the applicant to think whether or not they wished to return to a career in the licensing trade. Suspension for six months was proposed, seconded and unanimously **AGREED**.

(10:55 the Licensing Officers and applicant returned to the meeting)

The Legal Advisor read out the Committee's decision. The Committee had considered the evidence before them having regard to the relevant parts of the Council's Licensing Policy, the Licensing Act and guidance. The Committee had considered the Licence Holders relevant and recent conviction, and the representations made by them at the meeting. The Committee proposed in principle not to revoke the Personal Licence and were minded to suspend the licence for six months. Given the circumstances of this matter, this would give the Licence Holder time to reflect whether they wanted to go back to a career in the licensing trade.

Before making a final decision as to whether to revoke the licence, a process must be followed and a notice would be issued to the Chief of Police, inviting them to make representations on the issue of whether the licence should be revoked, having regard to the crime prevention objective.

Any comments or lack of comments received from the Chief of Police within 14 days would be considered by the Committee and a final decision made. Where those comments requested revocation, a second Committee hearing would be held.

30. Close of meeting

The meeting closed at 10:58am.