

ANGUS LICENSING BOARD – 12 SEPTEMBER 2019

NEW PERSONAL LICENCE APPLICATION – NOTICE OF CONVICTION

REPORT BY THE CLERK TO THE BOARD

ABSTRACT

Having decided to hold a hearing in terms of section 74(5A) of the Licensing (Scotland) Act 2005 (“2005 Act”) at the special meeting of the Board on 3 July 2019, and having deferred determination of the Application at the 8 August 2019 Board for the Applicant’s personal appearance, the purpose of this report is to consider the notice received from the Chief Constable of a relevant offence in terms of section 73(3)(b) of the 2005 Act and determine the application.

1. RECOMMENDATION

It is recommended that the Board hold a hearing and considers the correspondence received from the Chief Constable giving notice of a conviction and determine to :-

(a) if satisfied that a ground for refusal applies - refuse the application;

or

(b) if not so satisfied, grant the application.

2. BACKGROUND

The Clerk has received correspondence from the Chief Constable giving notice of a conviction in terms of section 73(3)(b) of the 2005 Act in respect of a new application for a personal licence. **A copy of that correspondence shall be circulated in advance of the meeting.** The Board, having previously determined to do so, will now hold a hearing to consider the application. The Board will recall that determination of the Application was deferred from the 8 August 2019 Board for the Applicant’s personal appearance.

3. LEGAL

3.1 At a hearing under section 74(5A), the Board, after having regard to the Chief Constable’s notice and, if applicable, any information provided by Police Scotland or the Licensing Standards Officer under sections 73(5) or 73A(2), can:-

(a) if satisfied that a ground for refusal applies, refuse the application, or

(b) if not so satisfied, grant the application.

3.2 The grounds for refusal are:

(a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.

3.3 The licensing objectives are:

- (i) preventing crime and disorder
- (ii) securing public safety
- (iii) preventing public nuisance

- (iv) protecting and improving public health; and
- (v) protecting children and young persons from harm

3.4 The Board should be aware that any grounds relevant to the licensing objectives mean that there has to be a direct and material link thereto brought about through the sale of alcohol.

3.5 Section 74(2) of the Act determines that an application for a personal licence should be granted if:

- a) all of the conditions of section 74(3) are met in relation to the applicant;
- b) the Board has received a notice from the Chief Constable that states the applicant has not been convicted of any relevant offence or foreign offence;
- c) the notice does not include a recommendation that it is necessary, for the purposes of any of the licensing objectives, that the application be refused;
- d) no further information has been provided by the Chief Constable;
- e) the applicant has signed the application; and
- f) the applicant has not previously held an expired or surrendered personal licence.

3.6 In terms of section 74(3), the Applicant must:

- a) be aged 18 or over;
- b) possess a licensing qualification;
- c) not already hold a personal licence; and
- d) not have had a personal licence revoked within the period of 5 years ending on the day when the application was received.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

5. HUMAN RIGHTS IMPLICATIONS

In dealing with this report, the Board will have regard to any human rights issues in relation to the applicant.

6. NOTIFICATION

The applicant has been written to and advised to attend the Board.

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(a) APPLICATION FOR A PERSONAL LICENCE – ASHLEIGH ELIZABETH ROSS

The Clerk received a Personal Licence Application dated 17 April 2019, but received 1 May 2019, from Ashleigh Elizabeth Ross. The application was sent for consultation to the Chief Constable of Police Scotland (“Chief Constable”) and the Angus Licensing Standards Officer on 1 May 2019.

The Clerk received a notice of a conviction of a relevant offence from the Chief Constable on 16 May 2019. **The Chief Constable’s notice shall be circulated to Board members in advance of the meeting.**

The Board is asked to note that the Applicant declared a conviction of assault on her personal licence application form. The Board may wish to ascertain from the chief Constable’s representative whether the declaration of assault is in fact the same, or a separate offence to the one notified to the Board by the Chief Constable.

The Board will recall that on 3 July 2019 the Board considered, and thereafter determined, to hold a hearing on 8 August 2019 in respect of the Personal Licence Application. At the Meeting of the Board on 8 August 2019 having regard to the Applicant’s non-attendance, the Board deferred determination of the application for the Applicant’s personal appearance.