

Report No: Public Agenda Item: **Yes**

Title: **Licensing Act 2003 – Determination of application under section 117 of the Licensing Act 2003 (Personal Licence), made in the name of Miss Joanne Louise Hayden**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **17 November 2022**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Sarah Clarke**  
☎ Telephone: **01803 207429**  
✉ E-mail: **licensing@torbay.gov.uk**

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## 1. Key points and Summary

- 1.1 To consider and determine the application for a Personal Licence submitted by Miss Hayden, following receipt of an “Objection Notice” from Devon and Cornwall Constabulary under section 120(5) of the Licensing Act 2003 (the Act).
- 1.2 The decision to grant or refuse to grant an application for a Personal Licence, where an Objection Notice has been received, must be made by the Licensing Committee or a Sub-Committee thereof.
- 1.3 The matter must be considered on its own merits, having received details of the issues arising at a hearing and by reference to information presented in this Report. A decision must be made to:
  - a) Grant the application
  - b) Reject the application.
- 1.4 Reasons for the decision must be given for inclusion in the Notice which will be served on the Applicant and the Chief Officer of Police.

## 2. Background

- 2.1 An application for a Personal Licence was submitted on behalf of Miss Hayden on 5 October 2022 by licensing consultants, Inn Confidence. A copy of the application form is provided at **Appendix 1**.

- 2.2 The Applicant is required to declare if they have been convicted of a relevant or foreign offence under Schedule 4 of the Act, and to provide details of the nature and date of the conviction and any sentence imposed.
- 2.3 Miss Hayden declared she received a conditional discharge of 3 years for the production/attempted production on premises of a controlled drug - Class B – Cannabis, on 1 March 2019. Members may notice the Applicant ticked a box on the application form, at Part 2, Section 2, to say she does not have a relevant conviction – Officers believe this was done in error.<sup>1</sup>
- 2.4 The offence of permitting production/attempted production on premises, of a controlled drug Class B Cannabis under the Misuse of Drugs Act 1971, is a relevant offence under the Act. A copy of Schedule 4 of the Act is provided at **Appendix 4**.
- 2.5 Section 120(4) of the Act requires the Licensing Authority to notify Devon and Cornwall Constabulary where an Applicant has been convicted of a relevant offence. Officers duly notified Devon and Cornwall Constabulary about the application on 12 October 2022 and invited comments by 25 October 2022. A copy of this correspondence is provided at **Appendix 2**.
- 2.6 Devon and Cornwall Constabulary, having had regard to the conviction of the Applicant for a relevant offence, notified the Licensing Authority on 14 October 2022, that it is satisfied that granting the licence would undermine the crime prevention licensing objective. In their email notification, Devon and Cornwall Constabulary explain Miss Hayden’s conviction will not become spent until 22 December 2023 and she is not considered to be an appropriate person to hold a Personal Licence. A copy of this correspondence (the Objection Notice) is provided at **Appendix 3**.
- 2.7 Where an Objection Notice is given within the 14-day period and not withdrawn, the Licensing Authority must hold a hearing to consider the Notice, unless the Applicant, Devon and Cornwall Constabulary and the Licensing Authority agree that it is unnecessary and having regard to the Notice, must reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.
- 2.8 Members are asked to note, that the Interim Licensing Manager contacted the Applicant by telephone on 27 October 2022 to explain an Objection Notice had been received in respect of the application and confirmed that the matter would be determined by the Licensing Sub Committee. During that telephone call, the Applicant confirmed that she wished her application to be heard and understood that a formal Notice of Hearing would be issued to her forthwith.
- 2.9 The Interim Licensing Manager also attempted to contact Inn Confidence by telephone to advise of the Objection Notice, but this call was unanswered. There was no facility to leave a voicemail message.
- 2.10 Appropriate Notices have been issued to both parties, as required by the Licensing Act 2003 (Hearing Regulations) 2005, including details of the Objection Notice and the procedure to be followed at the hearing.

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<sup>1</sup> The Licensing Act 2003 (Personal licences) Regulations 2005 – Schedule 3 (7)(1)(c)

- 2.11 The Council's delegation scheme, published in the Council's "Licensing Statement of Principles 2021-2026" recommends that "Applications for a Personal Licence" is a matter for the Council's Licensing Sub Committee.

### **The Decision and Right of Appeal**

- 2.12 If the application is refused, a Right of Appeal to the Magistrates' Court is granted to the Applicant by Section 181 and by Schedule 5, Part 3 17(1) of the Act.
- 2.6 If the application is granted, a Right of Appeal to the Magistrates' Court is granted to Devon and Cornwall Constabulary by Section 181 and by Schedule 5, Part 3 17(2) of the Act.
- 2.7 Following such Appeal, the Magistrates' Court may:
- (a) dismiss the appeal,
  - (b) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority, or
  - (c) remit the case to the Licensing Authority to dispose of it in accordance with the direction of the Court,
- and may make such order as to costs as it thinks fit.

**Sarah Clarke**  
**Interim Licensing Manager**

### **Appendices**

- Appendix 1: Copy of Application submitted on behalf of Miss Hayden on 5 October 2022
- Appendix 2: Copy of correspondence to Devon and Cornwall Constabulary of 12 October 2022, notifying Applicant has a relevant conviction
- Appendix 3: Copy of Objection Notice served by Devon and Cornwall Constabulary on 14 October 2022
- Appendix 4: Copy of Schedule 4 of the Licensing Act 2003 – List of Relevant Offences

### **Documents available in Members' rooms**

None

### **Background Papers:**

The following documents/files were used to compile this report:

Torbay Council Licensing Policy 2021-26

Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)