

The Highland Licensing Board

Meeting – 11 December 2014

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| Agenda Item | 12.2 |
| Report No | HLB/158/14 |

Hearing to determine application for Personal Licence – David George Shanks

Report by the Clerk to the Licensing Board

Summary

This Report invites the Board to grant an application for a Personal Licence under Section 72 of the Licensing (Scotland) Act 2005.

1. Background

- 1.1 A Personal Licence is required to allow any individual to supervise or authorise the sale of alcohol.
- 1.2 On 22 October 2014 an application for a Personal Licence was received from David George Shanks. A previous conviction for a relevant offence was declared in the application. A copy of this declaration is attached.
- 1.3 In relation to this application Police Scotland gave notice on 5 November 2014 under s73(3)(a) that as far as they were aware the applicant had not been convicted of any relevant offence or foreign offence. The notice contained no recommendation to refuse the application.
- 1.4 However, in their subsequent response, dated 10 November 2014, to a concurrent application under s33 to transfer a premises licence to Mr Shanks, Police Scotland confirmed the existence of a relevant conviction. This is the same conviction as that declared by Mr Shanks in this personal licence application. The s73(3)(a) notice given by Police Scotland in relation to the personal licence application was accordingly incorrect.
- 1.5 In the absence of a s73 notice by Police Scotland in respect of this personal licence application either confirming the existence of the relevant conviction or making a recommendation that the application be refused, there is no requirement or ground on which to hold a hearing under either s74(5) or (5A).

2. Powers

- 2.1 As the existence of a relevant conviction is known (as a result of the applicant's own declaration) the Clerk to the Board does not have delegated power to grant the application.

2.2 However, as there is no requirement or ground on which to hold a hearing under s74(5) or (5A), the statutory grounds of refusal of the application under s74(6) do not apply and the Board must grant the application.

Recommendation

The Board is invited to grant the application.

Ref. HC/INBS/4319
Author: Susan Blease
Date: 25 November 2014
Background Papers: Licensing (Scotland) Act 2005, Application Form
Appendix: Applicant's declaration

6. PREVIOUS CONVICTIONS

You must provide details below of any conviction for a relevant or foreign offence that is not considered spent under the Rehabilitation of Offenders Act 1974. Please continue on a separate sheet if necessary. If you are declaring that you have no such convictions please write "none". Read note 3.

| Offence | Court | Date | Penalty |
|---------------|---------|-----------------------------|-------------------------|
| DRINK DRIVING | DORVOCH | 9 TH MAY 2013 | 2 YEAR BAN £800 FINE |

7. DECLARATION

The contents of this application are true to the best of my knowledge and belief

| | | | |
|-----------|---|------|----------|
| SIGNATURE |  | DATE | 22/10/14 |
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PLEASE NOTE - IT IS AN OFFENCE TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

DATA PROTECTION ACT 1998

The information on this form may be held on an electronic public register which may be available to members of the public on request. This will be maintained in accordance with the Data Protection Act 1998 and will not be sold or passed on to any organisation without your prior approval unless this is a legal requirement.

GUIDANCE

1. CHANGE OF NAME OR ADDRESS

Section 88 of the Licensing (Scotland) Act 2005 requires that a personal licence holder must, no later than one month after any change in the licence holder's name or address, give the Licensing Board which issues the licence notice of the change. It is an offence not to do so.

2. LICENSING QUALIFICATIONS

Licensing qualifications are dealt with in Section 91 of the Licensing (Scotland) Act 2005. In summary, to be eligible for a personal licence, an applicant must be aged 18 or over and possess a licensing qualification, and no personal licence previously held by the applicant must have been revoked within the period of 5 years ending with the day on which the application was received by the Licensing Board. There are a number of training providers in the Highlands. Contact the Board for details.

3. CONVICTIONS

Section 75 of the Act places a duty on an applicant for a personal licence to notify the Licensing Board if he or she has been convicted of any relevant or foreign offence during the time between making the application and the application being determined by the Licensing Board. Furthermore, Section 82 of the Act requires personal licence holders to notify their Licensing Board of any convictions for relevant or foreign offences within one month of the licence holder being convicted.