

Date of Meeting: 24 August 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release: N/A

To consider the suspension or revocation of a personal licence issued by this Licensing Authority.

Report summary:

The report summarises the powers of the Licensing Authority under S132A of the Licensing Act where a licensing authority becomes aware that the holder of a personal licence has been convicted of any relevant offence.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That members consider the suspension or revocation of a personal licence issued under the Licensing Act 2003.

Reason for recommendation:

To comply with statutory processes.

Officer: Licensing Officer Lesley Barber, lesley.barber@eastdevon.gov.uk

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information:

[EDDC Statement of Licensing Policy 2021-2026](#)

Licensing Act 2003 Guidance issued under Section 182

Licensing Act 2003

APPENDIX A – Copy of personal licence

APPENDIX B – Certificate of Conviction

APPENDIX C – Section 132A Notice

APPENDIX D – Mr Hayball's Representation

Link to Council Plan

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Report in full

1 Details of Personal Licence

- 1.1 Mr Peter David HAYBALL is the holder of a personal licence, issued by this Authority on 25 May 2005. The licence was granted during the transition period prior to the commencement of the Licensing Act 2003 in November 2005. The personal licence was then renewed in 2015, ten years after first being issued.
- 1.2 A copy of the personal licence (EDVE0057) is provided at APPENDIX A. Page two of the licence sets out the duties of a personal licence holder.
- 1.3 A personal licence authorises an individual to supply or authorise the supply of alcohol in accordance with a premises licence.
- 1.4 A personal licence holder may be nominated as Designated Premises Supervisor (DPS) on a Premises Licence. Mr Hayball is not currently the nominated DPS on any premises licence in the East Devon District.
- 1.5 A Personal Licence permits the holder to submit a greater number of Temporary Event Notices (fifty a year) than a non Personal Licence holder (five a year).

2 Conviction and Sentence Information

- 2.1 On 28th March 2022 Mr Hayball was convicted at Exeter Crown Court of three offences of Sexual Assault on a female (Section 3, Sexual Offences Act 2003).
- 2.2 On 24th May 2022 Mr Hayball was sentenced as follows:
 - 18 months imprisonment
 - Registration under S92 Sexual Offences Act 2003 for a period of ten years
 - To be placed on Barring List by the Disclosure and Barring Service
- 2.3 Section 128 of the Licensing Act sets out that where a holder of a personal licence is charged with a relevant offence they must produce their personal licence to the court or if

that is not practicable they must notify the court of the personal licence. It cannot be confirmed if Mr Hayball notified the court of his personal licence.

- 2.4 The details of these convictions were first disclosed to the Licensing Authority on 19th May 2022 during a conversation with Mr Hayball about the requirement to update his address with this Licensing Authority. No written notification of the convictions have been received from Mr Hayball.
- 2.5 The Licensing Authority became aware of the sentence imposed by the court when the matter was reported in the local press. No written confirmation of the sentence imposed has been received from Mr Hayball.
- 2.6 A Certificate of Conviction is provided at **APPENDIX B**. This was obtained from Exeter Crown Court on 6th July 2022 in order to confirm the conviction and sentence information.
- 2.7 Following further enquires with the Crown Court on 3rd August 2022 it is confirmed that Mr Hayball has not lodged an appeal against either the convictions or sentence imposed.
- 2.8 The offences for which Mr Hayball has been convicted and sentenced are listed as relevant offences, as set out at Schedule 4 of the Licensing Act 2003.

3 Notice issued under Section 132A Licensing Act 2003

- 3.1 The Licensing Act sets out at Section 132A that where a Licensing Authority has granted a Personal Licence and becomes aware that the holder of the licence has been convicted of any relevant offence the licensing authority may –
 - (a) suspend the licence for a period not exceeding six months, or
 - (b) revoke the licence
- 3.2 If the licensing authority is considering whether to suspend or revoke the licence the authority must give notice to the licence holder.
- 3.3 A notice under Section 132A (4) was issued to the licence holder on 13th July 2022. A copy of the notice is provided at **APPENDIX C**.
- 3.4 The licence holder may make representations to the Licensing Authority within the 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 circumstances).
- 3.5 Representations received from Mr Hayball on 3rd August 2022 are attached at **APPENDIX D**.
- 3.6 In his representation Mr Hayball advises that he and his partner run a mobile bar service. The sale of alcohol at such an outside bar event would be authorised by a Temporary Event Notice. A Temporary Event Notice may be submitted either by Mr Hayball or by his partner. Mr Hayball's partner holds a personal licence with this authority. The holder of a personal licence is permitted to submit up to fifty temporary event notices per calendar year.

4 Relevant Legislation Licensing Act 2003 - Section 132A Licensing Authority powers on conviction of a Personal Licence Holder

- 4.1 Section 132A (3) states: this section applies where a licensing authority has granted a personal licence and it becomes aware that the holder of the licence has been convicted of any relevant offence the licensing authority may
 - (a) suspend the licence for a period not exceeding six months, or
 - (b) revoke the licence
- 4.2 Section 132A (7) states: 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
- 4.3 Section 129 & 130 of the Act referenced at 4.2 deal with the powers of a court to order the forfeiture or suspension of a personal licence and are not therefore relevant in this instance as the licensing authority has not been notified by the court of any such action being taken.
- 4.4 Section 132A (10) states that when a licensing authority has taken into account matters set out at 4.2 and proposes NOT to revoke the licence the authority must give notice to the Chief Officer of Police and invite the officer to make representations regarding the issue of whether the licence should be suspended or revoked having regard to the crime prevention objective.
- 4.5 The Police may make representations to the licensing authority within the period of 14 days beginning with the day the notice was received.
- 4.6 Where the licensing authority has given notice to the police the authority must then take into account any representations from the officer and matters set out at 4.2 above.
- 4.7 Any decision does not have effect until the end of the period given for appealing against the decision or if the decision is appealed against, until the appeal is disposed of.

5 Relevant Licensing Policy Considerations

- 5.1 Section 4.2.3 of the Policy sets out that suspension or revocation of a Personal Licence (on relevant conviction) is a matter to be considered by sub-committee, this decision is not delegated to officers.

6 Relevant Section 182 Guidance Considerations – Licensing Authority powers to revoke or suspend personal licences.

- 6.1 Section 4.45 of the Guidance states: The Policing and Crime Act 2017 gives licensing authorities the power to revoke or suspend personal licences, with effect from 6 April 2017. This is a discretionary power; licensing authorities are not obliged to give consideration to all personal licence holders subject to convictions for relevant offences, foreign offences or civil penalties for immigration matters. When a licensing authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months. This applies to convictions received and civil immigration penalties which a person has been required to pay at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017, or the requirement to pay the civil penalty arose after 6 April 2017. Only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017. The process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out

at section 132A of the 2003 Act. The decision to revoke or suspend a personal licence must be made by the licensing committee or sub-committee, but the actions required before making a final decision may be made by a licensing officer.

- 6.2 Section 4.46 of the Guidance states: The licensing authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the offence, until the appeal is disposed of. Where an appeal is not lodged, the licensing authority may not take action until the time limit for making an appeal has expired.
- 6.3 Section 4.47 of the Guidance states: If a licensing authority is considering revoking or suspending a personal licence, the authority must give notice to the licence holder. This notice must invite the holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also decide to include any other information, for example, about their personal circumstances. The licence holder must be given 28 days to make their representation, beginning on the day the notice was issued. The licensing authority does not need to hold a hearing to consider the representations. Before deciding whether to revoke or suspend the licence the licensing authority must consider any representations made by the licence holder, any decisions made by the court or appellate court in respect of the personal licence of which the licensing authority is aware, and any other information which the licensing authority considers relevant. The licensing authority may not be aware of whether the court considered whether to revoke or suspend the licence, and there is no obligation on the licensing authority to find this out before making a decision themselves. Where the court has considered the personal licence and decided not to take action, this does not prevent the licensing authority from deciding to take action itself. Licensing authorities have different aims to courts in that they must fulfil their statutory duty to promote the licensing objectives, and therefore it is appropriate for the licensing authority to come to its own decision about the licence.

Right to Appeal

- 6.4 Where a licensing authority revokes or suspends a personal licence under section 132A(8) or (12) the holder of the licence may appeal against that decision as set out in Paragraph (5B), (6) & (7) of Schedule 5 of the Act.

An appeal under this paragraph must be made to a magistrates' court.

An appeal under this paragraph must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

Financial implications:

The only financial implication is if the applicant appeals against the decision made, with the possibility of court costs.

Legal implications:

The legal framework and implications are included within the report.