

ANGUS LICENSING BOARD – 23 FEBRUARY 2017

REVIEW OF PREMISES LICENCES

REPORT BY THE CLERK TO THE LICENSING BOARD

ABSTRACT:

The purpose of this Report is to present Premises Licences under the Licensing (Scotland) Act 2005 ("the 2005 Act") to the Board for review.

1. RECOMMENDATION(S)

It is recommended that the Board conducts a Hearing to review the Premises Licence listed in the Annex to this Report and, if satisfied that a ground for review is established, then the Board may:-

- (i) issue a written warning to the Licenceholder;
- (ii) make a variation of the licence;
- (iii) suspend the licence for such period as the Board may determine; or
- (iv) revoke the licence.

2. BACKGROUND

Members will recall determining on 5 January 2017 to hold a Review in respect of premises where the premises licenceholder has failed to pay annual fees.

In terms of the 2005 Act, the Licensing Board may review the licence on the following grounds:-

- (a) that one or more of the conditions to which the premises licence is subject has been breached; or
- (b) any other ground relevant to one or more of the licensing objectives.

It is a mandatory condition of all premises licences issued under the 2005 Act that an annual fee must be paid in terms of the relevant regulations. Accordingly, where a premises licence is in effect, or is suspended, the holder of that licence must make payment of an annual fee;

- The first annual fee being payable on 1 October 2009 or 30 days after the date on which the licence takes effect.
- Subsequent annual fees are due on 1 October each year, or where that date falls on a Saturday or Sunday on the immediately following Monday.

Despite the Clerk giving notification to licensees that annual fees are due in respect of the premises, fees remain unpaid in respect of those premises listed in Appendix 1. The respective premises licence holder would therefore appear to be in breach of the said condition of their premises licence.

Where a review hearing is to be held, the Board must, in the case of a premises licence review application, give notice of the hearing to the applicant, and give notice of the hearing and a copy of the premises licence review proposal or application to the licence holder, and any Licensing Standards Officer for the area in which the premises concerned are situated.

Where a Licensing Standards Officer receives a copy of a premises licence review proposal or application the Officer must, before the review hearing, prepare and submit to the Board a report on the proposal or application, and the Board must take the report into account at the hearing. The Licensing Standards Officer has provided a report which is attached as Appendix 2.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising out of this Report.

4. HUMAN RIGHTS IMPLICATIONS

In dealing with the matters as set out in this report, the Board will have regard to any human rights issues in relation to the licence holders.

Members are advised that Article 1 of the First Protocol of the European Convention of Human Rights (i.e. protection of property) applies in relation to this Report. The licence holder is considered to be the owner of the licence and as such is entitled to the peaceful enjoyment of his/her possession. However, Angus Licensing Board may take such action as it deems necessary to control the use of the property in accordance with the general interest and subject to the conditions provided for by law. Article 14 requires non-discriminatory treatment of individuals in the enjoyment of their rights.

The legal basis for taking any action in connection with this Report is in terms of the 2005 Act.

Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

5. EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

6. CONCLUSION

The Board is requested to review the premises licences and determine what steps, if any, they consider to be necessary for the purposes of the licensing objectives.

REPORT AUTHOR: Dawn Smeaton, Licensing and Litigation Assistant

E-MAIL: LEGDEM@angus.gov.uk

NOTE: The background papers (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- The Licensing (Scotland) Act 2005
- The Licensing (Fees)(Scotland) Regulations 2007

NON PAYMENT OF ANNUAL FEES FOR 2016

143	Albert Bar	48 Market Street, Montrose, DD10 8RD	£220
374	Casa Bianca	41 Market Street, Montrose, D10 8NB	£220

**LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL**

A premises licence review proposal has been received from Angus Licensing Board in respect of:

The Albert Bar, 48 Market Street, Montrose

The Board are asked to note where a Licensing Standards Officer receives a copy of a premises licence review proposal, the Licensing Standards Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal. The Board must take this report into account at the hearing.

Background:

The Licensing Board on 5 January 2017 considered a premise licence review proposal for the Albert Bar as the premises had failed to pay their annual fees. The Board's decision was to hold a review hearing.

Licensing Standards Officer's Report:

All premises were written to on 26 August 2016 to advise that annual fees were due to be paid no later than 1 October 2016 as well as including the amount due and information on how payments can be made. Those premises that had not paid their fees were written to again on 11 October 2016.

On 10 November 2016 I attempted to make contact via mobile numbers we held on record however these numbers were no longer connected. I also sent an email that was returned undeliverable.

On 21 December 2016 I attempted to visit the premises but it does not appear to be trading at present.

On 6 January 2017 I attempted to make contact via 2 mobile numbers and via a landline number that was not answered and had no answerphone. I also sent an email to all email addresses included within paperwork associated with the premises requesting contact be made to discuss the situation but have received no response.

Mark Gillespie
Licensing Standards Officer
Angus Council

18 January 2017

**APPENDIX 2 TO REPORT LB 13/17
ANGUS LICENSING BOARD – 23 FEBRUARY 2017**

**LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL**

A premises licence review proposal has been received from Angus Licensing Board in respect of:

Casa Bianca, 41 Market Street, Montrose

The Board are asked to note where a Licensing Standards Officer receives a copy of a premises licence review proposal, the Licensing Standards Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal. The Board must take this report into account at the hearing.

Background:

The Licensing Board on 5 January 2017 considered a premise licence review proposal for the Casa Bianca Restaurant as the premises had failed to pay their annual fees. The Board's decision was to hold a review hearing.

Licensing Standards Officer's Report:

All premises were written to on 26 August 2016 to advise that annual fees were due to be paid no later than 1 October 2016 as well as including the amount due and information on how payments can be made. Those premises that had not paid their fees were written to again on 11 October 2016.

On 7 November 2016 I attempted to make contact via a mobile number we held on record but received no answer. I also sent an email to the company address that holds the licence.

On 21 December 2016 I attempted to visit the premises but it was closed.

On 6 January 2017 I attempted to make contact via 2 mobile numbers and via a landline number that was not answered and had no answerphone. I also sent an email to the email address included within paperwork associated with the premises requesting contact be made to discuss the situation but have received no response.

On 17 January 2017 I attempted to visit the premises at 6pm but it was closed.

Mark Gillespie
Licensing Standards Officer
Angus Council

18 January 2017