

ANGUS LICENSING BOARD – 7 JANUARY 2016

REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT

REPORT BY THE CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to advise the Board to relieve an applicant of a failure to comply with a procedural requirement which requires to be determined by the Board.

1. RECOMMENDATION

It is recommended that the Board:-

- (i) note that the Clerk has received a request from an applicant to relieve a failure to comply with a procedural requirement which requires to be determined by the board; and
- (ii) determine whether to relieve the failure to comply with the procedural requirement.

2. BACKGROUND

- 2.1 On 10th December 2015 the Clerk of the Board received notification that Forresters Restaurant limited, the Premises License holder for the then called Forresters Restaurant, Forrester Seat, Burnside, By Forfar, was dissolved on the 3rd July 2015. It was confirmed that the premises ceased trading in March 2015 and the company dissolved.
- 2.2 In September 2015, Mr. Murphy signed the lease and on 1st September 2015 he took entry of the premises. From the terms of the lease he understood that the Landlord would retain the license. Mr. Murphy started trading on or around 8th September 2015. Unbeknown to Mr. Murphy the landlord had transferred the license to a tenant on 10th May 2012. The license was then transferred to Forresters Restaurant Limited on 10th May 2013. On discussing this matter with the landlord, she claims that they were unaware of what they were doing when signing the transfer application in 2012.
- 2.3 On 11th December 2015 the Licensing Standards Officer visited the premises and spoke with Declan Murphy, the son of James Murphy, who advised that his father was out of the UK at present. Declan Murphy was advised that the premises license no longer had effect and that he should immediately lodge a transfer of license application as soon as possible.
- 2.4 Section 34 of the Licensing (Scotland) Act 2005 provides that there are certain circumstances when a premises licence can be transferred on the application of another person other than the licence holder. One of these circumstances is when a premises licence holder is dissolved. Section 34 also provides that such an application must be made within 28 days of the occurrence of the event. If such an application is not made within 28 days of such an event the licence ceases to have effect.
- 2.5 Section 135 of the Licensing (Scotland) Act 2005 provides that the Board may relieve any applicant or other party to proceedings before the board of any failure to comply with a procedural provision if:-
 - (a) The failure is due to a mistake, oversight or other excusable cause; and
 - (b) The board considers it appropriate in all the circumstances to relieve the failure

2.6 where the Board exercises this power it may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

4. NOTIFICATION

The applicant has been notified of the terms of this Report. They have also been advised of their entitlement to attend the Board should they wish.

5. CONSULTATION

The Divisional Commander, Tayside Division of Police Scotland has been consulted in the preparation of this report and we are currently awaiting comments from Police Scotland.

**SHEONA C HUNTER
CLERK TO THE LICENSING BOARD**

NOTE: No background papers were relied on to a material extent in preparing the above report.

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