

AGENDA ITEM 7

REPORT NO LB 4/18

ANGUS LICENSING BOARD – 4 JANUARY 2018

TRANSFER OF PREMISES LICENCE UNDER SECTIONS 33 AND 34

REPORT BY SHEONA C HUNTER CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to present an application for transfer of a premises licence under sections 33 and 34 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) which requires to be determined by the Board.

1. RECOMMENDATIONS

It is recommended that the Board consider and determine this application in terms of the following options:-

- (i) to allow or not to allow relief from failure to comply with the application requirement for the transfer of the licence within 28 days of the premises licence holder becoming insolvent;
- (ii) having allowed relief in terms of (i), to grant the application in accordance with Paragraph 3 of this Report.

2. BACKGROUND

On 30 October 2017, the Clerk to the Board received an application for transfer of premises licence 378 under section 34 from joint administrators Lyn Leon Vardy, Toby Scott Underwood and Graham Douglas Frost. Premises licence 378 is held by Park Investments (Dundee) Ltd, 31 Hawkhill, Dundee, DD1 5DH for the premises at 14 Market Place, Arbroath, DD11 1HR (formerly trading as the Turkish Grill Restaurant and Bar).

The applicants, being the administrators for Park Investments (Dundee) Limited, were appointed by Court Interlocutor dated 23 January 2017. Principal agents for the applicants were instructed to transfer various premises licences to the applicants within 28 days of appointment. They were advised at that time that premises licence 378 had ceased to have effect. Subsequently, it was discovered that premises licence 378 is still in force.

Members of the Board are asked to accede to the request of the applicants to utilise section 135 of the 2005 Act to relieve their failure to comply with the requirements of section 34 of the 2005 Act, namely that the application to transfer the licence is made within 28 days of the premises licence holder, being an individual, a partnership or a company, becoming insolvent.

If Members are minded to accede to this request, examination of Police Scotland’s Notice, dated 7 November 2017, is required. **A copy of the notice shall be circulated at the meeting.** The Board is asked to determine the application in accordance with Section 1 of the Report.

3. LEGAL IMPLICATIONS

Section 34 of the 2005 Act provides that an applicant, who is not the premises licence holder or an individual under the age of 18, may, within 28 days of the premises licence holder, if a company, becoming insolvent, apply to the appropriate Licensing Board for the transfer to that person of the licence.

Section 135 provides that a Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if the failure is due to mistake, oversight or other excusable cause, and the Board considers it appropriate in all the circumstances to relieve the failure. Where the Board exercises the power, the Board may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

If Members are minded to engage section 135 and use the power contained in that section, the next step is consideration of section 34(4) which requires Members to consider the transfer application in light of sections 33(4) to (10) of the 2005 Act.

The Chief Constable has provided a notice in terms of section 33(6)(a)(i) and (ii) advising that neither the applicant or any connected person has been convicted of a relevant offence. The Chief Constable was unable to confirm the existence of a foreign offence.

It is the case with this application that the Licensing Board has received a notice from the Chief Constable under section 33(6)(a), the notice does not include a recommendation that the Chief Constable considers it necessary for the purposes of any of the licensing objectives that the application for the transfer of the licence be refused and no additional information has been provided by the Chief Constable; on that basis, the Board must grant the application.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

5. CONSULTATION

The Chief Constable of Police Scotland has been consulted in the preparation of this report.

6. NOTIFICATION

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

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

REPORT AUTHOR: Tina Magson, Solicitor

E-MAIL: LEGDEM@angus.gov.uk