

ANGUS LICENSING BOARD – 16 MAY 2019

**REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT
SHIMLA, SWAN STREET, BRECHIN**

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 27 March 2019 the Clerk of the Board received notification from Shiells Solicitors that they intended to lodge an application to transfer the premises licence from Shad MD Mostar Ali to Suhel Ahmed in respect of Shimla (formerly the Swan), Swan Street, Brechin. A signed lease between Mr Ahmed and the owners of the premises, Rossie Food Club, was submitted. The date of entry in terms of the lease was noted as 1 January 2019.
- 2.2 On 8 April 2019 an application for Transfer of a Premises Licence by a Person Other than the Licence Holder was lodged in order to transfer the Premises Licence from Shad MD Mostar Ali to Suhel Ahmed.
- 2.3 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 the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to the applicant. 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.
- 2.4 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
- 2.5 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.

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

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