

ANGUS LICENSING BOARD – 20 FEBRUARY 2020

REVIEW OF PREMISES LICENCES

REPORT BY THE CLERK

ABSTRACT

The purpose of this Report is to present premises licences to the Board for review due to non payment of Annual Fees in accordance with the Licensing (Scotland) Act 2005 (“the 2005 Act”)

1. RECOMMENDATION

It is recommended that the Board conducts a Hearing to review the premises licences listed in **Appendices 1 and 2** to this Report and, if satisfied that a ground for review is established, take such of the following steps, as it considers necessary and appropriate, for the purposes of any of the licensing objectives:-

- (a) to issue a written warning to the licence holder,
- (b) to make a variation of the licence,
- (c) to suspend the licence for such period as the Board may determine,
- (d) to revoke the licence.

2. BACKGROUND

2.1 At the meeting of the Board on 9 January 2020, Board Members agreed to note the position stated in Report 4/20 regarding the non-payment of Annual Fees and agreed to hold a review hearing in respect of the premises detailed in **Appendices 1 and 2** to this Report.

2.2 In terms of section 36(3) of the 2005 Act, the grounds for review are:

- (za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence;
- (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.

The licensing objectives are:-

- (a) preventing crime and disorder;
- (b) securing public safety;
- (c) preventing public nuisance;
- (d) protecting and improving public health; and
- (e) protecting children and young persons from harm.

2.3 Paragraph 10 of Schedule 3 to the 2005 Act makes it a mandatory condition applicable to all premises licences that the fee must be paid as required by The Licensing (Fees) (Scotland) Regulations 2007. The regulations provide for the fee being an annual fee and specifies the amounts due by different types of premises. The Regulations specify that the first annual fee is due within 30 days after the date on which the licence takes effect. The Regulations further specify that subsequent annual fees are due on 1st October each year or, where that date falls on a Saturday or Sunday, on the immediately following Monday.

- 2.4 Despite reminders and repeated requests for payment being made, the annual fees in respect of each of the licensed premises detailed in **Appendix 1** remain unpaid.

The annual fees in respect of each of the premises noted within **Appendix 2** of the report were unpaid at the date of the last Board meeting (9 January 2020) but have since been paid.

Where a premises licence is in effect, or is suspended, the holder of that licence must make payment of the 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 a Sunday, on the immediately following Monday.

The respective premises licence holders would therefore appear to be in breach of the said condition of their licence.

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

- 2.6 Where a Licensing Standards Officer receives a copy of a premises licence review proposal the Officer must, before the review hearing, prepare and submit to the Board a report on the proposal, 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 3**.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising directly from this report.

4. HUMAN RIGHTS IMPLICATIONS

- 4.1 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.

- 4.2 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.

- 4.3 The legal basis for taking any action in connection with this report is in accordance with the 2005 Act.

- 4.4 Any actions considered by the Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim.

5. CONCLUSION

The Board is requested to review the premises licences as detailed in **Appendices 1 and 2** to this Report and determine, what steps, if any, they consider to be necessary and appropriate for the purposes of the licensing objectives.

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APPENDIX 1 TO REPORT LB 15/20
ANGUS LICENSING BOARD – 20 FEBRUARY 2020

Premises Number	Premises Name	Premises Address	Amount
159	St James Convenience Store	35E St James Road, Forfar	£280
280	The Panmure Hotel	Tay Street, Monifieth	£280

APPENDIX 2 TO REPORT 15/20

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Premises Number	Premises Name	Premises Address	Amount
139	Finavon Hotel	Finavon, By Forfar	£280
273	Sunny's Bar and Kitchen	2 Mattocks Road, Wellbank	£280
299	St Thomas Bar	17 James Street, Arbroath	£220

ANGUS LICENSING BOARD – 20 FEBRUARY 2020

LICENSING (SCOTLAND) ACT 2005

PREMISES LICENCE REVIEW PROPOSAL

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

St Thomas Bar, 17 James Street, Arbroath

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 9 January 2020 considered a premise licence review proposal for St Thomas Bar as the premises had failed to pay their annual fees. The Board's decision was to hold a review hearing.

Premises Licence Holder: Malcolm Grant Booth

Designated Premises Manager: George Graham Whyte

Licensing Standards Officer's Report:

The premises were written to on 6 September 2019 and advised that their premises licence annual fee was due to be paid no later than 1 October 2019. Information was also provided on how the payment could be made.

I phoned the premises on 18 November and was told that the Premises Licence Holder would not be back until 22 November. On 20 November, I sent an email to the listed Designated Premises Manager to ask him to make sure the Premises Licence Holder received the message the Annual Fee was due.

With no reply forthcoming, I visited the premises on 22 November and left a letter at the premises for the attention of the Premises Licence Holder.

I phoned the premises again on 25 November but again the Premises Licence Holder was not present. On 27 November I located an email for the Premises Licence holder on our system and sent an email to him asking he get in touch. He replied to me intimating that he no longer operated the St Thomas Bar and is now only the landlord. He gave me the details of the tenant who he said was due this fee. I phoned this person and left a message. I received a call from that person who advised me she was no longer involved with the St Thomas Bar and left on 30 September 2019.

I therefore returned to the Premises Licence Holder by email on 23 December to try and obtain the fee. He advised he would phone the office after Christmas and did so on 30 December.

I explained to him that Annual Fees fall due on 1 October each year for the year coming. He had misunderstood and believed it was for the year past, and this was why he directed me to the previous tenant. He gave me the details of the new tenant and Designated Premises Manager who I phoned on 31 December, who said he would settle he fee. I emailed him the details of how he could do this. With no payment forthcoming, I phoned him on 6 January and he advised me that the Premises Licence Holder was to phone on 7 January to settle this fee.

Again, with no payment forthcoming, and after the Board decided to proceed to review, I contacted the Premises Licence Holder on 13 January to retrieve payment. He assured me that it had been set

up to go through on the next pay run on the 19 January. However, on 20 January, the Premises Licence Holder phoned me and opted to make payment over the phone.

Overall, I had made 10 attempts to retrieve this fee, having to speak with three different people in the process before it finally being settled.

The outstanding balance has now been settled.

Daniel J. Coleman

Licensing Standards Officer

Angus Council

LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL

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

Finavon Hotel, Finavon, "By Forfar"

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 9 January 2020 considered a premise licence review proposal for Finavon Hotel as the premises had failed to pay their annual fees. The Board's decision was to hold a review hearing.

Premises Licence Holder: Finavon Restaurant and Hotels Ltd (Connected Person: Robert Alexander Duffus)

Designated Premises Manager: Robert Alexander Duffus

Licensing Standards Officer's Report:

The premises were written to on 6 September 2019 and advised that their premises licence annual fee was due to be paid no later than 1 October 2019. Information was also provided on how the payment could be made.

I sent an email to the Premises Licence Holder on 12 November 2019 to ask he get in touch to settle the outstanding balance. With no reply forthcoming, I then phoned the mobile of the Premises Licence Holder on 18 November 2019 asking he phone me back as soon as possible. On 20 November 2019 I sent a letter to the home address of the Premises Licence Holder asking that he get in touch with me to settle this balance.

With no contact from the Premises Licence Holder, I visited the premises on 25 November. The Premises Licence Holder was not present. I left a letter which included my contact details with a member of staff, impressing upon them the urgency of this matter.

I phoned the premises again on 27 November 2019 and again the Premises Licence Holder was not present and I left as message with a member of staff. I did similar on 16 December. I wrote again to the home address of the Premises Licence Holder and the Premises on 23 December 2019 which were sent by recorded delivery. I telephoned the mobile of the Premises Licence Holder and left a message and also followed this up by email on the 31 December 2019.

I emailed the solicitor who previously acted for the Premises Licence Holder on 7 January 2020 to ask if they could assist in having this fee settled. The solicitor replied phoned me that same day to advise me they would address this matter urgently. That same day I was copied into an email by the agent to the property stressing the urgency of this matter. I followed that email up the same day asking that they please inform me as soon as this fee was paid. The Board then proceeded to review on 9 January.

With no notification of payment, and then the letter sent recorded delivery to the Licence Holder's home being returned on 18 January as "not called for", I opted to contact the Finance department on 21 January to ascertain if payment had been made via BACs. It transpired payment was made on 8 January 2020 by BACs but the Licence Holder did not inform me he had done this or was intending to pay via BACs.

The outstanding balance has now been settled. The Board may wish to be aware that the fee was settled as of 8 January 2020 which was the day prior to the day of the last Board meeting when the Board made a decision to hold a review hearing.

Daniel J. Coleman

Licensing Standards Officer

Angus Council

LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL

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

Sunny's Bar and Kitchen

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 9 January 2020 considered a premise licence review proposal for Sunny's Bar and Kitchen as the premises had failed to pay their annual fees. The Board's decision was to hold a review hearing.

Premises Licence Holder: Bellrock Property Ltd (Connected Person: Andrew Hardie)

Designated Premises Manager: Mariam Hayat

Licensing Standards Officer's Report:

The premises were written to on 6 September 2019 and advised that their premises licence annual fee was due to be paid no later than 1 October 2019. Information was also provided on how the payment could be made.

From previous work with this premises, I am privy to the knowledge the Designated Premises Manager is responsible for the annual fee as part of the leasing agreement with the landlords, who are the Premises Licence Holders. This does not, however, relieve the Premises Licence Holder from complying with the mandatory conditions.

I emailed the Designated Premises Manager on 12 November 2019 in respect of the unpaid annual fee. With no reply forthcoming, I phoned the Designated Premises Manager on 19 November 2019 and she said she would call back later that week. She apologised for the delay but explained the premises had had flooding issues and had closed for a while, and she had not received the original letter sent to the premises because of this.

Having not heard from her, I emailed her again on 25 November 2019 asking if she could progress the matter. I received an email from her on 26 November 2019 asking if she could settle the balance on 13 December 2019. Given the flooding matters which would have hindered business income, I acquiesced to her request.

However, with no payment being made on that date, I returned to the Designated Premises Manager on 16 December 2019 enquiring if payment could be made. They responded advising they did not have the funds to do so. I informed them if this fee was not paid, their licence would be submitted for review by the Board Member's and would have adverse consequences for their licence. They advised me they would have this settled by the end of the year. I advised them that this was far from satisfactory and it will need to be paid.

On 6 January 2020, payment had not been made. I therefore emailed the Designated Premises Manager again asking if she could get in touch with me to settle the outstanding balance.

On 7 January 2020 I phoned the Designated Premises Manager and left a message on her phone asking she get in touch to settle this balance. On 9 January the Board agreed to proceed to review.

On 16 January 2020, the Designated Premises Manager phoned the department to settle the outstanding balance and paid by card over the phone.

I had made contact with the Designated Premises Manager on six occasions in an effort to retrieve the outstanding balance.

Daniel J. Coleman

Licensing Standards Officer

Angus Council

LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL

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

St James Convenience Store, 35E St James Road, Forfar

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 9 January 2020 considered a premise licence review proposal for St James Convenience Store 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:

The premises were written to on 6 September 2019 and advised that their premises licence annual fee was due to be paid no later than 1 October 2019. Information was also provided on how the payment could be made. This letter was returned undeliverable.

I attempted to call the Premises Licence Holder on 18 November 2019. However, all listed phone numbers were invalid. On 20 November 2019 I wrote to the Premises Licence Holder at his home address.

With no contact forthcoming, I visited the premises on 25 November 2019 and the premises was closed and boarded up. It would appear to me that these premises have shut down.

Although they have shut down, the Premises Licence was not surrendered and was still in force on 1 October 2019 when fees fell due. As such, the fee is lawfully due.

To date, the premises licence annual fee has not been paid.

Daniel J. Coleman

Licensing Standards Officer

Angus Council

LICENSING (SCOTLAND) ACT 2005
PREMISES LICENCE REVIEW PROPOSAL

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

The Panmure Hotel, Tay Street, Monifieth

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 9 January 2020 considered a premise licence review proposal for The Panmure Hotel 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:

The premises were written to on 6 September 2019 and advised that their premises licence annual fee was due to be paid no later than 1 October 2019. Information was also provided on how the payment could be made. This letter was returned undeliverable.

Searching for phone numbers, Google suggested that these premises were "permanently closed". I sent an email to the most recently listed Designated Premises Manager on 12 November 2019. All numbers on file for both the Premises Licence Holder and Designated Premises Manager were invalid.

During my search, I found evidence that this hotel had now been sold and renovated into a block of flats. The Premises Licence is therefore no longer required.

Although the premises have shut down, the Premises Licence was not surrendered and was still in force on 1 October 2019 when fees fell due. As such, the fee is lawfully due.

To date, the premises licence annual fee has not been paid.

Daniel J. Coleman

Licensing Standards Officer

Angus Council