

ANGUS LICENSING BOARD – 30 JUNE 2020

REQUEST TO RELIEVE THE FAILURE TO COMPLY WITH A PROCEDURAL REQUIREMENT

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this report is to request the Board to determine whether to relieve an applicant of a failure to comply with procedural requirements in terms of Section 135 Licensing (Scotland) Act 2005 (“the 2005 Act”)

1. RECOMMENDATION

It is recommended that the Board:-

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

2. BACKGROUND

- 2.1 Graeme Nicol (“Mr Nicol Junior”) is currently the named premises licence holder of Arthur Jacks, 1 Arbroath Road, Forfar (“Arthur Jacks”). Mr Nicol Junior died in March 2019 and the premises ceased trading around this time. The parents of Mr Nicol Junior who survive him were unaware that as executors or representatives of Mr Nicol Junior, they required to make an application to transfer the Premises Licence into their name under Section 34 of the 2005 Act within a period of 28 days in order to keep the Premises Licence active. The Board were unaware of the circumstances surrounding this Premises until now and the Premises Licence fee for 2019/2020 was paid on time.
- 2.2 On 4 March 2020 a Transfer Application under section 34 of the 2005 Act in respect of Arthur Jack’s was received from the Agent for Lynart Shepherd Ltd.
- 2.3 Lynart Shepherd Ltd are the prospective owners of the business at Arthur Jacks having entered into an agreement with Mr and Mrs Nicol regarding the sale of the business formerly owned by Mr Nicol Junior. The missives relating to this agreement are now pending the transfer of the Premises Licence. Mr and Mrs Nicol have provided a letter of consent through their agent stating that they are agreeable to the transfer of the licence. This letter of consent is contained within **Appendix 1**. If the Board are minded to relieve the failure to comply with the procedural requirements, the transfer of the licence will be able to proceed but will remain pending until confirmation has been received by the Agent for Lynart Shepherd Ltd.
- 2.4 Section 34 of the 2005 Act 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 upon the death of the Premises Licence Holder. Section 34 provides that an application must be made by “the executors or representatives” of the Personal Licence Holder within a period of 28 days.
- 2.5 The application submitted by Lynart Shepherd Ltd has been made outwith the 28 day period and the transferee, Lynart Shepherd Ltd, is someone other than the prescribed person, namely they are not “executors or representatives” of Mr Nicol Junior. As noted at Section 2.3, the transferee has obtained consent from the executors or representatives of the previous Licence Holder and the application to transfer the licence has been passed to consultees including Police Scotland for comment. No objections have been received. Accordingly, the Board are being asked to consider determining to relieve the failures to comply with the procedural requirements of section 34, firstly in relation to the fact that Lynart Shepherd Ltd are not prescribed persons under the Act and secondly, in relation to the fact that the transfer application has been made outwith the 28 day period.

- 2.6 Section 135 of the 2005 Act 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.
- 2.7 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, via their Agent, has been notified of the terms of this Report. They have also been invited to attend the Board.

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

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Our Ref ENM/JSM/JL/NIC1421.3

Your Ref

Date 13 March 2020

Angus Council
Licensing Department
Angus House,
Orchardbank Business Park,
Forfar, DD8 1AN.

F.A.O. Dawn Smeaton

Dear Ms Smeaton

**S34 Transfer Premises Licence Arthur Jacks, Forfar
Premises Licence Number AC / 380**

We act for Mr Brian Nicol and Mrs Elizabeth Nicol and confirm that we have their consent to the section 34 transfer of the Premises Licence for Arthur Jacks, 1 Arbroath Road, Forfar to ***Lynart Shepherd Limited***.

We confirm the date of entry is dependent on knowing the transfer will be able to take place. We would be grateful if you could advise Mrs Janet Hood, Janet Hood Training and Consulting Limited, Kirkton of Balfour, Edzell, Brechin, Angus by **email at janethood@me.com** that the premises licence is able to be transferred as per the application. Once that has occurred we will confirm to you that the matter has settled and the transfer can take place.

On no account should the Premises Licence be transferred without a further email confirmation from us confirming that the transfer should proceed.

Yours faithfully

Bowmans

Bowmans

Total number of words: 180

Reply to

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