

**ANGUS LICENSING BOARD – 15 NOVEMBER 2012**

**PREMISES LICENCES  
UNDER THE LICENSING (SCOTLAND) ACT 2005 – LICENCES CEASED**

**REPORT BY THE CLERK**

**ABSTRACT**

The purpose of this report is to consider representations from the holder of a Premises Licence which the Board determined, on 4 October 2012, had ceased to have effect by virtue of the Premises having ceased to be used for the sale of alcohol.

**1. RECOMMENDATION**

It is recommended that the Board:-

- (i) consider the representations made from the holder of a Premises licence; and
- (ii) determine what action to take in light of those representations.

**2. BACKGROUND**

2.1 Section 28 of the Licensing (Scotland) Act 2005 ("the 2005 Act") provides, amongst others, that a premises licence ceases to have effect where:

- (a) the premises licence is revoked under any provision of the 2005 Act;
- (b) the licensed premises cease to be used for the sale of alcohol;
- (c) the premises licence holder being an individual:
  - (i) dies; or
  - (ii) becomes incapable within the meaning of Section 1(6) of the Adults with Incapacity (Scotland) 2000;
- (d) the premises licence holder, being an individual, a partnership or a company becomes insolvent;
- (e) the premises licence holder, being a person other than an individual, a partnership or a company is dissolved;
- (f) the Licensing Board receives from the premises licence holder a notice surrendering the licence, accompanied by the premises licence or a statement of reasons for failure to produce the licence.

2.2 On 26 August 2009, Angus Licensing Board granted a Premises Licence (under the Licensing (Scotland) Act 2005) to Oxford Hotels and Inns Management Limited in respect of the premises known as the Royal Hotel, 33 Castle Street, Forfar. On 16 December 2010, the office of the Clerk to the Board received correspondence from Solicitors acting for Oxford Hotels and Inns Management Limited advising that their tenant at these premises had recently left and that the premises were currently closed and will remain closed until they found a suitable tenant.

- 2.3 On 26 September 2012, a letter was sent to these premises, by first class mail, advising that a report will be considered by the Board at their meeting 4 October 2012. The Premises Licence holders were advised that they had the right to attend and may be represented. The Premises Licence holder was also advised that if they could not attend the meeting for any reason then they should contact the Clerk immediately. A copy of the report to be considered by the Board was also attached to the letters. On 1 October 2012 it was ascertained that Royal Mail were unable to deliver the first class letter because the "addressee has gone away". In addition, a further letter in similar terms to the letter referred to above was issued to the solicitors acting for the Premises Licence holders by first class recorded delivery. Royal Mail has not advised that they were unable to deliver this letter.
- 2.4 On 4 October 2012, Angus Licensing Board determined that, amongst others, the Premises Licence for the Royal Hotel, 33 Castle Street, Forfar, had ceased to have effect.
- 2.5 Following the meeting of the Board, the office of the Clerk received representations from Solicitors acting for Oxford Hotels and Inns Management Limited. These representations were to the effect that Oxford Hotels and Inns Management Limited were actively seeking to find suitable tenants to operate these premises but were unable to do so in the current economic climate. It was noted that they had paid their annual fees in respect of these premises in both years 2010/2011 and 2011/2012 and that, in these circumstances, the Board should not consider that the Premises Licence should ceased to have effect.
- 2.6 The Premises Licence holders have made payment of their annual fees in respect of these premises in respect both years 2010/2011 and 2011/2012. On 28 August 2012, a letter was issued to the premises licence holders in respect of the annual fee for 2012/2013. To date, payment of the annual fee for 2012/2013 has not been made.
- 2.7 In light of these representations, the Clerk has invited the Premises Licence holders to attend and address the Board in respect of these matters. The Board may consider that, in light of these representations, and possibly in consideration of information not before the Board when it made it's initial decision, it would wish to revisit the decision to determine that the Premises Licence for the Royal Hotel, 33 Castle Street, Forfar, had ceased to have effect.

### **3. RISKS**

This report does not require any specific risk issues to be addressed.

### **4. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

### **5. HUMAN RIGHTS IMPLICATIONS**

- 5.1 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.
- 5.2 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.
- 5.3 The legal basis for taking any action in connection with this Report is in terms of Section 28 of the the 2005 Act.
- 5.4 Any actions considered by the Licensing Board must be proportionate, i.e. there should be as little intervention as possible to achieve the Board's desired aim. If the Board is minded to suspend the licence, members must first consider the Board's desired aim in imposing a period of suspension and must also consider an appropriate period of suspension taking into account the guidance on proportionality and must ensure that their decision does not discriminate against the licence holder.

**6. CONSULTATION**

The Head of Finance, the Director of Infrastructure Services and the Chief Constable, Tayside Police have been consulted in the preparation of this report.

**7. NOTIFICATION**

Notification of the terms of this Report has been sent to the licence holders at their last known addresses.

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

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:

Licensing (Scotland) Act 2005

Licensing (Transitional and Saving Provisions) (Scotland) Order 2007