

Item: 4

Orkney Islands Area Licensing Board: 5 October 2023.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Jennifer A McLeod – Deerness Stores, Deerness.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by Jennifer A McLeod for variation of a premises licence held in respect of Deerness Stores, Deerness.

2. Recommendations

It is recommended:

That the Board determines the application by Jennifer A McLeod for variation of a premises licence held in respect of Deerness Stores, Deerness.

3. Policy Aspects

3.1.

In accordance with the Licensing (Scotland) Act 2005, the Board's Statement of Alcohol Licensing Policy provides that decisions on premises licence variation applications shall be made by the Board (with the exception of decisions on minor variation applications which are delegated to the Clerk to the Board).

3.2.

In relation to overprovision, on 27 April 2023, the Board determined the following:

- There is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.
- The Board concluded that, on a balance of probabilities, there was not a dependable causal link between the availability of alcohol in Orkney and alcohol-related harm, in that, based on the evidence of harm in the locality of Orkney as defined by the Board, it was unlikely, on balance, that alcohol availability was a cause of harm in Orkney, or that increasing the availability of alcohol in Orkney would increase that harm.

3.3.

Sections 2.8 to 2.15 of the Board's currently approved Statement of Alcohol Licensing Policy set out the relationship between licensing legislation and other statutory health and safety requirements, such as planning, building standards and food hygiene. Section 2.8 of the Policy provides that the Board will avoid duplication with other regulatory regimes and will not use its powers under the Act to arrive at outcomes that can be achieved under other legislation or by other enforcement agencies.

3.4.

In accordance with the Licensing (Scotland) Act 2005, the Board's Statement of Alcohol Licensing Policy generally permits off-sale operating hours of 10:00 to 22:00 each day.

3.5.

The full policy document is available from the Related Downloads section [here](#).

4. Introduction

4.1.

A premises licence has been held at Deerness Stores, Deerness, since 1 September 2009, firstly by Dionne J Butcher and then by Jennifer A McLeod.

4.2.

On 23 December 2022, Jennifer A McLeod submitted an application for variation of the premises licence. Details of the application are provided at section 5 below.

5. Relocation of Off-sale Alcohol Display Capacity

The application requests the relocation of the off-sale alcohol display area in the redeveloped shop on the site, retaining the same capacity of 8 square metres. A layout plan of the building is attached at Appendix 1 to this report.

6. Off-sale Operating Hours

For information, the premises are currently licensed for off-sales only as follows, which will not be affected by the proposed variation:

- 10:00 to 22:00 Mondays to Saturdays, inclusive.
- 11:00 to 22:00 Sundays.

7. Consultation

7.1.

During consultation on the application in early 2023, it was recognised that the layout plan provided by the applicant was different to the plan provided to the Council for building warrant purposes. The application was withdrawn and was re-activated in August 2023 with an amended layout plan, which accords with the approved building warrant plan.

7.2.

The required notices were issued to the statutory consultees on 17 August 2023 and the application was published on Orkney Islands Council's website from 22 August 2023. The last date for objections or representations to be received was 12 September 2023. No objections or representations were received.

8. Financial Implications

The appropriate application fee of £100 has been paid.

9. Legal Aspects

9.1.

The Act provides that the licensing board must hold a hearing for the purpose of considering and determining an application for a variation that is not a minor variation.

9.2.

Because the application requests the relocation of the off-sale alcohol display area in the redeveloped shop on the site it is not a minor variation and therefore must be determined by the Board.

9.3.

Any person may, by notice to the Board, object to an application on any of the grounds for refusal specified in the Act or may make representations to the Licensing Board, including representations in support of the application, as to modifications which the person considers should be made to the operating plan accompanying the application or as to conditions which the person considers should be imposed.

9.4.

The grounds for refusal under the Act are as follows:

9.4.1.

The application must be refused if, generally, it is an application within one year of a previous refusal or seeks generally banned 24 hour opening or prohibited off-sale hours.

9.4.2.

The Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives, namely:

- Preventing crime and disorder.
- Securing public safety.
- Preventing public nuisance.
- Protecting and improving public health.
- Protecting children and young persons from harm.

9.4.3.

Having regard to:

- The nature of the activities proposed to be carried on in the subject premises.
- The location, character and condition of the premises.
- The persons likely to frequent the premises.

The Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation.

9.4.4.

The Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises or licensed premises of the same or similar description as the subject premises (taking account of the variation), in the locality.

9.5.

Anyone lodging an objection on the ground detailed at section 9.4.4 above must specify the locality on which they are basing their objection.

9.6.

Where the Board refuses the application, the Board must specify the ground for refusal. If the ground for refusal is that specified in the ground detailed at section 9.4.2 above, the Board must specify the licensing objective or objectives in question.

9.7.

The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies. If none of them applies, the Board must grant the application. If any of them applies, the Board must refuse the application.

10. Contact Officers

Gavin Mitchell, Clerk to the Board, extension 2233, email gavin.mitchell@orkney.gov.uk.

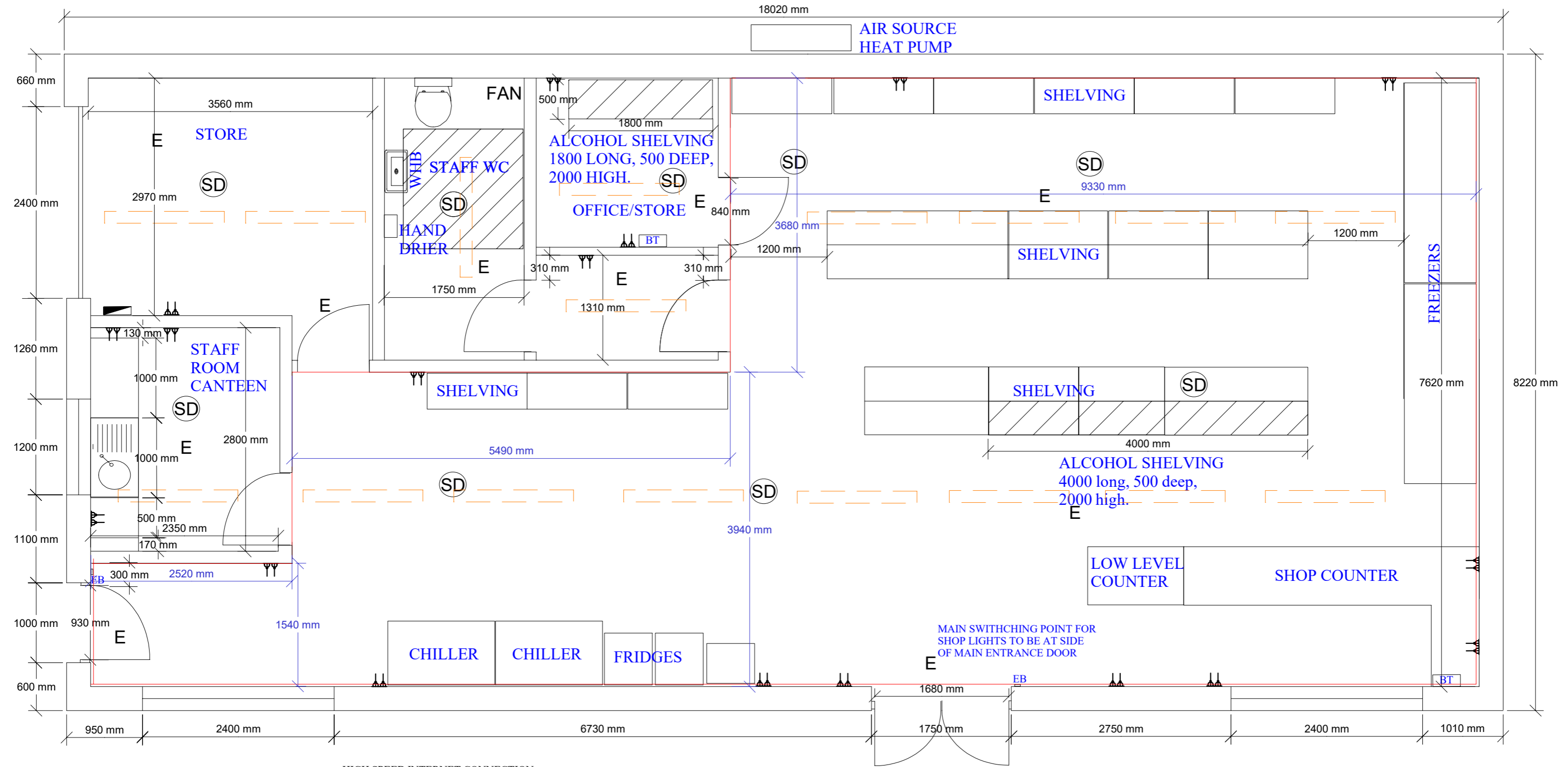
Stuart Bevan, Solicitor, extension 2220, email stuart.bevan@orkney.gov.uk.









Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

11. Appendix

Appendix 1 – Layout plan of the premises.

FLOOR PLAN AND MECHANICAL AND ELECTRICAL LAYOUTS



-  DISTRIBUTION BOARD
-  STRIP LIGHTING
-  SMOKE DETECTOR
-  EMERGENCY LIGHT
-  13AMP DOUBLE SOCKET
-  EXTRACTOR FAN
-  DISTRIBUTION BOARD
-  EMERGENCY BREAK GLASS

- HIGH SPEED INTERNET CONNECTION TO BE RETAINED
- EMERGENCY BREAK GLASS POINTS AT BOTH EMERGENCY EXITS, TO BE FITTED 1100 FROM FLOOR
- EMERGENCY EXIT SIGNS WITH BATTERY BACKUP POSITIONED ABOVE BOTH FIRE EXIT DOORS
- ALL DOORS TO BE NO LESS THAN 800 CLEAR OPENING
- ALL SMOKE DETECTORS TO HAVE LOCALISED SOUNDERS
- FIRE ALARM PANEL TO BE LOCATED BEHIND SHOP COUNTER

NEW REPLACEMENT DEERNES STORES	
DEERNES ORKNEY	DATE JANUARY 2023
	SCALE 1:50
	DRAWN BY KF
	PAGE SIZE A3
AMP 010 REV E	FOR MR A MILLER