

## **Item: 6**

**Orkney Islands Area Licensing Board: 19 January 2023.**

**Licensing (Scotland) Act 2005.**

**Application for Provisional Premises Licence.**

**Sinclair Breweries Ltd – Proposed Orkney Brewery Bottle Shop at 28 Albert Street, Kirkwall.**

**Report by Clerk to the Board.**

### **1. Purpose of Report**

To consider an application by Sinclair Breweries Limited for a provisional premises licence in respect of a proposed Orkney Brewery Bottle Shop at 28 Albert Street, Kirkwall.

### **2. Recommendations**

**It is recommended:**

That the Board determines the application by Sinclair Breweries Limited for a provisional premises licence in respect of a proposed Orkney Brewery Bottle Shop at 28 Albert Street, Kirkwall.

### **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 provisional premises licence applications shall be made by the Board.

#### **3.2.**

On 3 May 2018, the Board determined there was no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.

##### **3.2.1.**

The Board concluded that there was not a dependable causal link between the evidence provided to the Board and the operation of licensed premises, to suggest that a saturation point had been reached, or was close to being reached, within the locality of Orkney defined by the Board.

#### **3.3.**

The Board's Statement of Alcohol Licensing Policy generally permits off-sale operating hours of 10:00 to 22:00 each day.

### **3.4.**

The Board's Statement of Alcohol Licensing Policy generally permits:

- Commencement on-sale operating hour of 10:00 each day.
- Terminal on-sale operating hours of 24:00 Sundays to Thursdays and 01:00 Fridays/Saturdays and Saturdays/Sundays.
- For local events such as annual agricultural shows, local festivals and private functions, a terminal on-sale operating hour of 01:00 any morning.
- For weddings, a terminal on-sale operating hour of 01:30 any morning.
- For the festive season, being 24/25 December until 2/3 January each year, a terminal on-sale operating hour of 01:00 any morning.

### **3.5.**

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

## **4. Application**

### **4.1.**

On 30 November 2022, Sinclair Breweries Limited submitted an application for a provisional premises licence in respect of a proposed Orkney Brewery Bottle Shop at 28 Albert Street, Kirkwall, which requests the following:

- Off-sale operating hours, as follows:
  - 10:00 to 18:00 on Mondays to Saturdays inclusive.
  - 11:00 to 18:00 on Sundays.
- Off-sale capacity of 36.56 square metres.
- On-sale operating hours, as follows:
  - 10:00 to 18:00 on Mondays to Saturdays inclusive.
  - 11:00 to 18:00 on Sundays.
- Total on-sale capacity of 20 persons.

#### **4.1.1.**

Both the off-sale and on-sale operating hours detailed above are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy.

### **4.2.**

The premises are a shop, which will be converted for use as licensed premises, primarily as a shop.

### **4.3.**

The applicant has provided the following description of the proposed operation of the premises:

“Speciality off sales bottle shop premises, selling produce largely manufactured at the Orkney Brewery at Quoyloo. The premises would sell similar items to the Brewery Visitor Centre including beer bottles, beer gift packs, glasses, clothing and other Orkney Brewery branded merchandise. Whilst bottled product alcohol sales would primarily be for the consumption off the premises, the shop would have a small area for occasional tasting events and sampling to inform purchase choices. This would be ancillary to the primary retail function, and not dissimilar to the operation of speciality wine merchants.”.

#### **4.4.**

A layout plan of the premises is attached at Appendix 1 to this report.

### **5. Consultation**

The required notices were issued to the statutory consultees on 1 December 2022 and the application was published on Orkney Islands Council’s website from 2 December 2022. The last date for objections or representations to be received was 23 December 2022. No submissions were received.

### **6. Financial Implications**

The appropriate application fee of £200 has been paid.

### **7. Legal Aspects**

#### **7.1.**

The Licensing (Scotland) Act 2005 (the Act) provides that the licensing board must hold a hearing for the purpose of considering and determining an application for a premises licence (which includes provisional premises licence).

#### **7.2.**

The Act provides that a premises licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed or converted for use as licensed premises. Such an application is referred to as a “provisional premises licence application”.

#### **7.3.**

A provisional premises licence does not take effect unless and until it is confirmed by the licensing board. The Clerk to the Board has delegated authority to confirm provisional premises licences. If it is not confirmed before the end of the provisional period, then at the end of that period the licence is treated as revoked. The provisional period is 4 years from the date of issue of the provisional premises licence. The provisional period can be extended by the Board where completion of the construction or conversion of the premises has been delayed and the delay has been caused by factors outwith the provisional premises licence holder’s control.

## **7.4.**

### **7.4.1.**

Provisional premises licence applications must be accompanied by:

- A disabled access and facilities statement.
- A certificate in relation to Planning.

### **7.4.2.**

The information required in terms of section 7.4.1 above has been submitted.

### **7.4.3.**

Provisional premises licence applications do not require to:

- Name a premises manager, who must be a personal licence holder.
- Be accompanied by certificates in relation to building standards and food hygiene.

### **7.4.4.**

The information required in terms of section 7.4.3 above must be submitted at a later date with the application for confirmation.

## **7.5.**

Any person may, by notice to the Licensing 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.

## **7.6.**

The grounds for refusal under the Act are as follows:

### **7.6.1.**

The subject premises are excluded premises – these are essentially garages or garage shops, but there is an exemption for premises which are the principal source, in their community, for groceries as well as petrol or derv.

### **7.6.2.**

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.

### **7.6.3.**

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.

#### **7.6.4.**

The Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence.

#### **7.6.5.**

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.

#### **7.6.6.**

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, in the locality.

#### **7.7.**

Anyone lodging an objection on the ground detailed at section 7.6.6 above must specify the locality on which they are basing their objection.

#### **7.8.**

Where the Board is minded to refuse the application, but a modification proposed by the Board to the operating plan or layout plan (or both) would make the application acceptable to the Board, the Board must grant the application, as modified, where the applicant accepts the proposed modification.

#### **7.9.**

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 sections 7.6.3 or 7.6.4 above, the Board must specify the licensing objective or objectives in question.

#### **7.10.**

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.

## **8. Contact Officers**

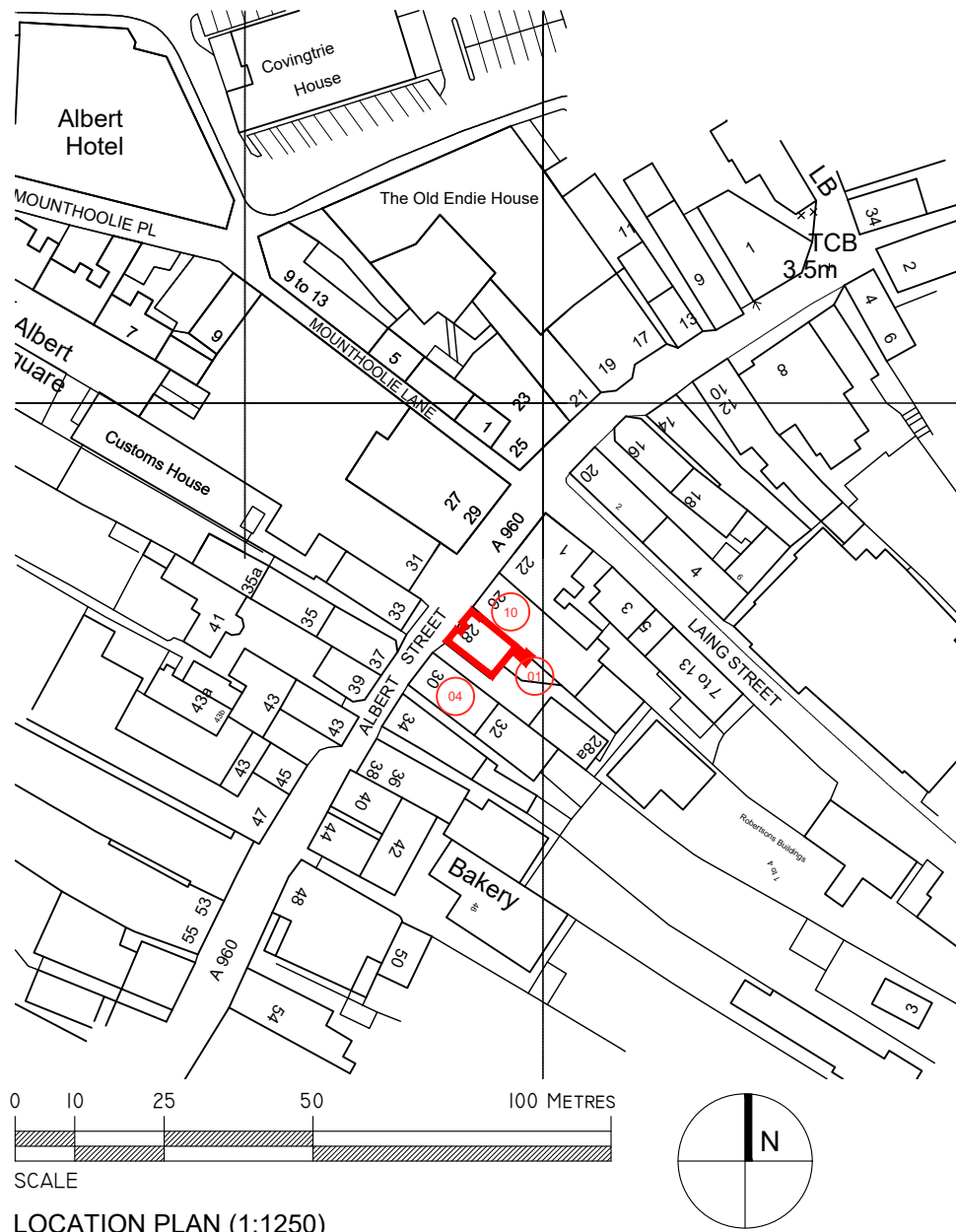
Gavin Mitchell, Clerk to the Board, extension 2233, email [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk).

Sheila Tulloch, Depute Clerk to the Board, extension 2213, Email [sheila.tulloch@orkney.gov.uk](mailto:sheila.tulloch@orkney.gov.uk).

Elaine Sinclair, Legal Clerk, extension 2232, email [elaine.sinclair-hill@orkney.gov.uk](mailto:elaine.sinclair-hill@orkney.gov.uk).

## **9. Appendix**

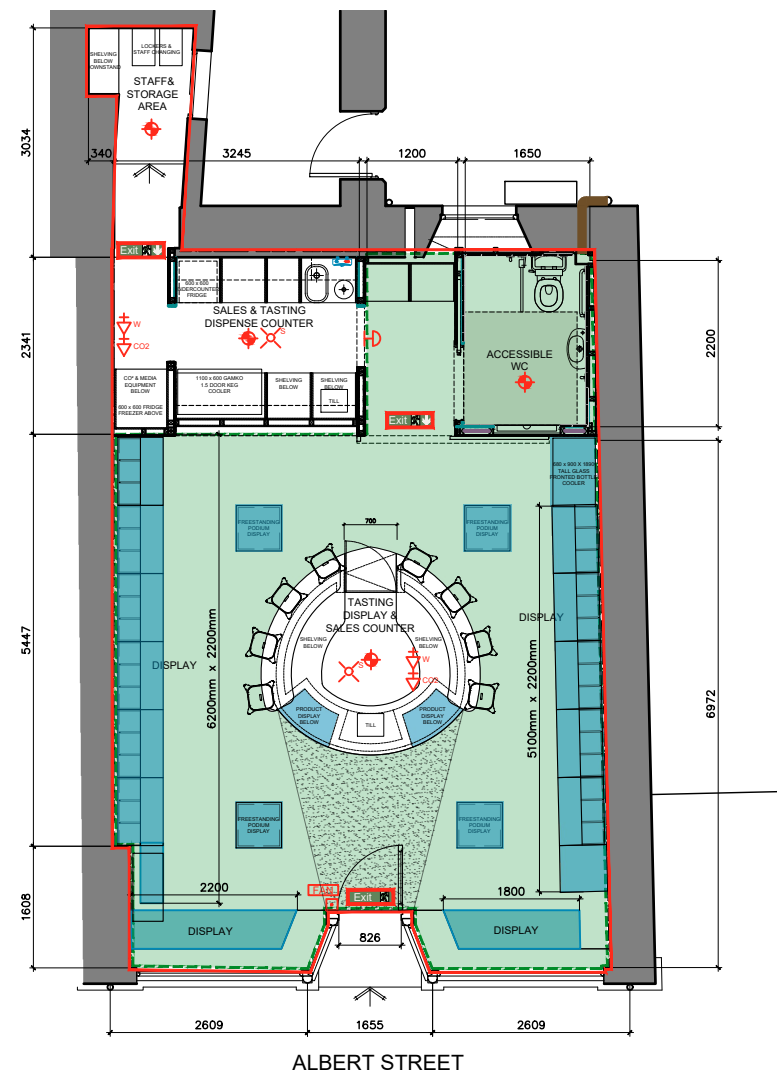
Appendix 1: Layout plan of the premises.



LOCATION PLAN (1:1250)

NEIGHBOURING ADDRESSES

Neighbouring Properties			
Ref:	Address	Use	Notes
01	Flat 28b, Albert Street, Kirkwall, KW15 1HL	Private Flat	1st Floor Property above Unit in Application.
04	30, Albert Street, Kirkwall, KW15 1HL	Commercial Property	'Grooves' - Toys/Music Shop
10	26, Albert Street, Kirkwall, KW15 1HL	Commercial Property	'Beggs Shoes & Bags' - Shop



PREMISES LICENCE PLAN 1:100@A3

Location of Activity	
Activity	Shop Floor
Accommodation	
Conference Facilities	
Restaurant Facilities	
Bar meals	
Receptions	
Club meetings	
Recorded Music	✓
Live Performances	
Dance Facilities	
Theatre	
Films	
Gaming	
Indoor/outdoor sports	
Televised Sport	
Outdoor Drinking facilities	
Adult Entertainment	
Tastings	✓
Children & Young Person Areas	✓

LEGEND

Fire Warning System, Emergency Lighting & Fire Fighting Equipment

- Emergency LED Downlight with battery back up
- Maintained illuminated exit sign
- Maintained illuminated directional exit sign
- Non-Maintained Emergency Light
- Non-illuminated directional exit sign
- Non-illuminated exit sign
- Fire action notice
- 'BREAK GLASS' Emergency call point
- Fire alarm sounder
- Smoke detector/Heat detector/Multi Sensor (C/W Flashing Beacon)
- CO2 type fire extinguisher
- Water/Foam/Powder/Wet Chemical type extinguisher
- Fire Blanket

LICENCE PLAN LEGEND

- Licenced Area
- Denotes children and young person areas
- Denotes areas used for display of alcohol

GENERAL DRAWING NOTES

- Do not scale off this drawing. All dimensions are in millimetres unless otherwise stated.
- This drawing is to be read in conjunction with all relevant Architectural, Interior, Civil, Structural and Service Engineer's drawings and specifications.
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PROJECT SPECIFIC NOTES

This drawing has been produced for use as a Premises Layout Plan as described in the Licencing (Scotland) Act 2005 only.

Any information provided on this layout plan that is not required by the Licencing (Scotland) Act 2005 or regulations made thereunder is provided purely for the purpose of assistance. Such information specifically does not form part of any Premises Licence.

OCCUPANCY	
INTERNAL PUBLIC OCCUPANCY CAPACITY	= 18
STAFF	= 2
TOTAL OCCUPANCY CAPACITY	= 20

AREAS	
GROUND FLOOR GIA	=63M <sup>2</sup>
PUBLIC AREAS	=45M <sup>2</sup>

AREAS USED TO DISPLAY ALCOHOL	
Display Podiums x 4 (Approx. 600mm x 600mm each)	=1.44M <sup>2</sup>
Service Desk x 2 (Approx. 800mm x 900mm each)	=1.44M <sup>2</sup>
Tall Bottle Cooler (Approx. 1800mm x 900mm)	=1.62M <sup>2</sup>
North Wall Merchandise 6200mm x 2200mm	=13.64M <sup>2</sup>
South Wall Merchandise 5100mm x 2200mm	=11.22M <sup>2</sup>
Window Display 1 2200mm x 1800mm	=3.96M <sup>2</sup>
Window Display 2 1800mm x 1800mm	=3.24M <sup>2</sup>
TOTAL AREA	=36.56M <sup>2</sup>

Revision/Date	Description	By
A - 09 11 22	Removed ref to external areas. 'Other Activities' changed to 'Tastings'. Baby change added to AWC.	DM
B - 15 11 22	Display Areas revised	DM
C - 25 11 22	Updated Neighbouring Properties list	DM



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Client  
Sinclair Breweries Ltd.

Project  
Proposed Bottle Shop,  
28 Albert Street,  
Kirkwall,  
Orkney

Drawing Title  
Premises Layout Plan

Scale	Date	Drawn by	Checked by
1:100 @ A3	Oct '22	DM	MDK
Job No.	Drawing No.	Revision	Issued for
2230	A(99)01	C	Prm. Lic. App.