

Item: 9

Orkney Islands Area Licensing Board: 7 July 2022.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Highland Brewing Company Limited – Swannay Brewery, Swannay by Evie, Birsay.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by the Highland Brewing Company Limited for variation of a premises licence held in respect of Swannay Brewery, Swannay by Evie, Birsay.

2. Recommendations

It is recommended:

That the Board determines the application by the Highland Brewing Company Limited for variation of a premises licence held in respect of Swannay Brewery, Swannay by Evie, Birsay.

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 3 May 2018, the Board determined the following:

3.2.1.

There is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.

3.2.2.

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.

Sections 2.8 to 2.15 of the Board's 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 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.

3.6.

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

4. Introduction

4.1.

A premises licence has been held at Swannay Brewery, Swannay by Evie, Birsay, since 30 June 2016 by the Highland Brewing Company Limited.

4.2.

On 13 May 2022, the Highland Brewing Company Limited submitted an application for variation of the premises licence. Details of the application are provided at sections 5 to 8 below.

5. Extent of Premises

The existing premises licence permits off-sales only and relates solely to a shelving area within an office at the brewery complex. The Variation application requests an increase to the extent of the licensed premises by the development of other parts of the brewery complex. The office currently licensed for off-sales will be changed to form part of a new shop area. A layout plan of the proposed increased premises is attached at Appendix 1 to this report.

6. On and Off-sale Operating Hours and Capacities

6.1.

The application requests the following on-sale operating hours for the first time, which are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy:

- 10:00 to 24:00 on Sundays to Thursdays inclusive.
- 10:00 to 01:00 Fridays/Saturdays and Saturdays/Sundays.
- Terminal on-sale operating hour of 01:00 any morning for private functions; functions held on the premises relating to a local festival or agricultural show; or for the festive season.
- Terminal on-sale operating hour of 01:30 any morning for weddings.

6.2.

The application requests on-sale capacity of 75 persons.

6.3.

The premises are currently licensed for off-sale operating hours from 10:00 to 18:00 on Mondays to Saturdays. The application requests the following increased off-sale operating hours, which are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy:

- 10:00 to 22:00 on Mondays to Sundays inclusive.

6.4.

The application requests an increase in off-sale capacity of 21.01 square metres from the existing 4.6 square metres within the office at the brewery complex to 25.61 square metres within the new Shop and Café Bar areas.

6.5.

With reference to section 3.3 above, it is noted that the relevant service has advised that, while the planning authority has no concerns in principle, there is a condition relating to the hours of operation attached to a planning approval requiring that the café/bar shall operate between the hours of 10:00 and 24:00 only. The applicant was advised to contact the planning authority regarding any implications for their planning

approval. The applicant will require to comply with all legislative implications affecting their premises, including planning.

7. Access by Children and Young Persons

7.1.

Section 147(1) of the Licensing (Scotland) Act 2005 (the Act) provides the following definitions:

- “Child” means a person under the age of 16.
- “Young person” means a person aged 16 or 17.

7.2.

Mandatory operating plans associated with premises licences require licensees to provide specific information regarding access by children and young persons in on-sales premises.

7.3.

The application indicates that children and young persons will be permitted entry unaccompanied between 10:00 and 22:00. Outwith those times or for the duration of a function, they will require to be accompanied by a person aged 18 years or older.

8. Activities

8.1.

Mandatory operating plans associated with premises licences require licensees to indicate activities to be provided in premises.

8.2.

The existing premises licence permits the activity of Recorded Music. The application indicates the following additional activities for the first time, throughout various new areas at the brewery complex, as shown on the layout plan attached at Appendix 1 to this report:

- Conference Facilities.
- Restaurant Facilities.
- Bar Meals.
- Receptions.
- Club / Other Group Meetings.
- Live Performances.
- Dance Facilities.
- Films (videos as part of the brewery tour/visitor experience).
- Outdoor Drinking Facilities.

9. Consultation

The required notices were issued to the statutory consultees on 17 May 2022 and the application was published on Orkney Islands Council's website from 19 May 2022. The last date for objections or representations to be received was 9 June 2022. No submissions were received.

10. Financial Implications

The appropriate application fee of £100 has been paid.

11. Legal Aspects

11.1.

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.

11.2.

The following elements of the application mean that it is not a minor variation and therefore must be determined by the Board:

- Increase in extent of premises.
- Operation of on-sales.
- Provision of on-sale capacity.
- Increase in off-sale operating hours.
- Increase in off-sale capacity.
- Provision of access by children and young persons.
- Provision of additional activities.

11.3.

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.

11.4.

The grounds for refusal under the Act are as follows:

11.4.1.

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.

11.4.2.

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.

11.4.3.

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.

11.4.4.

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.

11.5.

Anyone lodging an objection on the ground detailed at section 11.4.4 above must specify the locality on which they are basing their objection.

11.6.

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 11.4.2 above, the Board must specify the licensing objective or objectives in question.

11.7.

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.

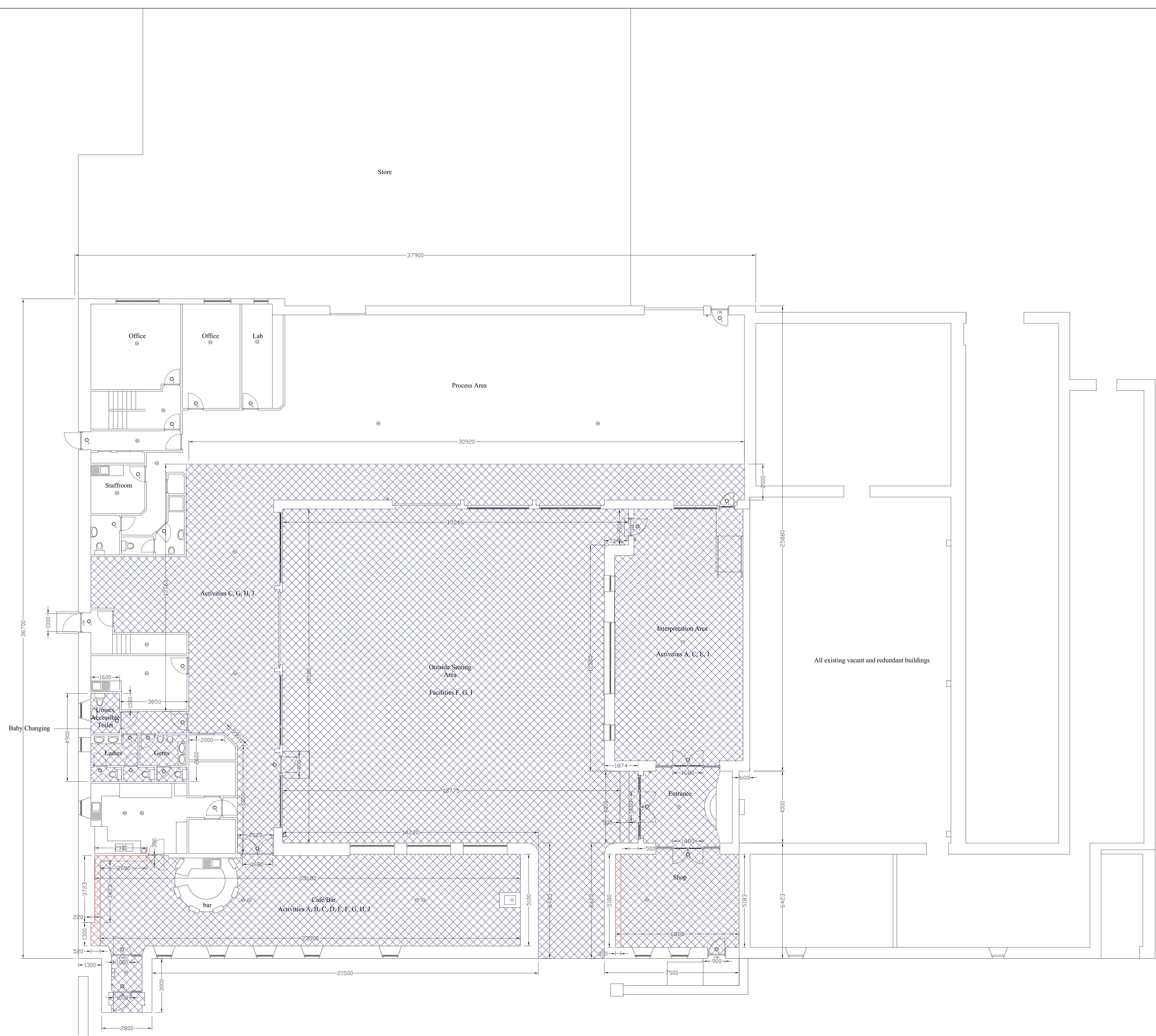
12. Contact Officers

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

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

13. Appendix

Appendix 1 – Layout plan of the premises.



- Activities**
- A- Conference facilities
 - B- Restaurant facilities
 - C- Bar meals
 - D- Receptions including weddings, funerals, birthdays, retirements, etc
 - E- Club or other group meetings
 - F- Recorded music
 - G- Live performances
 - H- Dance facilities
 - I- Outdoor drinking facilities
 - J- Films
- Occupancy Capacity- 75
- areas used primarily for the display of alcohol
 - areas to which children or young persons have access
- Floor Area**
- Cafe/Bar 120m²
- Ceiling Heights**
- Cafe/Bar 2.4m
- Alcohol Display Height 2m
- Off-sale display dimensions**
- Cafe/Bar- (2.6m x 2m) + (3.723 x 2m) + (1.3m x 2m) = 15.25m².
- Shop: 5.18m x 2m = 10.36m².
- Total Off-sales Capacity = 25.61 m².
- Fire Escape, Warning, Detection**
- LNK - Lock no key.
 - ⊙ - Fire alarm call point - break glass.
 - IP - Fire alarm indicator panel.
 - ⊕ - Emergency lighting point (unlettered).
 - ⊕ - Emergency lighting point (with words EXIT or FIRE EXIT)
 - ⊕ - Smoke Detector
 - ⊕ - High Heat Detector

