

Item: 5

Orkney Islands Area Licensing Board: 2 December 2021.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Orkney Distilling Limited – Distillery and Visitor Centre, Ayre Road, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application from Orkney Distilling Limited for a variation of a premises licence held in respect of Distillery and Visitor Centre, Ayre Road, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application from Orkney Distilling Limited for a variation of a premises licence held in respect of Distillery and Visitor Centre, Ayre Road, 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 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 of the following Council webpage:

https://www.orkney.gov.uk/Service-Directory/L/Alcohol_Licensing.htm.

4. Introduction

4.1.

A premises licence has been held at Distillery and Visitor Centre, Ayre Road, Kirkwall, since 14 June 2018, by Orkney Distilling Limited.

4.2.

On 23 September 2021, Orkney Distilling Limited submitted an application for variation of the premises licence, details of which are provided at sections 5.1 to 5.7 below.

5. Extent of Premises

5.1.

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

5.2.

The application requests an increase in the extent of the licensed premises by the inclusion of outdoor seating areas for the first time.

5.3.

The on-sale capacity of the premises will increase by 100 persons, from 100 to 200 persons, with the inclusion of the outdoor seating areas.

5.4.

The current off-sale capacity of the premises, extending to 19.52 square metres, will not be affected by the proposed variation.

5.5.

The areas accessible by children and young persons will increase with the inclusion of the outdoor seating areas.

5.6.

With reference to section 3.3 above, it is noted that the relevant service has advised that consent will be required from the Roads Authority to occupy a pavement area on the Ayre Road frontage of the premises in connection with the provision of one of the outdoor seating areas.

6. Operating Hours

6.1.

The premises are currently licensed for both on and off-sales as follows:

- On-sales:
 - 10:00 to 24:00 on Sundays to Thursdays inclusive.
 - 10:00 to 01:00 on 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.
- Off-sales:
 - 10:00 to 22:00 on Mondays to Sundays inclusive.

6.2.

The application requests the following amendment to the operating hours:

- On-sales to provide outdoor drinking facilities:
 - 10:00 to 23:00 on Sundays to Thursdays inclusive.
 - 10:00 to 01:00 on Fridays/Saturdays and Saturdays/Sunday.

6.3.

The proposed outdoor seating area at the rear of the premises, in proximity to Burnmouth Road and known as Oot the Back, has been the subject of occasional licences to facilitate business re-opening in accordance with Scottish Government restrictions during COVID-19 during the periods 24 July 2020 to 1 April 2021 and 17 May to 12 December 2021 with operating times of 10:00 to 22:00 daily and 10:00 to 22:30 daily, respectively.

6.4.

The applicants have provided a Supplementary Statement regarding the proposed on-sale operating hours detailed at section 6.2 above, attached at Appendix 2 to this report.

6.5.

The on-sale operating hours and the off-sale operating hours on Mondays to Sundays inclusive detailed at section 6.1 above are within current policy or accord with the existing premises licence. As no variation to these operating hours is sought, those aspects of the premises licence are outwith the scope of matters for consideration in connection with the current application.

7. Consultation

The required notices were issued to the statutory consultees on 23 September 2021 and the application was published on Orkney Islands Council's website from 24 September 2021. The last date for objections or representations to be received was 15 October 2021. 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.

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 licensed premises.
- Increase in on-sales capacity.
- Increase in access by children and young persons.
- Provision of on-sale operating hours for outdoor seating areas.

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.

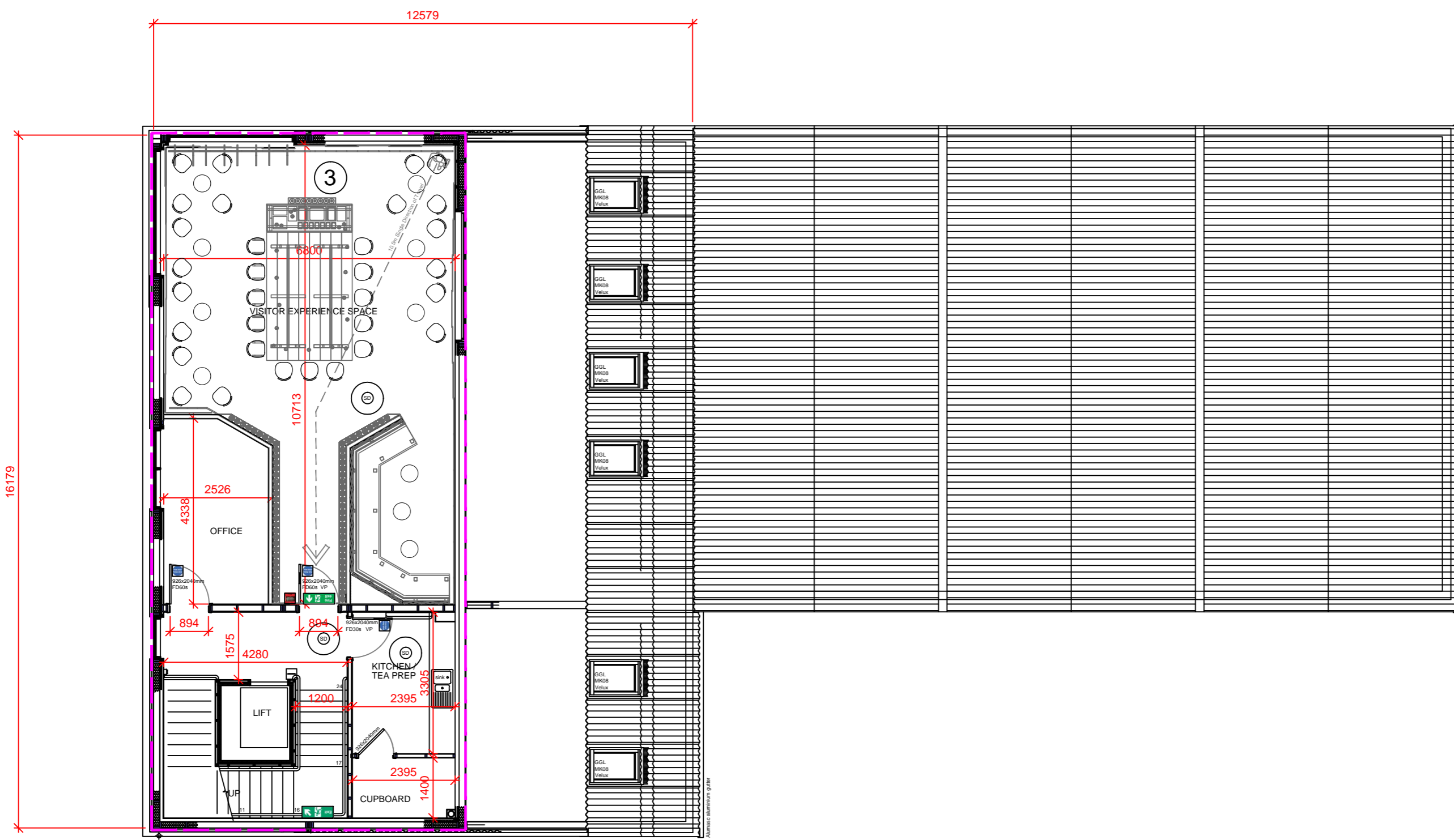
Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

11. Appendices

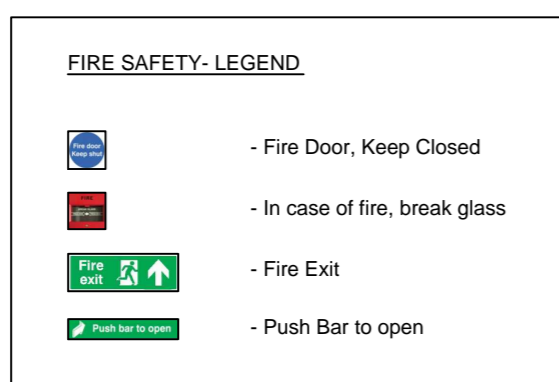
Appendix 1: Layout plan of the premises.

Appendix 2: Supplementary Statement regarding application.

A965 - AYRE ROAD



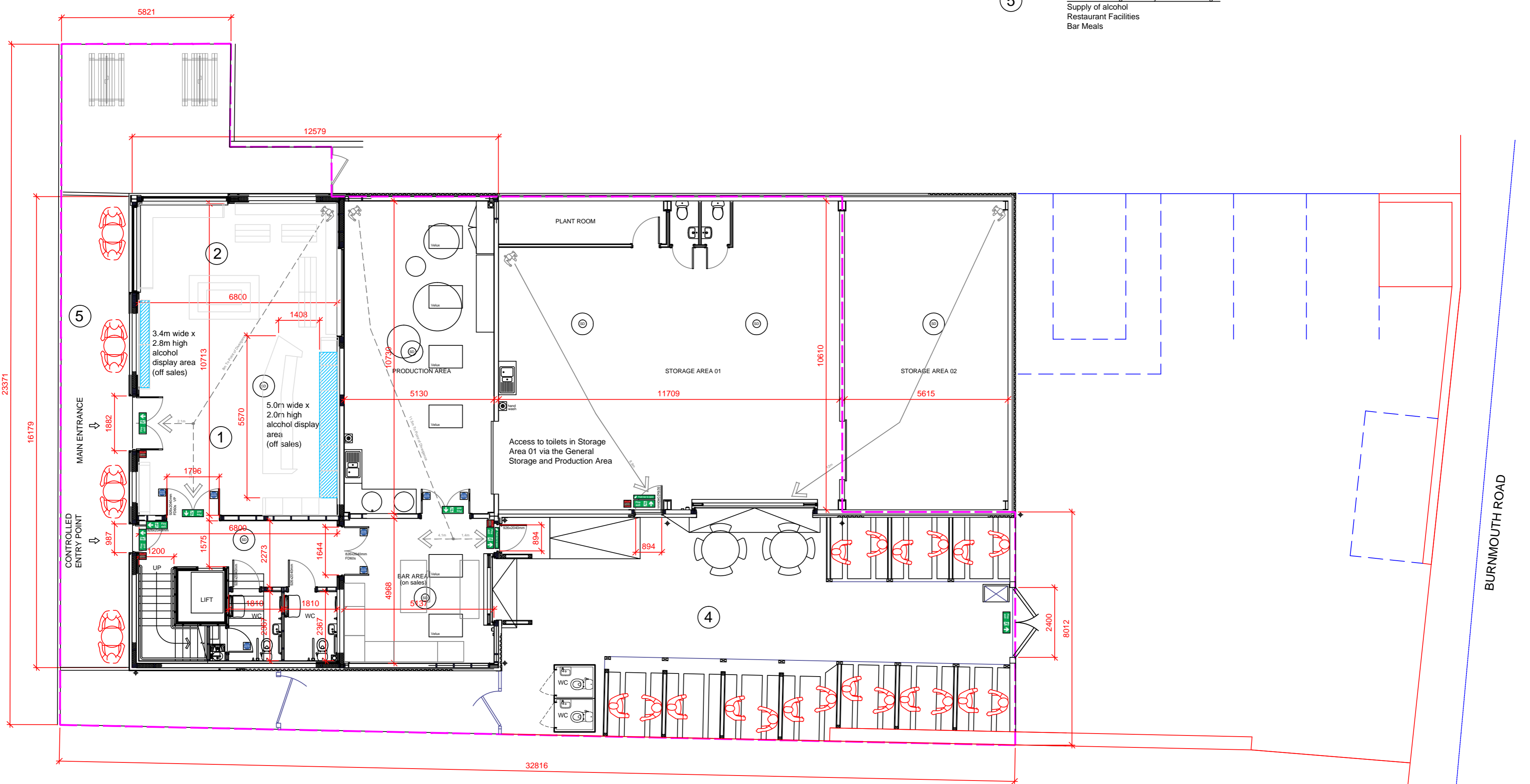
FIRST FLOOR PLAN



LEGEND

- Extent of licensed premises
Children and young persons are permitted to all public areas
- ① - Sales area
Supply of alcohol
Recorded music
- ② - Exhibition and Retail area
Restaurant Facilities
Bar Meals
Receptions (including weddings, funerals, birthdays, retirements etc)
Club or other group meeting etc
Recorded music
Live music
- ③ - Visitor Experience space
Supply of alcohol
Conference Facilities
Restaurant Facilities
Bar Meals
Receptions (including weddings, funerals, birthdays, retirements etc)
Club or other group meeting etc
Recorded music
Live music
- ④ - Outside seating area - 'Oot the Back'
Supply of alcohol
Restaurant Facilities
Bar Meals
Receptions (including weddings, funerals, birthdays, retirements etc)
Club or other group meeting etc
Recorded music
Live music
- ⑤ - Outside seating area - Ayre Road frontage
Supply of alcohol
Restaurant Facilities
Bar Meals

A965 - AYRE ROAD



GROUND FLOOR PLAN



ORKNEY DISTILLING LTD

THE ORKNEY DISTILLERY, AYRE ROAD, KIRKWALL, ORKNEY KW15 10X

TEL: +44 (0)1856 875338 INFO@ORKNEYDISTILLING.COM WWW.ORKNEYDISTILLING.COM

FAO Licensing
Orkney Islands Council
School Place
Kirkwall
KW15 1NY

15th September 2021

Sirs,

Application to vary operating license at The Orkney Distillery, Kirkwall

Further to recent correspondence, we note the potential for concern in relation to our proposal to vary our operating hours of the proposed outdoor area to correspond with our existing licensed hours at the premises (i.e. opening until midnight weekdays). Having now experienced over a year of successful operation, and upon reflection, we are confident that there will be no increased risk of disturbance to residents in the closest residential accommodation, or of antisocial behaviour in the area due to our proposal. This is due to the customer behaviour we drive through a layout and method of operation that is fairly novel in its approach in a local context (i.e. almost entirely table service, access to the premises being by reservation, with entry check-in for access & egress for all customers, and with all access being taken from our own car parking area at Burnmouth Rd).

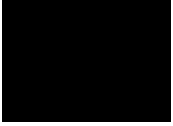
It is inevitable that as restrictions pass, consumer habits will begin to revert to attending licenced premises later in the evenings, and so we are concerned that not being able to cater for demand as it shifts back to old habitual timings will create a viability issue for the premises. As we move out of COVID, our hope is to make permanent this new type of licensed trade offering for Orkney. There are many examples of external seated areas at licensed premises across the country that are open late, and that work well and without increased disturbance, nuisance or anti-social behaviour. In general, Orkney based premises have always been entirely internal due to climatic conditions and the resulting historic architecture of our towns, however having been forced to do so by COVID restrictions, we've successfully proved this new outdoor concept at Oot the Back, without incident or cause for concern across a year of operation.

In the particular area at Burnmouth Road where customers access & egress our premises via our car park, Fusion Nightclub tends to have regular footfall (arrivals and departures) right through until it closes at weekends, and in the past through discussion with local Police Officers we've been given the impression that it's easier to monitor and police a single busy area than multiple venues spread across a wider area of Kirkwall. We therefore do not believe that our clientele will increase pressure on policing in this specific area of Kirkwall during peak weekend periods, indeed it is our expectation that having a larger number of the local customer base located in our setting for longer may potentially simplify the policing task presented. We have been in dialogue with Police Scotland, who will formally respond via the consultation process, however it is our understanding that their potential concerns are related to possible noise creation specifically in relation to the proximity of the Kiln Corner residential development, and that this is predominantly based around weekdays. **For this reason, we have agreed to apply to limit our proposed opening hours outdoors between Sunday and Thursday to 23:00hrs, with 01:00 opening being requested only on Friday and Saturday nights.** As Oot the Back is located

in a space between two tall warehouse buildings, we do not anticipate any cause for complaint from Kiln Corner residents (having received no negative comment to date).

Should you wish to query any part of our application, or should you require any further information please do not hesitate to contact us.

Yours sincerely,



Stephen Kemp
Managing Director