



Item: 6

Orkney Islands Area Licensing Board: 9 May 2024.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Highland Distillers Limited – 58 Albert Street, Kirkwall.

Report by Clerk to the Board.

1. Overview

- 1.1. A premises licence has been held at 58 Albert Street, Kirkwall, since 8 May 2019, by Highland Distillers Limited.
- 1.2. On 11 March 2024, Highland Distillers Limited submitted an application for variation of the premises licence, details of which are provided at section 3 below.

2. Recommendations

- 2.1. It is recommended that members of the Board:
 - i. determine the application from Highland Distillers Limited for variation of a premises licence held in respect of 58 Albert Street, Kirkwall.

3. Application for Variation of Premises Licence

- 3.1. The premises are currently licensed for the following off-sales operating hours:
 - 10:00 to 22:00 on Mondays to Saturdays inclusive.
 - 12:00 to 22:00 on Sundays.
- 3.2. The application requests:
 - Increase in the extent of the licensed premises by the inclusion of an additional room on the first floor.
 - To permit activities of live music, films, tasting, sampling and whisky experiences in addition to previously permitted recorded music.
 - Increase in off-sales operating hours on Sundays from 10:00 to 22:00.
 - To permit on-sales from 10:00 to 22:00 on Mondays to Sundays inclusive with capacity of 20 persons.
- 3.3. The current off-sale capacity of the premises, extending to 24.495 square metres, will not be affected by the proposed variation.

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

4. Consultation

4.1. The required notices were issued to the statutory consultees on 12 March 2024 and the application was published on Orkney Islands Council's website from 13 March 2024. The last date for objections or representations to be received was 3 April 2024. No objections or representations were received.

5. Policy Position

5.1. In accordance with the Licensing (Scotland) Act 2005 (the Act), 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).

5.2. 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

5.3. 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.

5.4. 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.

- 5.5. The on-sale operating hours and increase in off-sale operating hours requested in the application fall within the range of hours permitted in the Board's Statement of Alcohol Licensing Policy.
- 5.6. 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.
- 5.7. The full policy document is available from the Related Downloads section [here](#).

6. Legislative Position

- 6.1. 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.
- 6.2. Because the application requests the following changes, it is not a minor variation and therefore must be determined by the Board:
- Increase in the extent of the licensed premises.
 - Provision of additional activities.
 - Increase in off-sales operating hours.
 - Provision of on-sales for the first time.
 - Provision of on-sales capacity for the first time.
- 6.3. With reference to section 5.6 above, it is noted that the relevant service has advised that there is an outstanding change of use consent in connection with the development of the proposed premises.
- 6.4. 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.
- 6.5. The grounds for refusal under the Act are as follows:

- 6.5.1. 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.
- 6.5.2. 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.
- 6.5.3. 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.
- 6.5.4. 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.
- 6.6. Anyone lodging an objection on the ground detailed at section 6.5.4 above must specify the locality on which they are basing their objection.
- 6.7. 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 6.5.2 above, the Board must specify the licensing objective or objectives in question.
- 6.8. 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.

For Further Information please contact:

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

Implications of Report

1. **Financial:** The appropriate application fee of £100 has been paid.
2. **Legal:** As above.
3. **Corporate Governance:** In terms of Section 30 of the Licensing (Scotland) Act 2005, a Premises Licence Variation Application is to be determined by the Licensing Board.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** None.
8. **Links to Local Outcomes Improvement Plan:** None.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

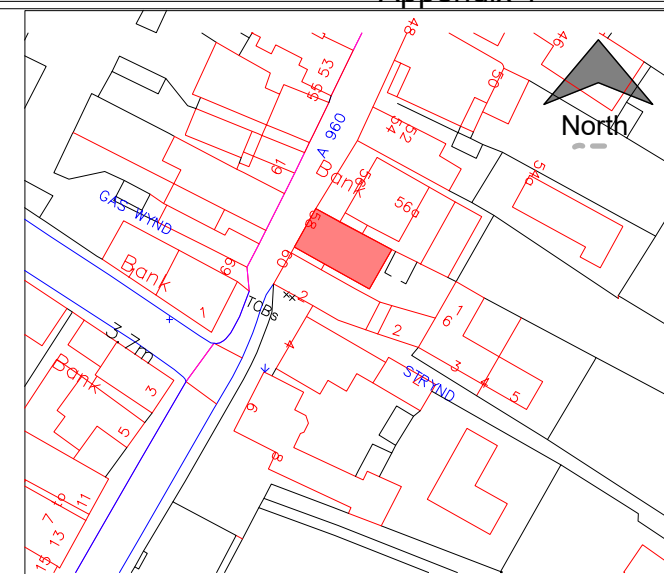
List of Background Papers

Application for Variation of Premises Licence by Highland Distillers Limited.

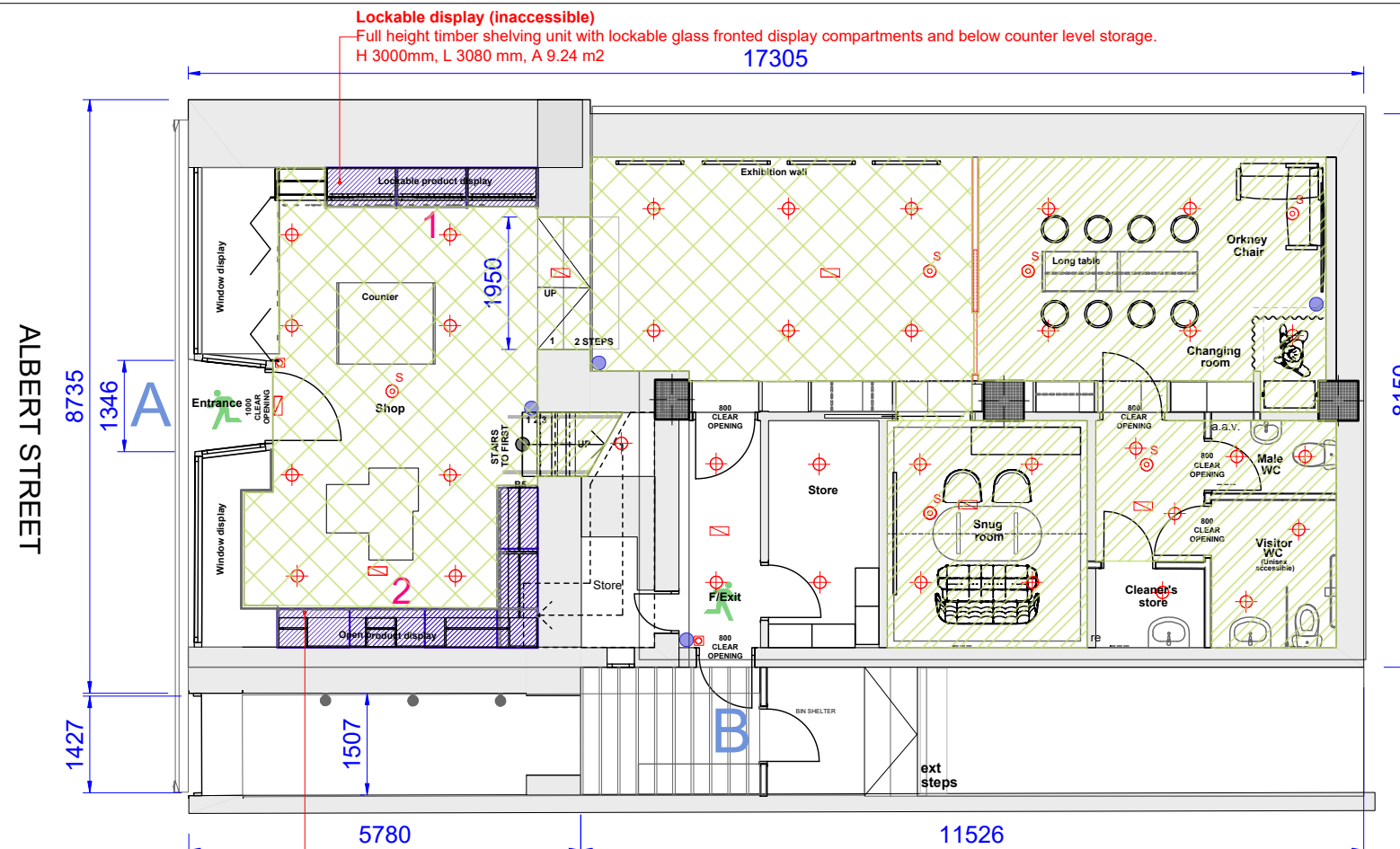
Appendix

Appendix 1 – Layout plan of the premises.

Location Plan
Scale - 1:1500
OS Ref HY4410NE



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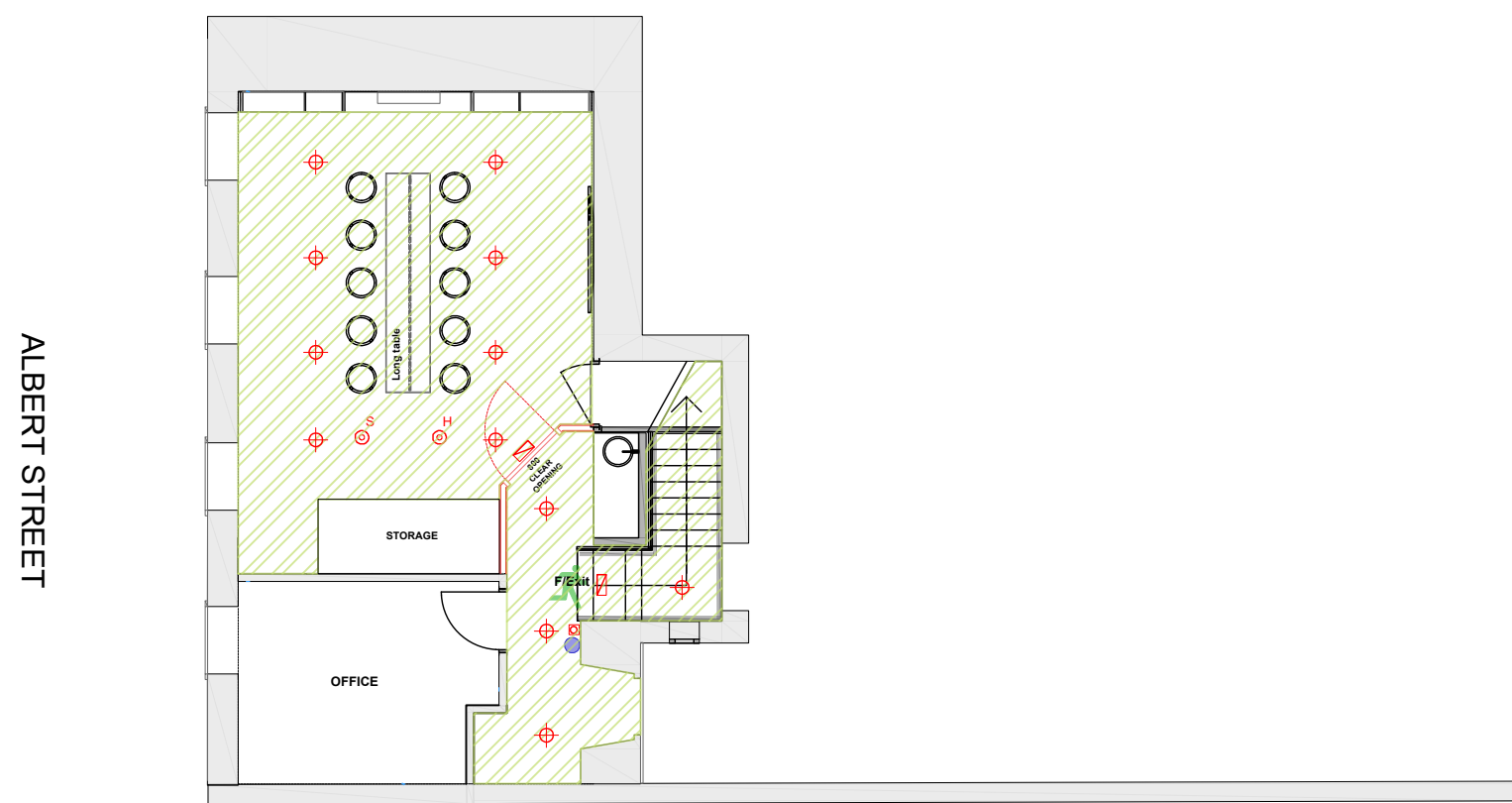


KEY:

Display of Alcohol
Total - 24.495 m2
Area accessible to general public (including children and young persons)
OFF-SALES AREA
Experience, tasting, etc. (children and young persons not permitted)
ON-SALES AREA

Scale - 1:100
when printed on A3 paper

GROUND FLOOR PLAN



FIRST FLOOR PLAN

Displays	Frontage (mm)	Height (mm)	Units	Number of Shelves	Type of Display	
1	3080	3000	3	4	Inaccessible Display	Full height timber shelving unit with lockable glass fronted display compartments and below counter level storage. Visible from counter
2	5085	3000	5	4	Open Display	full height timber shelving unit with below counter level storage. Visible from counter
Door	Width	Type				
A	1000	Mortice	Unlocked when shop in use			
B	800	Push bar fire lock	Locked from outside when shop in use			

Fire Information

Symbol	Item	Type	Number
●	Fire Extinguisher	CO3	5
⊙	Smoke detector		6
⊙	Heat detector		1
⊙	Fire alarm point		3
➔	Fire Exit		2
⊕	Downlight		

Activities	Permitted areas
Playing recorded music	All
Tasting, sampling & whisky experiences	On-Sales area only
Live performances	All
Films	All