



Item: 5

Orkney Islands Area Licensing Board: 9 May 2024.

Licensing (Scotland) Act 2005.

Application for Variation of Premises Licence.

Deerness Distillery Limited – Deerness Distillery, Newhall, Deerness.

Report by Clerk to the Board.

1. Overview

- 1.1. A premises licence has been held at Deerness Distillery, since 11 May 2017, by Deerness Distillery Limited.
- 1.2. On 1 March 2024, Deerness Distillery 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 Deerness Distillery Limited for variation of a premises licence held in respect of Deerness Distillery, Deerness.

3. Application for Variation of Premises Licence

- 3.1. The premises are currently licensed for off-sale operating hours from 10:00 to 22:00 on Mondays to Sundays inclusive. The licence relates to the Distillery, including a small shop area for tastings and sales of teas, coffees and merchandise.
- 3.2. The application requests:
 - Increase in the extent of the licensed premises by the extension of the Distillery to include a larger shop and cafe, outdoor area and separate tasting room.
 - To permit on-sales from 10:00 to 23:00 on Mondays to Sundays inclusive with capacity of 200 persons.
 - To permit activities of outdoor drinking facilities, conference facilities, restaurant facilities, bar meals, receptions, club or other group meetings and live performances in addition to previously permitted Recorded music.

- 3.3. The current off-sale capacity of the premises, extending to 15.59 square metres, will not be affected by the proposed variation.
- 3.4. The following plans are attached to this report:
- Appendix 1 – Layout plan of the extension to the Distillery, including the larger shop and café areas.
 - Appendix 2 – Site plan showing the existing Distillery, together with the extension to include the larger shop and cafe, the outdoor area marked “Paving” and the separate tasting room marked “Copinsay Room”.

4. Consultation

- 4.1. The required notices were issued to the statutory consultees on 1 March 2024 and the application was published on Orkney Islands Council’s website from 4 March 2024. The last date for objections or representations to be received was 25 March 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 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 on-sales for the first time.
 - Provision of on-sales capacity for the first time.
 - Provision of additional activities.
- 6.3. With reference to section 5.6 above, it is noted that the relevant service has advised that there is an outstanding Building Warrant approval 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.

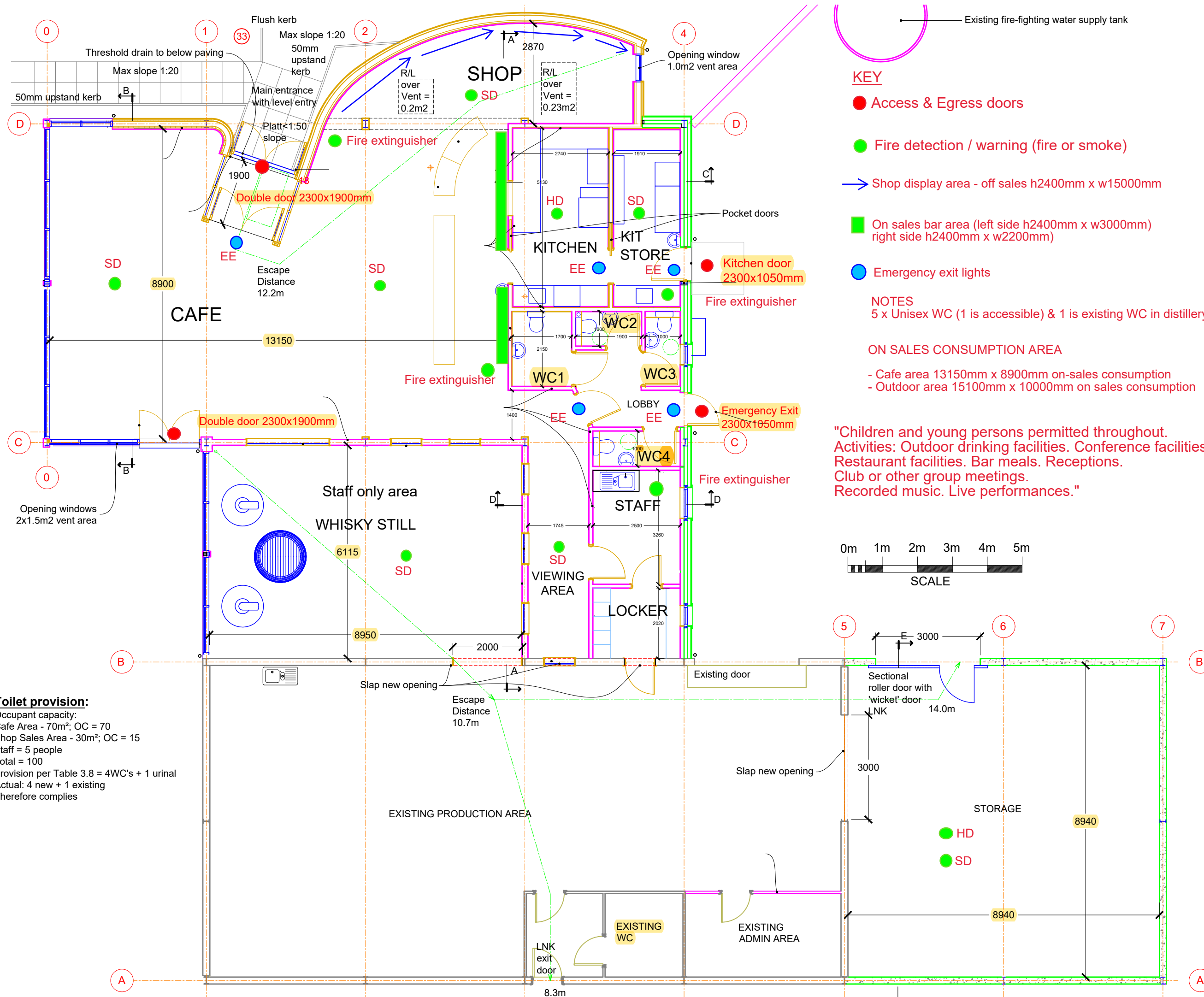
List of Background Papers

Application for Variation of Premises Licence by Deerness Distillery Limited.

Appendices

Appendix 1 – Layout plan of the extension to the Distillery, including the larger shop and café areas.

Appendix 2 – Site plan showing the existing Distillery, together with the extension to include the larger shop and cafe, the outdoor area marked “Paving” and the separate tasting room marked “Copinsay Room”.

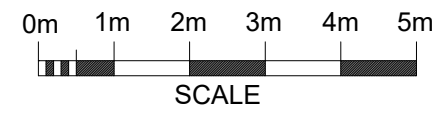


- KEY**
- Access & Egress doors
 - Fire detection / warning (fire or smoke)
 - ➔ Shop display area - off sales h2400mm x w15000mm
 - On sales bar area (left side h2400mm x w3000mm right side h2400mm x w2200mm)
 - Emergency exit lights

NOTES
 5 x Unisex WC (1 is accessible) & 1 is existing WC in distillery building

ON SALES CONSUMPTION AREA
 - Cafe area 13150mm x 8900mm on-sales consumption
 - Outdoor area 15100mm x 10000mm on sales consumption

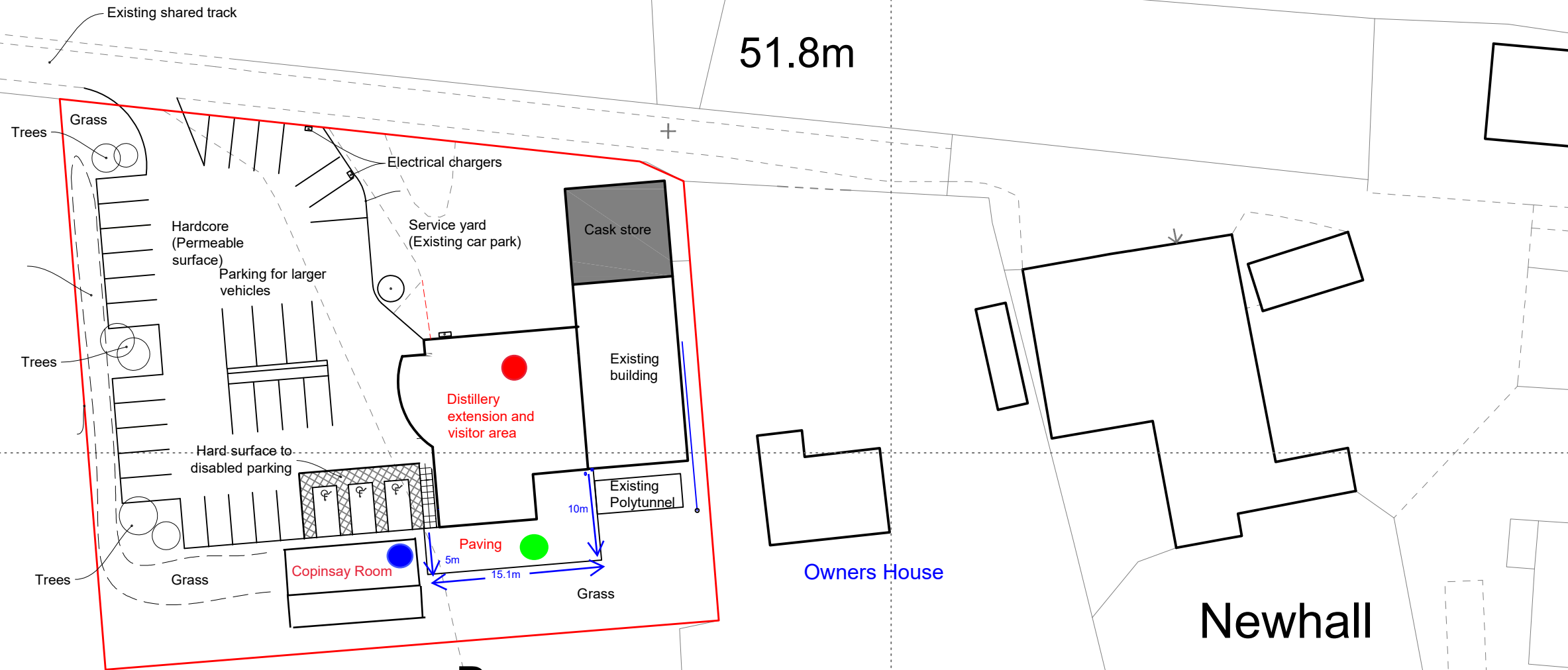
"Children and young persons permitted throughout.
 Activities: Outdoor drinking facilities. Conference facilities.
 Restaurant facilities. Bar meals. Receptions.
 Club or other group meetings.
 Recorded music. Live performances."



Toilet provision:
 Occupant capacity:
 Cafe Area - 70m²; OC = 70
 Shop Sales Area - 30m²; OC = 15
 Staff = 5 people
 Total = 100
 Provision per Table 3.8 = 4WC's + 1 urinal
 Actual: 4 new + 1 existing
 Therefore complies

Deerness Distillery Proposed Extension to Distillery	Consent A3		
	Drawing	Ref: 2114	No: 004
	Scale: 1:100	Date:	Amd: D
	Stuart Brown CEng, BEng, MIMechE	Drawn: SB	A

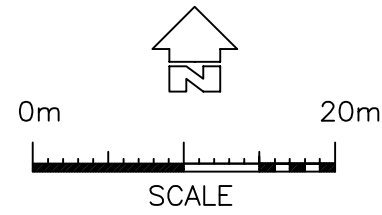
Licensed Cafe serving meals:
 Normal opening hours:
 Monday to Sunday 9am to 11pm
 Additional opening hours: Occasional
 opening till 1am for tastings, functions
 as per operating plan. Takeaway for
 hot and cold beverages, snacks,
 sandwiches, hot soup



KEY

- Main building - See drawing - 2114 004c Plan_Licensing
- Outdoor area consumption on sales - "Children and young persons permitted throughout. Activities: Outdoor drinking facilities. Conference facilities. Restaurant facilities. Bar meals. Receptions. Club or other group meetings. Recorded music. Live performances."
- Copinsay Room - On sales - Copinsay drawing

**Deerness
Distillery**



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Consents

Stuart Brown <i>CEng, BEng, MIMechE</i>		Deerness Distillery Proposed Extension to Distillery					A3
Drawing SITE PLAN - LICENSING							
Scale:	Drawn:	Date:	Ref:	A	No:	Amd:	
1:500	SB		2114	A	002	E	