

Item: 4

Orkney Islands Area Licensing Board: 7 March 2019.

Licensing (Scotland) Act 2005.

Application for Provisional Premises Licence.

Highland Distillers Ltd – Ground Floor, 58 Albert Street, Kirkwall.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application by Highland Distillers Ltd for a provisional premises licence in respect of Ground Floor, 58 Albert Street, Kirkwall.

2. Recommendations

It is recommended:

That the Board determines the application by Highland Distillers Ltd for a provisional premises licence in respect of Ground Floor, 58 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.

In relation to overprovision, on 3 May 2018, the Board determined that there is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.

3.2.1.

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 full policy document is available from the Related Downloads section of the following Council webpage:

<http://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.

4. Application

4.1.

On 17 January 2019, Highland Distillers Ltd submitted an application for a provisional premises licence in respect of Ground Floor, 58 Albert Street, Kirkwall.

4.2.

The premises are to be converted for use as licensed premises.

4.3.

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

4.4.

The application is for off-sale operating hours only.

4.5.

The application requests the following 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 Saturdays inclusive.
- 12:00 to 22:00 on Sundays.

4.6.

The application requests off-sale capacity of 24.495 square metres.

5. Consultation

The required notices were issued to the statutory consultees on 17 January 2019 and the application was published on Orkney Islands Council's website from 18 January 2019. The last date for objections or representations to be received was 8 February 2019. 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 a 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.

Provisional premises licence applications must be accompanied by

- A provisional planning certificate.
- A disabled access and facilities statement.

7.5.

Certificates in relation to building standards and food hygiene must be submitted with the application for confirmation at a later date and a premises manager must be named.

7.6.

Applications are not accepted unless all preliminary requirements are satisfied. A certificate in relation to planning and a disabled access facilities statement have been submitted.

7.7.

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.

7.8.

The grounds for refusal under the Act are as follows:

7.8.1.

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 deriv.

7.8.2.

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.

7.8.3.

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.

7.8.4.

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.

7.8.5.

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.

7.8.6.

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.

7.9.

Anyone lodging an objection on the ground detailed at section 7.8.6 above must specify the locality on which they are basing their objection.

7.10.

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.

7.11.

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 7.8.3. or 7.8.4. above, the Board must specify the licensing objective or objectives in question.

7.12.

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.

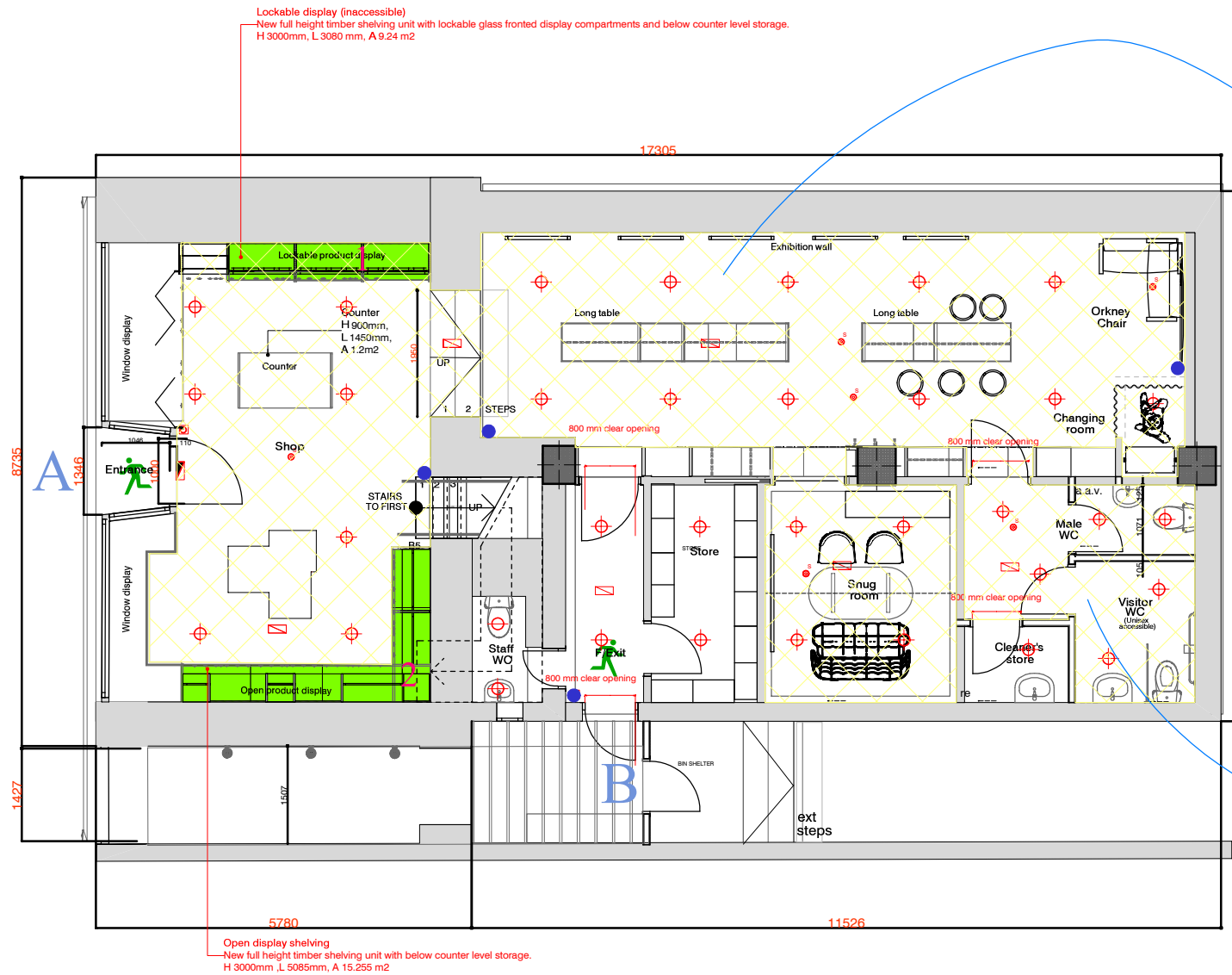
Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

9. Appendix

Appendix 1: Layout plan of the premises.

Licence Plan of 58 Albert Street, Kirkwall

ALBERT STREET



Anticipated display of Alcohol
Total - 24.495 m²

Area accessible to general public
cross hatched yellow

Scale - 1:100
when printed on A3 paper

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
Doors	Width	Type				
A	900	Mortice	Unlocked when shop in use			
B	800	Push bar fire lock	Locked from outside when shop in use			
Fire Information						
		Type	Number			
●	Fire Extinguishers	CO3	4			
⊙	Smoke detector		5			
➔	Fire Exit		2			
⊕	Downlights		34			
Activities		Playing recorded music				
		Tasting and sampling				

Location Plan
Scale - 1:1500
OS Ref HY4410NE

