

PREMISES LICENCES – REQUEST TO VARY UNDER THE LICENSING (S) ACT 2005

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this Report is to present applications to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 which require to be determined by the Board.

1. RECOMMENDATION

It is recommended that the Board consider and determine the applications to vary premises licences as detailed in **Appendix 1**, in terms of one or the following options:-

- (i) to grant the application, subject to Statutory Conditions and any other variation to the conditions to which the licence is subject that the Board may wish to impose;
- (ii) to defer the application to the next Licensing Board; or
- (iii) to refuse the application on one or more of the grounds referred to in Paragraph 4.3.

2. BACKGROUND

The Board has received applications to vary premises licences under section 29 of the Licensing (Scotland) Act 2005 (“the Act”) which require to be determined by the Board because the matters are not subject to delegation and shall only be discharged by the Licensing Board.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from this Report.

4. LEGAL

4.1 The Act provides that a variation, in relation to a Premises Licence, means any variation of:-

- (a) any of the conditions to which the licence is subject (other than the Statutory Conditions);
- (b) any of the information contained in the operating plan contained in the licence;
- (c) the layout plan contained in the licence; or
- (d) any other information contained or referred to in the licence,

and includes an addition, deletion or other modification

4.2. If the variation sought is a minor variation, then the variation must be granted and powers have been delegated to the Clerk to approve these minor variation applications. Minor variations are:-

- (a) any variation of the layout plan, if the variation does not result in any inconsistency with the operating plan;
- (b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any restriction or proposed restriction of the terms on which they are allowed entry to the premises;
- (c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and

(d) any other variation of such description as may be prescribed.

4.3. Section 30 of the Act provides that if the variations being sought are not minor, the Board must hold a hearing to determine the applications.

The Board must, in considering and determining the application, consider whether any of the grounds for refusal apply and:-

(a) if none of them apply, the Board must grant the application; or

(b) if any of them apply, the Board must refuse the application.

4.4. The grounds for refusal are:-

(a) that the application must be refused under Section 32(2) of the Act (the Board had previously refused an application to vary a premises licence within the preceding one year), Section 64(2) of the Act (alcohol would be sold for a continuous period of 24 hours from the premises, unless there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period), or Section 65(3) of the Act (if alcohol is to be sold for off sales purposes before 10am or after 10pm, or both);

(b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,

(c) that, having regard to:

(i) the nature of the activities carried on or proposed to be carried on in the subject premises;

(ii) the location, character and condition of the premises; and

(iii) 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,

(d) that, 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 into account of the variation), in the locality.

4.5 Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

4.6 Where the Licensing Board refuses the application, the Board must specify the ground for refusal and if the ground relates to a licensing objective, the Board must specify the objective or objectives in question.

(a) The licensing objectives are:-

(i) preventing crime and disorder

(ii) securing public safety

(iii) preventing public nuisance

(iv) protecting and improving public health; and

(v) protecting children and young persons from harm

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ANGUS LICENSING BOARD – 12 SEPTEMBER 2019

(a) LICENCE NO. 312 CORN EXCHANGE, OLYMPIA BUILDINGS, MARKET PLACE, ARBROATH, DD11 1NA

Name and Address of Applicant

J D Wetherspoon (Scot) Ltd, Wetherspoon House, Central Park, Reeds Crescent, Watford, WD24 4QL

Type of Licence: On and Off Sales

Description of Variation

1. **Layout – increase in** external area to allow an additional four tables with two chairs at each table.

(b) LICENCE NO.183 FORESTERSEAT RESTAURANT, ARBROATH ROAD, FORFAR, DD8 2RY

Name and Address of Applicant

Laird Brothers Ltd, Old Brechin Road, Lunanhead, Forfar, DD8 3NQ

Type of Licence: On and Off Sales

Confirmation Notice

If the confirmation notice is received before the Board date then this application will be dealt with. If the confirmation notice is not received the application may be deferred.

Description of Variation

1. **Premises name** to be amended from Foresterseat Restaurant to Sinclair's Kitchen.
2. **Premises description** to be amended to Rural Scottish themed restaurant serving lunches, evening meals, and coffee and cakes throughout the day.
3. **Core times** - amend the opening time on a Sunday from 12.30 noon to 12 noon when alcohol will be sold for consumption **on** the premises

The Board are asked to note that these hours are within Board Policy.

4. Activities:-

- (a) Conference facilities, bar meals and live performances to be provided within core hours.
- (b) Outdoor Drinking Facilities to be provided within core hours

Additional local conditions in respect of external drinking areas.

Patrons shall not be permitted to use the external drinking area beyond 21.00.

No music shall be provided in the external drinking area.

No music or amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.

5. **Additional area** to be licensed to include a shop with an alcohol display area of 3.5m x 2.5m
6. **Layout** to incorporate an additional shop area and outdoor drinking area.
7. **Children and Young Persons** to be permitted access to all parts of the premises.
8. **Capacity** – 100 (Restaurant area – 50; Cafe area – 30; Shop area – 20)

Outdoor Drinking Facilities to be provided with a capacity 50. Total capacity of premises to remain at 100.

REPORT BY LICENSING STANDARDS OFFICER

To assist the Board in determining this application a report has been submitted by the Licensing Standards Officer and is attached as **Appendix 2** to this Report.

COMMENTS RECEIVED

Lee Thom, Manager – Building Standards provided the following comments on 23/08/2019.

With regards to the capacities confirmed from licensing today there appears to be a 'shop' indicated as part of the license application with a capacity of 20 persons. This part of the building would require a Building Warrant and Completion Certificate for a conversion to a shop. At this moment in time a Building Warrant has not been applied for.

With regards to the licence capacity numbers of 50 for the restaurant and 30 for the Café area we have no comments to make and are satisfied. The outdoor area having a capacity of 50 but this will not be in addition to the overall figure we are also satisfied and have no comment to give either.

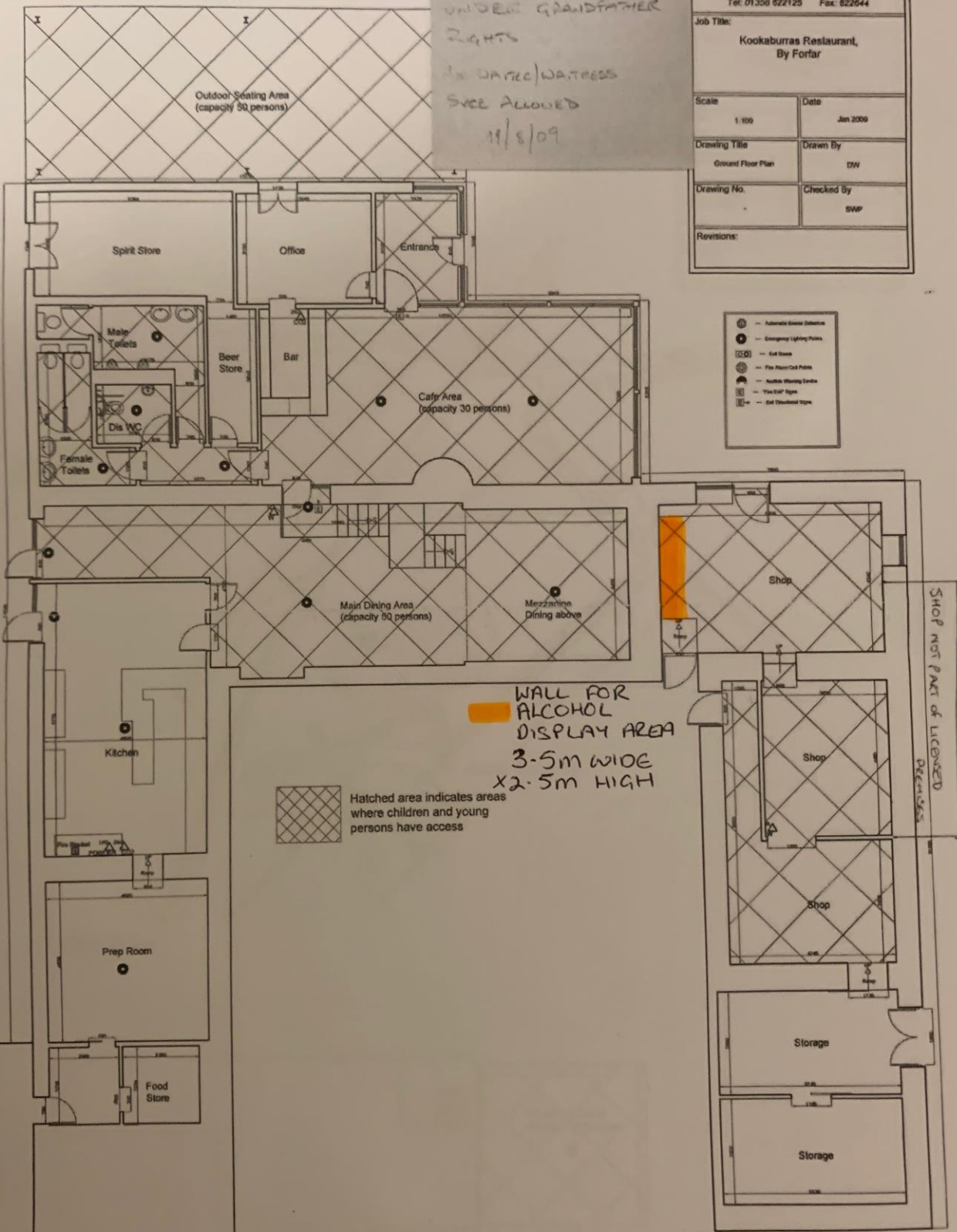
Car Parking Area

OUTDOOR AREA
NOT APPROVED
UNDER GRANDFATHER
RIGHTS
AS WAITER/WAITRESS
SPACE ALLOWED
11/8/09

A.B. Roger & Young
Chartered Architect & Surveyors
9 Macgregor Street, Brechin

Tel: 01350 622125 Fax: 622644

Job Title: Kookaburras Restaurant, By Forfar	
Scale: 1:100	Date: Jan 2009
Drawing Title: Ground Floor Plan	Drawn By: D.W.
Drawing No.:	Checked By: S.W.P.
Revisions:	



Hatched area indicates areas where children and young persons have access

WALL FOR ALCOHOL DISPLAY AREA
3.5m WIDE
X 2.5m HIGH

SHOP NOT PART OF LICENSED PREMISES

This plan was granted on 19 August 2009 by Angus Licensing Board in respect of a premises licence at Kookaburras Restaurant, Arbroath Road, Bumside, Forfar.

David C. Hunter