

ANGUS LICENSING BOARD – 31 OCTOBER 2019

PROVISIONAL PREMISES LICENCE APPLICATION UNDER THE LICENSING (S) ACT 2005

REPORT BY CLERK TO THE BOARD

ABSTRACT

The purpose of this Report is to present an application for a new provisional premises licence under section 45 of the Licensing (Scotland) Act 2005 (“the Act”) which requires to be determined by the Board.

1. RECOMMENDATION

It is recommended that the Board consider and determine the application for a new provisional premises licence as detailed in the attached Appendix, in terms of one of the following options:-

- (i) to grant the application, subject to Statutory Conditions and any other discretionary local conditions, which the Board may wish to impose;
- (ii) to propose a modification to the operating plan or layout plan (or both) and if the applicant accepts the proposed modification, request that the applicant amend the application and thereafter, grant the modified application with the proposed amendment, subject to the Statutory Conditions and any other discretionary or local conditions which the Board may wish to impose;
- (iii) to defer the application to the next Licensing Board; or
- (iv) to refuse the application on one or more of the grounds referred to in Paragraph 4.

2. BACKGROUND

The Board has received an application for a new provisional premises licence under section 45 of the Licensing (Scotland) Act 2005 (“the Act”) which requires to be determined by the Board because the matters are not subject to delegation and shall only be discharged by the Licensing Board.

3. LEGAL

3.1 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. A premises licence application in respect of any such premises is referred to in the Act as a “provisional premises licence application”.

A premises licence issued in respect of any such premises does not take effect unless and until it is confirmed by the Licensing Board which issued it in accordance with section 46 of the Act.

If a premises licence issued in respect of any such premises 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, in relation to a provisional premises licence, is the period of 4 years beginning with the date of issue of the licence.

- 3.2 The Board must, in terms of section 23 of the Act, hold a hearing for the purposes of considering and determining the application. As part of this, the Board must take account of the documents which have been submitted accompanying the application. The Board must 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.
- 3.3 The grounds for refusal are:-
- (a) that the subject premises are excluded premises in terms of section 123 of the Act;
 - (b) that the application must be refused under Section 25(2) of the Act (the Board had previously refused 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);
 - (ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence;
 - (c) that the Licensing Board considers that the granting of the application would otherwise be inconsistent with one or more of the licensing objectives;
 - (d) that, having regard to:
 - (i) the nature of the activities 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 premisesthe Board considers that the premises are unsuitable for use for the sale of alcohol;
 - (e) 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.
- 3.4 In considering whether either of the grounds for refusal specified in subsection 3.3 (ba) and (c) above applies, the Licensing Board must, in particular, take account of:
- (a) any conviction, notice of which is given by the Chief Constable under subsection (4) (b) of section 21 of the Act; and
 - (b) any report given by the Chief Constable under section 24A (2) of the Act.
- 3.5 Section 23(7) of the Act provides that where the Licensing Board considers that they would refuse the application as made, but if a modification proposed by them were made to the operating plan (or layout plan, or both) for the subject premises accompanying the application, they would be able to grant the application, the Board must, if the applicant accepts the proposed modification, grant the application as modified.

3.6 Where the Licensing Board refuses an application, the Board must specify the ground for refusal and if any ground relates to the licensing objectives, the Board must state the relevant 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

4. **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this Report.

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(a) CASHLEY'S, 1 CASTLE STREET, FORFAR, DD8 3AE

Names and Address of Applicant

Cashley's, 62A Dundee Road, Broughty Ferry, DD5 1HY

Type of Licence: Provisional Premises Licence – On Sales

1. Description of Premises – Modern Scottish restaurant serving Melbourne cafe style food during the day and contemporary Scottish food in the evenings.

2. Core times when alcohol will be sold for consumption **on** the premises:-

Monday to Saturday	11:00 to 23.00
Sunday	12.30 to 22.00

The Board are asked to note the hours requested are within Board Policy.

3. Seasonal variation dates – additional hours approved by Angus Licensing Board in the terms of the Board's policy. (Christmas Eve, Christmas Day, Boxing Day, Hogmanay, New Year's Day)

4. Activities to be provided -

- (a) Conference facilities, receptions, club or other group meetings and live performances to be provided within core hours;
- (b) Restaurant facilities and recorded music to be provided within and outwith core hours. Breakfasts will be on sale before the start of selling alcohol. Radio to be played throughout open hours;
- (c) Other activities - point of sales for food related items i.e. coffee beans, jam, cups.

5. Children and young persons to be permitted into the premises:-

- (a) Age - 0 to 17 Years. Baby Changing facilities available;
- (b) For the purpose of consuming a meal;
- (c) Access until 1 hour after cessation of serving food to the individual or group of persons consuming the meal;
- (d) Access to the upstairs and downstairs dining areas.

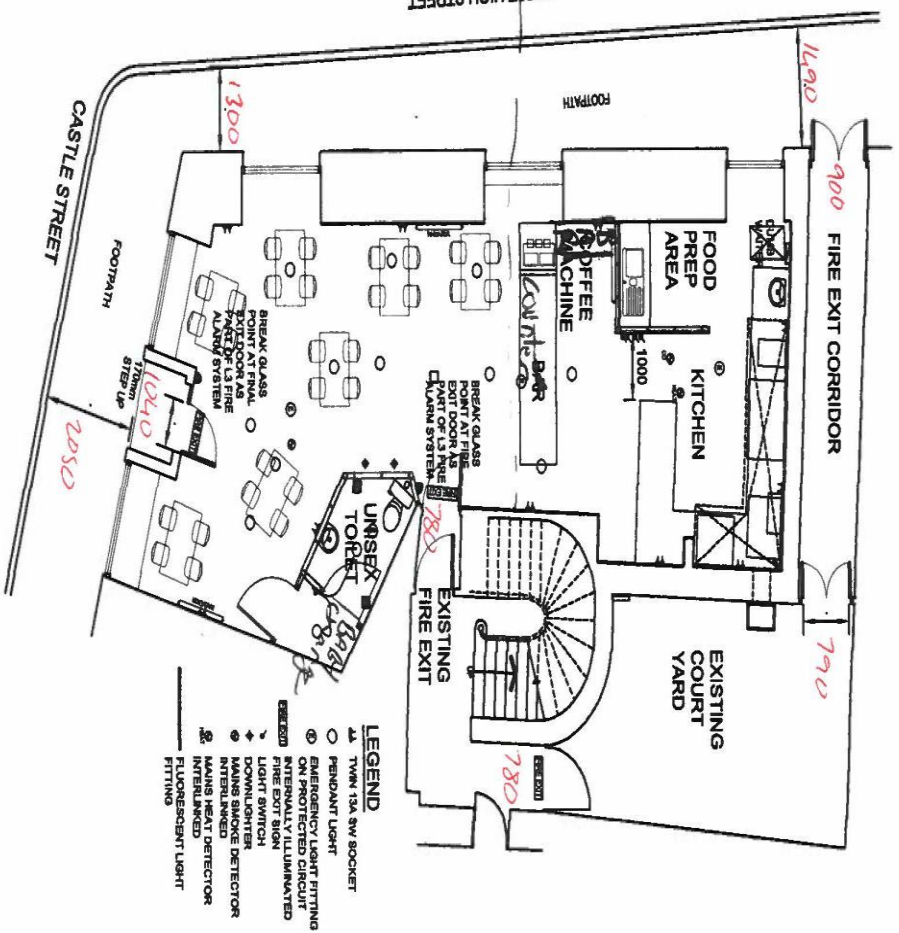
6. Capacity - 60 (Upstairs 30; Downstairs 30)

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.

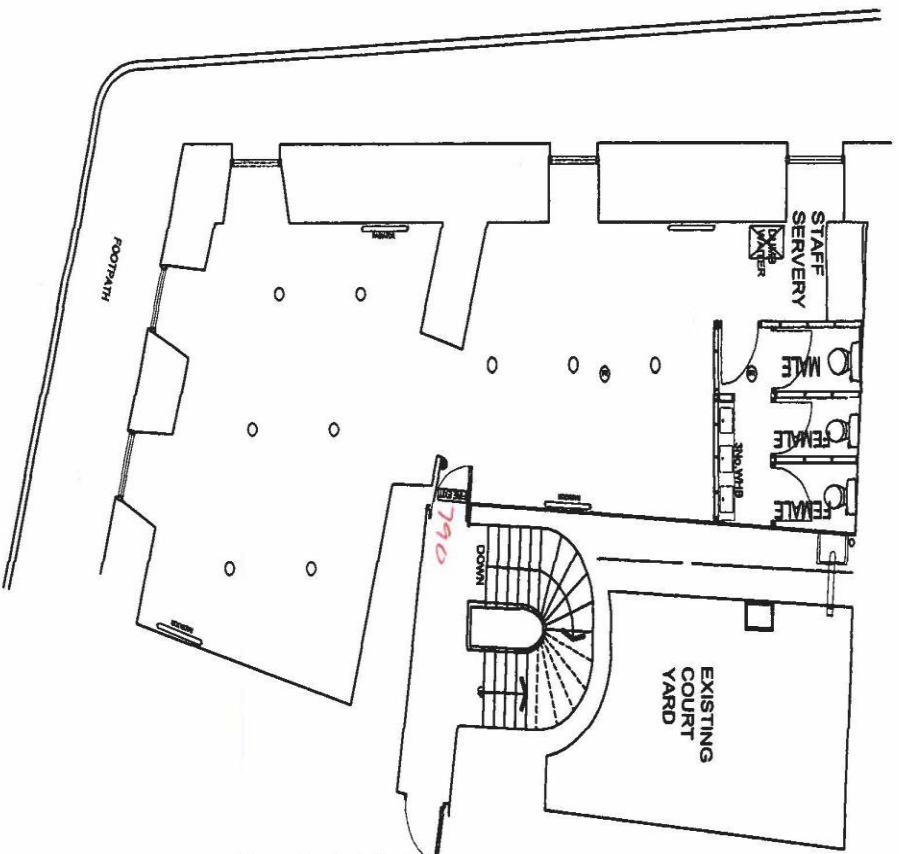
WEST HIGH STREET
 CASTLE STREET
 Public Access

PROPOSED GROUND FLOOR PLAN



- LEGEND**
- ▲ TWIN 13A SW SOCKET
 - PENDANT LIGHT
 - ⊙ EMERGENCY LIGHT FITTING ON PROTECTED CIRCUIT
 - ⊙ EMERGENCY LIGHT FITTING ON UNPROTECTED CIRCUIT
 - ⊙ FIRE DOT SIGN
 - ⊙ LIGHT SWITCH
 - ⊙ DOWN LIGHTER
 - ⊙ MAINS SMOKE DETECTOR
 - ⊙ MAINS HEADED INTERLINKED DETECTOR
 - ⊙ FLUORESCENT LIGHT FITTING

PROPOSED FIRST FLOOR PLAN



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