

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 four 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 each application to vary premises licences as detailed in **Appendix 1**, in terms of one of 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 4.4.

2. BACKGROUND

The Board has received four 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 variation(s) being sought are not minor, the Board must hold a hearing to determine the application.
- 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

REPORT AUTHOR: Dawn Smeaton, Business Support Officer
E-MAIL: LAWlicensing@angus.gov.uk

(a) LICENCE NO. 271, ALDI, CRAIG O'LOCH ROAD, FORFAR, DD8 3JA

Name and Address of Applicant

Aldi Stores Ltd, Holly Lane, Atherstone, Warwickshire, CV9 2SQ

Type of Licence: Off Sales

Description of Variation

1. Capacity – to increase the alcohol display capacity to 32.920466m² with no additional seasonal adjustments.

The current capacity is a permanent display of 22.5m² with an additional 9m² for seasonal displays between 24 November and 9 January annually.

2. Other activities – to include the sale of other goods consistent with the business of a supermarket including out with core hours.

3. Layout – the premises footprint is to be extended. Area currently labelled as warehouse will be part of the shop floor and an increased back of shop area being introduced at rear of premises. Additional tills are being installed. Alcohol to be relocated to back wall.

COMMENTS RECEIVED

Building Standards provided comments on 1 July 2020.

A Building warrant is required for the proposed alterations, an application ref 20/00196 was applied for and approved on 29/06/20. Works will be checked during progress and a Completion Certificate should be verified prior to the extended area being utilised.

(b) LICENCE NO.157, 10 CAFÉ BAR, 12-14 CASTLE STREET, FORFAR, DD8 3AD

Name of Applicant – Caroline Hampton

Type of Licence: On and Off Sales

Description of Variation

1. Outdoor drinking facilities to be provided within core hours for a capacity of 20 patrons.

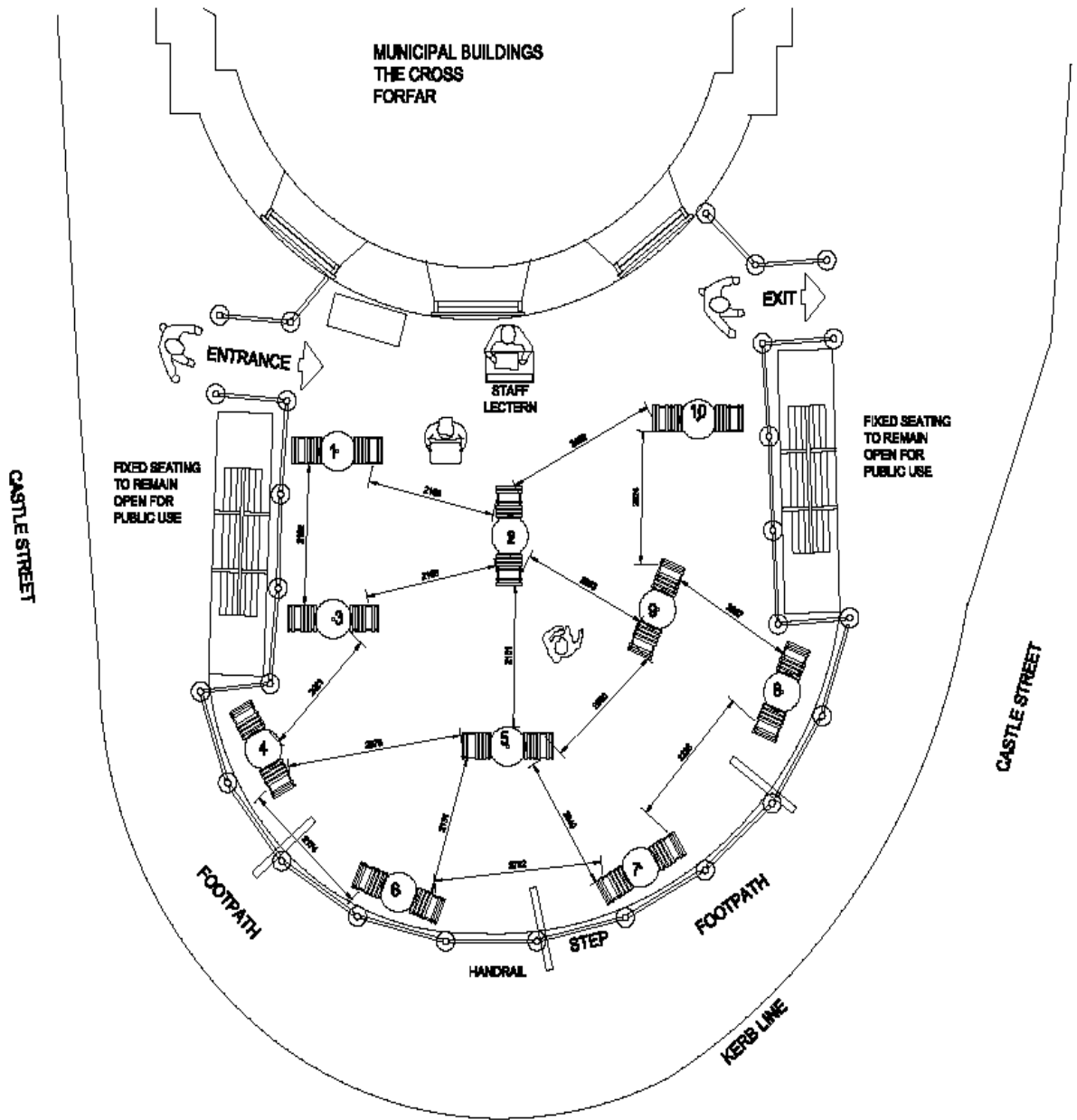
COMMENTS RECEIVED

Police Scotland provided a letter of objection dated 21 July 2020, which shall be circulated to members prior to the Board.

Environmental and Consumer Protection provided an observation on 9 July 2020.

This service would have no objections to the proposals subject to the following conditions being applied to any licence granted:-

- Patrons shall not be permitted to use the external drinking area beyond 21.00hrs
- No music shall be provided in the external drinking area.
- No music of amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.
- A noise management plan shall be submitted for the written approval of this service



LICENSING STANDARDS OFFICER VISIT REPORT

A premises licence application has been received from Caroline Hampton in respect of:

10 Café Bar, 12-14 Castle Street, Forfar, Angus, DD8 3AD

The premises is located at the Cross in Forfar, directly behind the Town and County Hall. The Premises Licence Holder is Caroline Hampton.

Background:

A premises licence application from Caroline Hampton was received on 6 July 2020. The Licensing Board at their meeting on the 17 September 2020 will consider this application.

Licensing Standards Officer's Report:

I visited the proposed location for the Major Variation on Monday 31st August 2020 at 11am. I met with Caroline and Alan Hampton, the proprietors of the business. The proposal is for a public area directly behind the Town and County Hall to be licenced by 10 Café Bar. The purpose of this is to provide a "city square" feeling to Forfar where patrons can sit in a town centre and have a meal or consume a beverage. The proposed location can be viewed at PHOTO 1 of APPENDIX 1 and can be seen in the video provided to Board Members.

The proposed area is some 20-30 steps away from the main licenced premises. I would ask Board Members to consider if it appropriate for a Major Variation to extend the licenced area of a premises to an area which is some distance away, as opposed to a new Premises Licence. The applicants conceded to me that they do not own this area of land.

Police Scotland have objected to the granting of this application on the grounds that to do so would be inconsistent with the licensing objective of Securing Public Safety. They have stated that the requested area can only be accessed by crossing a busy road which forms part of the main thoroughfare of the town centre. In addition, there is street parking available outside the premises which staff would need to pass through to access the proposed outside area. I addressed this objection with the applicants who understood the Police position. It is their view that this area should be a pedestrianised area and would help resolve this.

When walking to the premises for my visit, there were several cars, large trucks and medium sized lorries using this piece of road. Although the applicants assured me that there would be no patrons crossing the road or carrying drinks (a member of staff with a Bluetooth system would always be on duty in the proposed area to make orders. A member of "internal staff" would then bring the order across), I have serious concerns if this proposal does meet the licensing objective of securing public safety. This is an extremely busy carriageway.

I also discussed with the applicant what would happen with the tables, chairs and boundary fences. They advised me that all these items would be stored either in a property they have nearby or at an area they have in Orchardbank Business park. They told me that after each day all the equipment would be dismantled and stored. It would be a day by day decision if they decided to erect the outdoor drinking area. The applicants are conscious it is a public pavement and would not want to cause obstruction.

I also discussed with the applicant if they were aware the Christmas Tree is erected at this area every year. They said they were and would be willing to operate at half capacity when it is up as to not be interfering with this.

The applicants envisage some of the street furniture, such as benches and bins, having to be moved in order to allow their area to work. I have outlined this in my commentary of my video. There is a line of brickwork where they would place their barriers and then the bins and benches would be moved down onto the lower level. There would still be ample space for pedestrians.

Despite these re-assurances and well thought out processes from the applicants, I remain unconvinced that the granting of this major variation would be consistent with the licensing objective of securing public safety. In my opinion, members of staff are to be included as "public", and their safety is paramount. I am of the view that carrying drinks some 20-30 steps across busy public roads would not secure their safety.

In addition, given that the applicant does not own the premises, and given the nature of the premises, I would also ask the Board to consider if they believe the premises are suitable for the sale of alcohol in accordance with the proposed variation.

However, if Board Members are minded to grant this application, I would recommend that the following extra conditions are imposed on the licence:

- 1) A member of staff must be in attendance at the outdoor drinking area at all times
- 2) Patrons must not take any drink or glass outwith the licenced premises
- 3) Patrons are not permitted to leave the main licenced premises with a drink to consume it in the outdoor drinking area, it shall be table service provided by staff only
- 4) Staff should not be carrying more than four drinks at any given time
- 5) Drinks must be carried on drinks trays by staff
- 6) When the Forfar Christmas tree is up, the maximum capacity shall be 50%
- 7) The applicant must dismantle and store all barriers, chairs and tables at the close of business each day and store them in another location
- 8) Any spillages into public areas must be cleaned up by the applicants

The applicants were extremely co-operative with me for the duration of my visit. They were willing to work with both Angus Council and other parties to progress this application. I informed the applicant that the matters we discussed would form part of my report to go before the Board. I duly submit this report for consideration by the Board.

Daniel J. Coleman
Licensing Standards Officer
Angus Council

APPENDIX

PHOTO 1



ANGUS LICENSING BOARD – 17 SEPTEMBER 2020

(c) LICENCE NO.201, ARBROATH UNITED CRICKET CLUB, LOCHLANDS, KEPTIE ROAD, ARBROATH DD11 3EN

Name of Applicant – Arbroath United Cricket Club, Lochlands, Keptie Road, Arbroath

Type of Licence: On and Off Sales

Description of Variation

1. **Outdoor drinking facilities** to be provided within core hours. The area is to the front and side of the pavilion and is to be used during the cricket season. Children and Young person to have access.

COMMENTS RECEIVED

Environmental and Consumer Protection provided an observation on 13 July 2020.

This service would have no objections to the proposals subject to the following conditions being applied to any licence granted: -

- Patrons shall not be permitted to use the external drinking area beyond 21.00hrs.
- No music shall be provided in the external drinking area.
- No music of amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.

Please note, a noise management plan has been submitted and approved by this service.



ANGUS LICENSING BOARD – 17 SEPTEMBER 2020

(d) LICENCE NO.53, LOCHSIDE BAR, 84-86 NORTHESK ROAD, MONTROSE, DD10 8TG

Name of Applicant – William Cumming

Type of Licence: On and Off Sales

Description of Variation

1. **Terminal hours** for on sales to be extended to 01.00 on Sunday to Thursday.

2. **Layout** amendments – the relocation of main bar, snug area changed to kitchen, original kitchen removed, disabled and ladies' toilets relocated, function/dining room removed, darts area relocated

3. **Outdoor drinking facilities** to be provided

- (a) within core hours
- (b) within a beer garden/covered area
 - (i) Paved area to the front of the premise
 - (ii) Rear beer garden area
- (c) Children and Young person to have access.

4. **Capacity** to increase from 90 to 100 indoors. Outdoor capacity 50 (included in the indoor capacity)

COMMENTS RECEIVED

Police Scotland provided a letter dated 10 August 2020, which shall be circulated to members.

Environmental and Consumer Protection provided an observation on 28 July 2020.

This service would have no objections to the proposals subject to the following conditions being applied to any licence granted:

- Patrons shall not be permitted to use the external drinking area beyond 2100hrs.
- No music shall be provided in the external drinking area.
- No music of amplified sound should be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.

Please note, a noise management plan has been submitted and approved by this service.

**PROPOSED ALTERATIONS TO PREMISES AT
'LOCHSIDE BAR', 84 NORTH ESK ROAD, MONTROSE
FOR Mr. & Mrs. W. CUMMING**

dra. no. 01b (Mar. 17)

74 North Street
Brisbane Queensland
Australia 4000
Tel: 07 3207 8747
email: bob@gsdesign.com.au



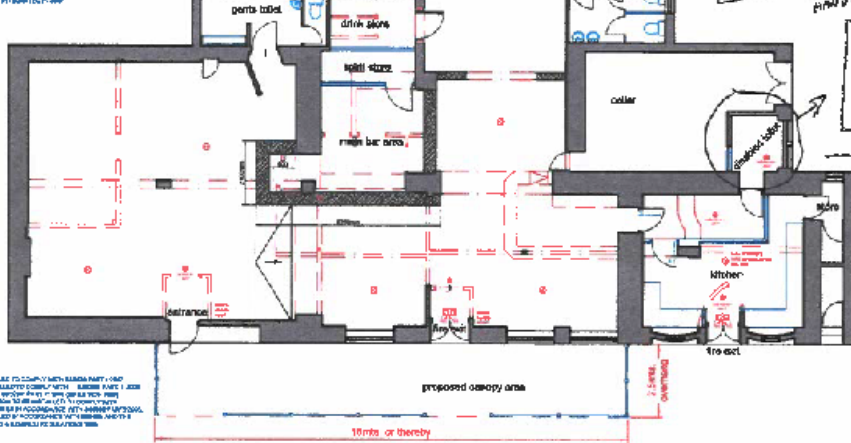
GENERAL NOTES

ALL WORKMANSHIP TO BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015 AND THE STRATA MANAGEMENT REGULATIONS 2015.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE STRATA MANAGEMENT COMMITTEE AND THE LOCAL COUNCIL.
ALL WORKMANSHIP TO BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015 AND THE STRATA MANAGEMENT REGULATIONS 2015.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE STRATA MANAGEMENT COMMITTEE AND THE LOCAL COUNCIL.
ALL WORKMANSHIP TO BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015 AND THE STRATA MANAGEMENT REGULATIONS 2015.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE STRATA MANAGEMENT COMMITTEE AND THE LOCAL COUNCIL.

**PROPOSED GROUND FLOOR PLAN
scale 1:100**

MATERIALS AND FINISHES

WALLS - 125mm AAC BLOCKS WITH BRICK FACED EXTERIOR SURFACE
ROOF - 125mm AAC BLOCKS WITH BRICK FACED EXTERIOR SURFACE
FLOORS - 100mm CONCRETE WITH POLISHED TERRAZZO FINISH



NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE STRATA MANAGEMENT COMMITTEE AND THE LOCAL COUNCIL.
2. ALL WORKMANSHIP TO BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015 AND THE STRATA MANAGEMENT REGULATIONS 2015.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE STRATA MANAGEMENT COMMITTEE AND THE LOCAL COUNCIL.
4. ALL WORKMANSHIP TO BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015 AND THE STRATA MANAGEMENT REGULATIONS 2015.

LICENSING STANDARDS OFFICER VISIT REPORT

A premises licence application has been received from William Cumming in respect of:

The Lochside Bar, 84-88 Northesk Road, Montrose, DD10 8TG

Premises Licence Holder: William Cumming, 90 Northesk Road, Montrose, DD10 8TG

Background:

A major variation application from William Cumming was received on 22 July 2020. The Licensing Board at their meeting on the 17 September 2020 will consider this application.

Licensing Standards Officer's Report:

I had visited the premises as part of a Premises Licence Review application on 18 August 2020. I used the opportunity to view the proposed outdoor drinking area. I have provided photographs of the proposed outdoor drinking area at **APPENDIX 1** of this report. I had a Microsoft Teams meeting with the applicant and his agent on 1 September 2020 to address some aspects of the application and the Police Scotland objection to the application.

Proposed Licenced Hours

The applicant has applied for a termination hour of 1am on Sundays-Thursdays. I advised the applicant that these proposed hours are outwith Board Policy, which is a midnight termination hour on the days in question. The applicant advised me that he would like 1am for when darts and pool leagues return as often participants leave the pub after their matches to other premises which are open later. He told me he did not envisage the need to open to 1am every night but would like the option.

I would remind Board Members that the general licenced hours within our Statement of Licensing Policy have been established for the purposes of promoting the licensing objectives. That said, however, Board Members are able to consider each application on its own merits and are not restricted to the hours in the policy.

Building Standards Issues

Building Standards asked for clarification of the following points:

1) Occupancy capacity –

The last occupancy capacity for the 'Bar' was 90. This application is increasing this number to 100 persons. We require clear dimensioned plans in order to ascertain the area and measurements of the area applied for. It is unclear exactly what area these 100 persons are to be accommodated. Unfortunately, without measurements or a scale bar to work out the area and outlined areas the occupancy relates to I am unable to assess the occupancy capacity internally.

2) External Areas

The larger rear external area has no dimensions or scale bar in order to ascertain the occupancy capacity. The external areas applied for in the application is 50 persons. This should be split between the front and rear areas accordingly in order to ascertain if the areas shown are suitable for the numbers applied for.

Confirmation required the 50 persons applied for in the external areas is not in addition to the internal areas.

3) Lighting

As the external areas are applied to be licensed throughout the year until 21:00hours there should be adequate emergency and escape route lighting supplied in the event of power failure.

After discussion with the applicant, these issues were resolved in the following way:

1) Measurements in a new plan were provided

- 2) The split between the two areas is to be 40 in the rear area and 10 in the front area. The applicant understands that this is not in addition to the internal area capacity.
- 3) Lighting will be provided and until such time it will only be used in daylight hours

The Building Standards Manager has confirmed on 3 September 2020 that Building Standards have no issues.

Police Scotland Objection

Police Scotland have objected to the granting of this Major Variation. Police Scotland are of the view that granting this application would be inconsistent with the following Licensing Objectives:

- 1) Preventing Crime and Disorder
- 2) Securing Public Safety
- 3) Protecting and improving public health

Police Scotland have described at length in the Premises Licence Review their concerns in respect of Mr Cumming's ability to manage a licensed premises. I have outlined Mr Cummings response to this in my Premises Licence Review report.

There have been two complaints in the time Mr Cumming has been licence holder (since 2011). One was in respect of noise nuisance and another in respect of children playing the darts league. Both matters were resolved with co-operation from the licence holder.

I duly submit this report for consideration by Board Members.

Daniel J. Coleman
Licensing Standards Officer
Angus Council

Appendix

Photo 1



This is the proposed outdoor area at the rear of the building where the maximum capacity will be 40.

There are four wooden benches which sit four people and four sets of tables and chairs.

As can be seen, there is a hatch that would allow service of patrons in the outdoor area without entering the building.