

**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 three 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 three 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  
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**APPENDIX 1 TO REPORT LB69/20**  
**ANGUS LICENSING BOARD – 26 NOVEMBER 2020**

**(a) LICENCE NO. 14, AIRLIE ARMS, 4 ST MALCOLM'S WIND, KIRRIEMUIR, DD8 4HB**

**Name and Address of Applicant**

Dilys Joan Robertson

**Type of Licence:** On and Off Sales

**Description of Variation**

**1. Activities -**

- (a) Bar meals to be provided within and outwith core hours. Breakfasts, teas and cake to be provided prior to 11am.
- (b) Gaming to be removed from operating plan. No longer provided in premises.

**2. Layout** – outdoor area to be delineated as per the layout plan.

**3. Children and Young Persons** to have access to the outdoor area.

**Environmental and Consumer Protection** provided an observation.

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 or amplified sound may be provided anywhere within the licensed premises with the intention of being heard within the external drinking area.
- A noise management plan has been submitted and approved by this service.

## LICENSING STANDARDS OFFICER VISIT REPORT - AIRLIE ARMS HOTEL

An application to vary a premises licence has been received from Dilys Robertson in respect of:

### **Airlie Arms Hotel, 4 St Malcom's Wynd, Kirriemuir, DD8 4HB**

The premises is located at the top of the Roods, along St Malcom's Wynd in Kirriemuir.

#### **Background:**

The application to vary the premises licence was received on 7<sup>th</sup> August 2020. The Licensing Board at their meeting on the 26<sup>th</sup> November 2020 will consider this application.

#### **Licensing Standards Officer's Report:**

I visited these premises on 11<sup>th</sup> November 2020 at 1pm and met with the licence holder and Premises Manager Dilys Robertson. I was there to undertake both the statutory checks and discuss her application for Major Variation.

#### **Major Variation**

The application was in respect of three things:

- 1) To provide Bar Meals outwith core hours, such as breakfasts teas and cake
- 2) Gaming to be removed from the operating plan
- 3) To alter the layout plan to incorporate outdoor drinking facilities

I was there chiefly to discuss point 3. Members should note that this Premises Licence in its Operating Plan already permits outdoor drinking. However, the outdoor drinking areas were not defined on the layout plan, and therefore require to be incorporated. There are two proposed locations that can both be seen in **APPENDIX 1** to this report. **I will also share videos in advance of the meeting.**

As Members can see from the photos, both areas are quite small containing only four picnic style benches in area A and three in area B.

This premises have operated several Occasional Licences for these areas during the pandemic with no complaints being received. The premises have successfully operated in accordance with a noise management plan. Environmental Health have requested the standard outdoor drinking area conditions be applied and the applicant is content with this.

Building Standards enquired if the external areas have free flowing escape routes. Having visited the premises, I can confirm that both areas have very clear escape routes with the exits being wide enough for four wheeled bins. Building Standards confirmed this was acceptable on 12<sup>th</sup> November.

#### **Statutory Checks**

Whilst at the premises, I took the opportunity to undertake the statutory checks. During this I identified one infringement:

- 1) **Under 18s Sign:** The mandatory conditions attached to your premises licence prescribe that there is to be displayed, so it is reasonably visible to customers entering the premises, a sign of at least A4 size which states the under 18s admission policy.

This notice was not displayed. I have since produced a copy and sent it to the premises, who have confirmed it is now on display. All other matters such as training records, recording of refusals and display of summary of premises licence were complied with to my satisfaction.

I informed the Licence Holder that what was discussed would form part of a report to be placed before Board Members. I duly submit this report for consideration by Members.

Daniel J. Coleman  
Licensing Standards Officer  
Angus Council

## Appendix 1 to LSO Report

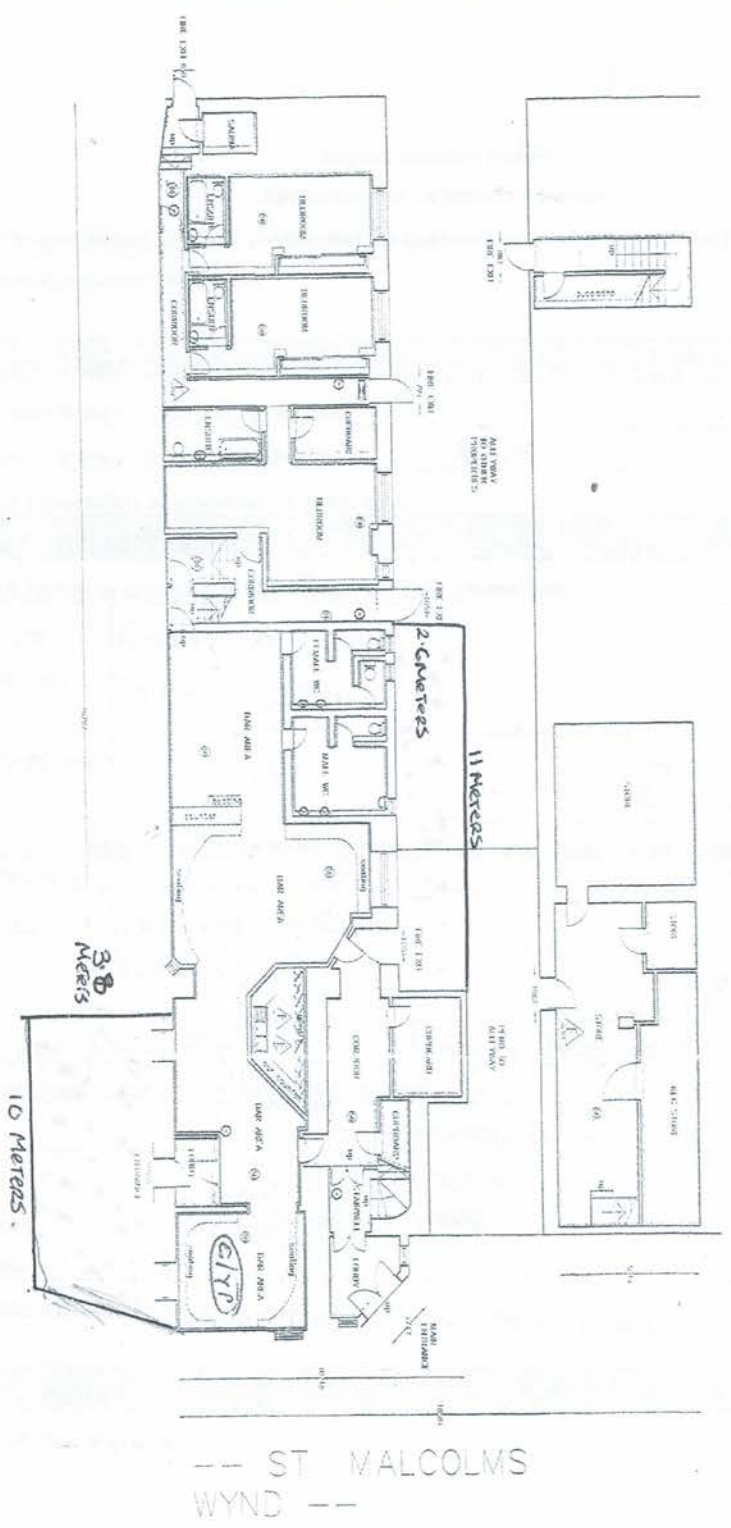


This is area A. It has four picnic style tables. There is a wide entry and exit area at the top left which is wide enough to fit three wheeled bins. There are no residential premises adjacent to this area, with the surrounding alleyway being other commercial premises or property of the hotel itself.



This is area B. It has three picnic style benches and is located at the main entrance of the premises, off St Malcom's Wynd. There are other licenced premises in the vicinity, but none with outdoor drinking facilities.

# AIRLIE ARMS HOTEL - GROUND FLOOR



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**(b) LICENCE NO.61, BUZZ BINGO, 141 HIGH STREET, ARBROATH, DD11 1DP**

**Name of Applicant** – Buzz Holdings Limited, New Castle House, Castle Boulevard, Nottingham, NG7 1FT

**Type of Licence:** On and Off Sales

**Description of Variation**

**1. Activities** - to permit the provision of restaurant facilities and bar meals outwith core hours.

The applicant has confirmed that no alcohol will be served beyond core licensed hours.

**(c) LICENCE NO. 137 HOSPITALFIELD HOUSE, WESTWAY, ARBROATH, DD11 2NH**

**Name of Applicant** – Hospitalfield Trading, Hospitalfield House, Westway, Arbroath, DD11 2NH

**Type of Licence:** On Sales

**Description of Variation**

**1. Premises layout: -**

- (a) Extension of the boundary in the premises layout to incorporate outside spaces including the walled garden, rear courtyard, the forecourt and an area of the grounds called the paddock.
- (b) Addition of new cafe building due to be completed in December 2020 which will include a small off sales retail area for locally produced spirits.

**2. Off Sales** provision to be added between the hours of 10.00 to 22.00 daily.

**3. Core times** when alcohol will be sold for consumption **on** the premises.

- (a) Sunday commencement hour to be amended from 12.30 to 11.00
- (b) Friday terminal hour to be amended from 24.00 to 01.00.

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

**4. Seasonal Variations Dates** to be added – Christmas Eve, Christmas Day, Boxing Day, Hogmanay, New Year's Day.

**5. Activities-**

- (a) Accommodation to be added within and outwith core hours.
- (b) Bar meals, recorded music, films, indoor/outdoor sports to be added within and outwith core hours.
- (c) Gaming to be added within core hours only
- (d) Restaurant facilities, live performances, dance facilities and theatre to be provided outwith core hours. Currently within core hours only.
- (e) Outdoor drinking facilities for soft drinks to be provided outwith core hours. Currently within core hours only.

**Additional activities to be included outwith core hours: -**

Breakfasts, teas, coffees, snacks, meals to patrons and guests  
All forms of artistic expression  
Hire of premises for conferences, concerts, exhibitions, promotions of food and drink or either, dinners and other social activities  
Tea room and ancillary shop open to public  
Erection of marquees etc in grounds for private and ticketed events  
Use of grounds for displays of art and other artistic events  
Gardens to be open for public use  
Croquet, quoits; petanque etc to be permitted in grounds  
Markets both within and outwith the premises  
Receiving delivery of food and alcohol as required as per Policy on delivery of alcohol

The applicant has given confirmation that no alcohol will be sold or consumed outwith core hours.



**6. Children and Young Persons** to be permitted in the premises at the discretion of management under the following terms: -

- (a) Children 0 to 12 years to be accompanied by an adult at all times;
- (b) Children and Young Persons aged 13 and over to be permitted on the premises unaccompanied from 10am to 7pm for educational and artistic purposes, to enjoy the grounds and to partake of soft drinks and other non-alcoholic refreshments snacks and meals in the cafe; and
- (c) Children and young persons accompanied by an adult to be permitted to attend private events until the end of the event.

## LICENSING STANDARDS OFFICER VISIT REPORT

An application to vary a premises licence has been received from Hospitalfield Trading in respect of:

**Hospitalfield House, Westway, Arbroath, DD11 2NH**

### **Background:**

The application to vary the premises licence was received from Martin Beard on behalf of Hospitalfield Trading on 14<sup>th</sup> July 2020. The Licensing Board at their meeting on the 26<sup>th</sup> November 2020 will consider this application.

### **Licensing Standards Officer's Report:**

I visited these premises on 11<sup>th</sup> November 2020 at 11am and met with Premises Manager Lucy Byatt, General Director Scott Byrne and Head of Restaurant Simon Gordon.

### **Major Variation**

The application proposed the following alterations:

- 1) Extension of the layout plan to include outdoor spaces and addition of the new café building which will include a small off-sales section
- 2) Addition of off-sales
- 3) Amend Sunday commencement hour to 11am and Friday terminal hour to 1am (within policy)
- 4) Incorporation of seasonal variations
- 5) The addition of several activities to be included outwith core hours

I was there chiefly to discuss point 5 with the applicant. The applicant had included several activities that are to take place outwith core hours. I discussed these with the applicant to ensure that none of them will result in alcohol being sold outwith the licenced hours. I was given assurances that no off-sales will take place before 10am and no on-sales will take place before 11am. The applicant advised me that these activities were included mostly to permit set up of events such as markets and pop up bars on the premises and that these are not included for the purposes of the selling alcohol.

The applicant has proposed specific Children and Young Person conditions for their premises which are as follows:

*Children and Young Persons to be permitted in the premises at the discretion of management under the following terms-*

- (d) Children 0 to 12 years to be accompanied by an adult at all times;*
- (e) Children and Young Persons aged 13 and over to be permitted on the premises unaccompanied from 10am to 7pm for educational and artistic purposes, to enjoy the grounds and to partake of soft drinks and other non-alcoholic refreshments snacks and meals in the cafe;*
- (f) Children and young persons accompanied by an adult to be permitted to attend private events until the end of the event.*

Although the proposal is not identical to any of the model conditions contained within the Board's Statement of Licensing Policy, it is broadly similar to Condition 2(v) which reads:

*The Board may declare that it is satisfied that specific Licensed Premises (such as a family leisure club or family orientated hotel) substantially cater for family activities and recreation involving children and young persons. In such instances, Children and Young Persons will be permitted to remain within the Licensed Premises during the hours when the Licensed*

*Premises are catering for family activities and recreation, but children and young persons will not be permitted in any bar area beyond 9:00 pm.*

Although the premises could not be described as either a family orientated hotel or leisure club, the premises do substantially cater for family activities and recreation involving children and young persons. Given this premises is a tourist attraction and it is easily foreseeable a young person would wish to attend the premises to artistic or educational purposes, I would not be opposed to the conditions the applicants have outlined, which are indeed more restrictive than ones contained in our own policy. I would remind Members that each application is to be determined on its own merits and the Board are not restricted in what it can grant.

### **Statutory Checks**

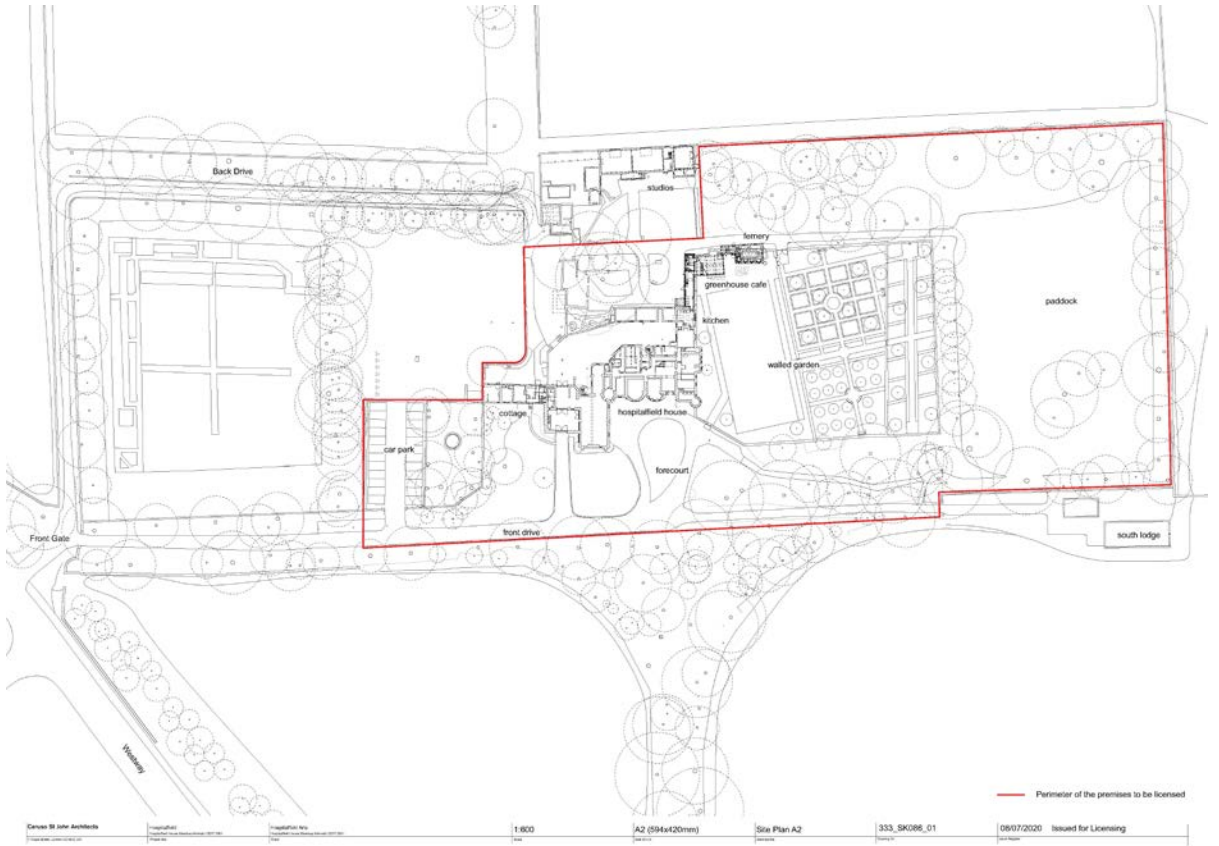
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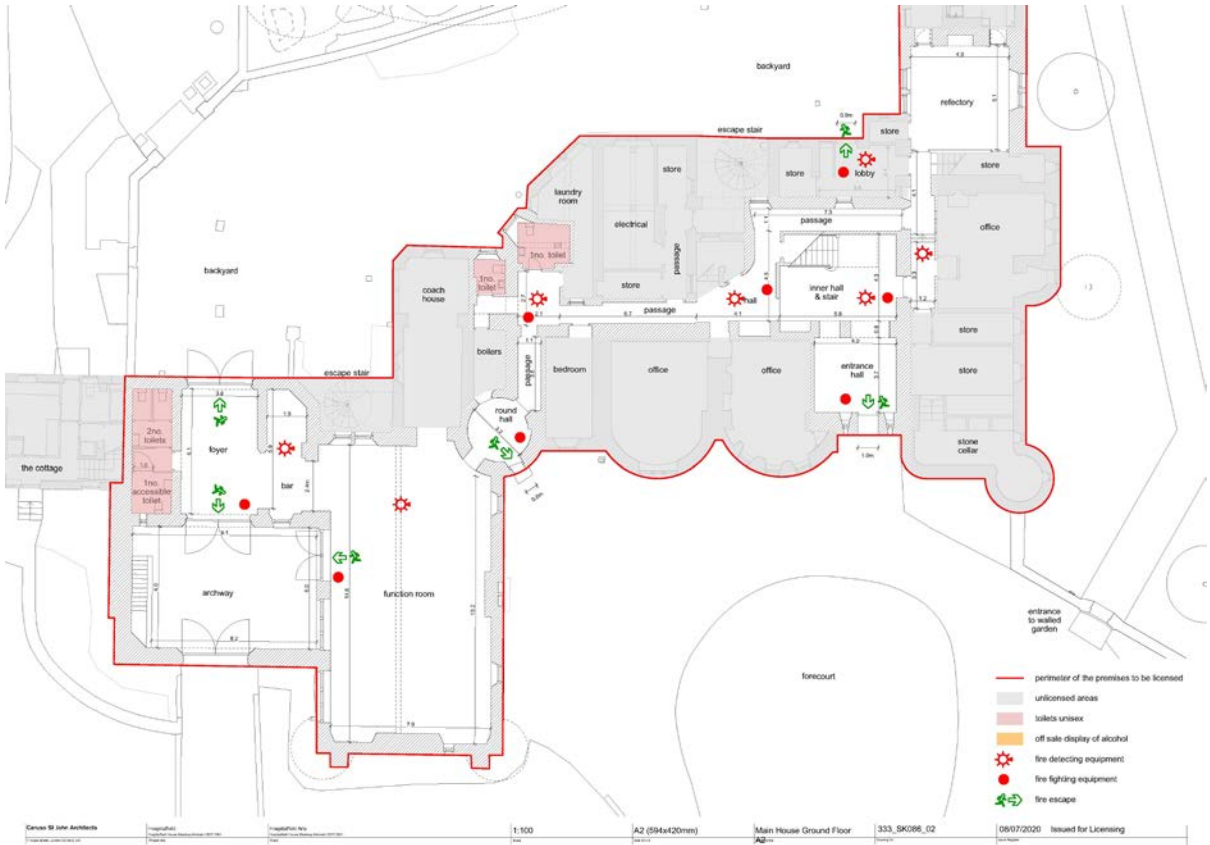
This notice was not displayed. I have since produced a copy and sent it to the premises, who have confirmed it is now on display. All other matters such as training records, recording of refusals and display of summary of premises licence were complied with to my satisfaction.

I informed the applicants that what was discussed would form part of my report to be placed before Board Members. I duly submit this report for consideration by Members.

Daniel J. Coleman  
Licensing Standards Officer  
Angus Council



1:600 A2 (594x420mm) Site Plan A2 333\_SK086\_01 09/07/2020 Issued for Licensing



1:100 A2 (594x420mm) Main House Ground Floor 333\_SK086\_02 09/07/2020 Issued for Licensing

