

**ANGUS LICENSING BOARD – 16 FEBRUARY 2023**

**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 licences under the Licensing (Scotland) Act 2005 which require to be determined by the Board.

**1. RECOMMENDATIONS**

It is recommended that the Board considers and determines the application for a new provisional premises licences 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 new provisional premises licences under the Licensing (Scotland) Act 2005 which requires to be determined by the Board because the matters are not subject to delegation and can only be discharged by the Licensing Board. The Board should note that the application is for a petrol filling station and information regarding this being a category of excluded premises is noted below in the applicable Appendix.

**3. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this Report.

**4. OTHER IMPLICATIONS**

Legal

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

- (a) if none of them applies, the Board must grant the application, or
- (b) if any of them applies, the Board must refuse the application.

The grounds for refusal are: -

- (a) that the subject premises are excluded premises,

- (b) that the application must be refused under Section 25(2) (the Board had previously refused a premises licence within the preceding one year), Section 64(2) (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) (if alcohol is to be sold for off sales purposes before 10am or after 10pm, or both),
- (c) 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,
- (d) that the Licensing Board considers that the granting of the application would otherwise be inconsistent with one or more of the licensing objectives,
- (e) 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,
- (f) 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, in the locality.
- (g) in considering whether either of the grounds for refusal specified in (c) or (d) applies, the Licensing Board must in particular take into account:-
  - (a) any conviction, notice of which is given by the chief constable under subsection 4(b) of section 21; and
  - (b) any report given by the chief constable under section 24A(2).
- (h) Where the Licensing Board considers that: -
  - (a) they would refuse the application as made, but
  - (b) 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.

Where the Licensing Board refuses the application: -

- (a) the Board must specify the ground for refusal, and
- (b) if the ground of refusal is that specified at 4(c) or (d) above, the Board must specify the licensing objective or objectives in question.

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ANGUS LICENSING BOARD – 16 FEBRUARY 2023

(a) **PARK ORCHARDBANK SERVICE STATION, SILVIE WAY, ORCHARDBANK BUSINESS PARK, FORFAR, DD8 1BF**

**Name of Applicant**

Park Garage Group PLC, 1-3 Station Approach, Hayes, Bromley, BR2 7EQ

**Type of Licence: Provisional Premises Licence – Off Sales**

The Board are asked to note that this application for a Provisional Premises licence called at the Angus Licensing Board on 19 January 2023. The Board deferred this application at the request of the Agent to allow for the applicant to be available.

**1. Description of Premises –**

Petrol station and local convenience store selling petrol/derv and a full range of grocery and food items including fresh and frozen, food to go and other retail products.

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

Monday to Sunday	10:00 to 22.00
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**The Board are asked to note the hours requested are within Board Policy.**

**3. Activities to be provided –**

Recorded music to be provided within and outwith core hours

**4. Activities outwith core hours –**

Background music may be played

**5. Activities other than those listed –**

Retail sale of groceries, confectionery, bread and cakes, crisps and snacks, soft drinks, non-food items, toiletries, frozen foods, chilled foods, fruit & veg, newspapers and magazines, tobacco and cigarettes, lottery and may also operate a pay point bill payment service or customer deliver/collection service.

**6. Capacity –**

Accessible Shelving	5.5m x 2.1m = 11.55m <sup>2</sup>
Inaccessible (behind counter)	3.34m x 2m = 6.68m <sup>2</sup>
Total	18.23m <sup>2</sup>

**For Board Consideration: -**

It is requested that the Board note that the Licensing (Scotland) Act 2005 provides that a Board must refuse an application for a premises licence if the subject premises are “excluded premises”.

One category of excluded premises is premises used as a garage or which form part of premises which so used. Premises are used as a garage if they are used for one or more of the following:

- (a) the sale by retail of petrol or derv;
- (b) the sale of motor vehicles; or
- (c) the maintenance of motor vehicles.

**The premises to which this application relates sells petrol and derv.**

The Act states that premises may not be classed as excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of :-

- (a) petrol or derv; or
- (b) groceries (where the premises are, or are to be, used also for sale by retail of groceries).

**The Board will therefore be required to consider as a preliminary matter if, in their opinion, the premises are excluded premises or non excluded premises before proceeding to consider the application.**

**Comments Received**

Licensing Standards Officer submitted a representation stating, "Members of the Board may wish to consider the terms of section 123 of the Licensing (Scotland) Act 2005 in assessing this application for a Premises Licence." Section 123 (1)-(5) **is detailed on the attached LSO report.**

**Premises Licence Application – Park Orchardbank Service Station  
Report on behalf of Licensing Standards Officer**

**Applicant Details**

Applicant: Park Garage Group PLC

Applying as: A Company

Premises or area to be licenced: Park Orchardbank Service Station, Silvie Way, Orchardbank Business Park, Forfar, DD8 1BF

Dates required: All days of the week  
Times required: 10:00hrs – 22:00hrs  
On sales: N/A  
Off sales: Monday to Sunday 10:00hrs-22:00hrs

**Children & Young Persons Access:** N/A

**Comments on behalf of LSO for Licensing Board Consideration**

I submit a representation that Members of the Board may wish to consider the terms of section 123 of the Licensing (Scotland) Act 2005 in assessing this application for a Premises Licences. Section 123 (1) - (5) provide as follows:

**123. Excluded premises**

- (1) No premises licence or occasional licence has effect to authorise the sale of alcohol on excluded premises.
- (2) For the purposes of this Act, “*excluded premises*” means
  - (a) premises on land—
    - (i) acquired or appropriated by a special roads authority, and
    - (ii) for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes), and
  - (b) subject to subsection (5), premises used as a garage or which form part of premises which are so used.
- (3) For the purposes of subsection (2)(a)—
  - (a) “*special road*” and “*special roads authority*” have the same meanings as in the [Roads \(Scotland\) Act 1984 \(c.54\)](#), and
  - (b) “*class 1*” means [class 1 in Schedule 3](#) to that Act, as varied from time to time by an order under [section 8](#) of that Act, but, if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in this section to traffic of class 1 so as to take account of the additional class.
- (4) For the purposes of subsection (2)(b), premises are used as a garage if they are used for one or more of the following: -
  - (a) the sale by retail of petrol or derv,
  - (b) the sale of motor vehicles, or
  - (c) the maintenance of motor vehicles.
- (5) Despite subsection (2)(b), premises used for the sale by retail of petrol or derv or which form part of premises so used are not excluded premises if persons resident in the locality in which the premises are situated are, or are likely to become, reliant to a significant extent on the premises as the principal source of—
  - (a) petrol or derv, or
  - (b) groceries (where the premises are, or are to be, used also for the sale by retail of groceries).

**Tina Magson, Team Leader – Legal and Democratic Services**