

Item: 7

Orkney Islands Area Licensing Board: 7 July 2022.

Licensing (Scotland) Act 2005.

Application for Premises Licence.

Orkney Street Food Limited – Waterside Café, Atlantis Lodges, Finstown.

Report by Clerk to the Board.

1. Purpose of Report

To consider an application from Orkney Street Food Limited for a premises licence in respect of Waterside Café, Atlantis Lodges, Finstown.

2. Recommendations

It is recommended:

That the Board determines the application from Orkney Street Food Limited for a premises licence in respect of Waterside Café, Atlantis Lodges, Finstown.

3. Policy Aspects

3.1.

In accordance with the Licensing (Scotland) Act 2005, the Board's Statement of Alcohol Licensing Policy provides that decisions on premises licence applications shall be made by the Board.

3.2.

In relation to overprovision, on 3 May 2018, the Board determined the following:

3.2.1.

There is no overprovision of licensed premises or licensed premises of a particular description within the locality of Orkney defined by the Board.

3.2.2.

The Board concluded that there was not a dependable causal link between the evidence provided to the Board and the operation of licensed premises, to suggest that a saturation point had been reached, or was close to being reached, within the locality of Orkney defined by the Board.

3.3.

In accordance with the Licensing (Scotland) Act 2005, the Board's Statement of Alcohol Licensing Policy generally permits off-sale operating hours of 10:00 to 22:00 each day.

3.4.

The Board's Statement of Alcohol Licensing Policy generally permits:

- Commencement on-sale operating hour of 10:00 each day.
- Terminal on-sale operating hours of 24:00 Sundays to Thursdays and 01:00 Fridays/Saturdays and Saturdays/Sundays.
- For local events such as annual agricultural shows, local festivals and private functions, a terminal on-sale operating hour of 01:00 any morning.
- For weddings, a terminal on-sale operating hour of 01:30 any morning.
- For the festive season, being 24/25 December until 2/3 January each year, a terminal on-sale operating hour of 01:00 any morning.

3.5.

The full policy document is available from the Related Downloads section [here](#).

4. Application

4.1.

On 3 May 2022, Orkney Street Food Limited submitted an application for a premises licence in respect of Waterside Café, Atlantis Lodges, Finstown.

4.2.

A layout plan of the premises is attached at Appendix 1 to this report.

4.3.

The application is for on-sale operating hours only and requests the following operating hours, which are within those permitted in terms of the Board's Statement of Alcohol Licensing Policy:

- 11:00 to 24:00 on Sundays to Thursdays inclusive.
- 11:00 to 01:00 Fridays/Saturdays and Saturdays/Sundays.
- Terminal on-sale operating hour of 01:00 any morning for private functions; functions held on the premises relating to a local festival or agricultural show; or for the festive season.
- Terminal on-sale operating hour of 01:30 any morning for weddings.

4.4.

The application requests on-sale capacity of 30 persons.

5. Consultation

The required notices were issued to the statutory consultees on 3 May 2022 and the application was published on Orkney Islands Council's website from 5 May 2022. The last date for objections or representations to be received was 26 May 2022. No submissions were received.

6. Financial Implications

The appropriate application fee of £800 has been paid.

7. Legal Aspects

7.1.

The Licensing (Scotland) Act 2005 (the Act) provides that the licensing board must hold a hearing for the purpose of considering and determining an application for a premises licence.

7.2.

A premises licence takes effect as soon as it is granted by the licensing board.

7.3.

Premises licence applications must:

7.3.1.

Name a premises manager, who must be a personal licence holder.

7.3.2.

Be accompanied by:

- A disabled access and facilities statement.
- Certificates in relation to:
 - Planning.
 - Building standards.
 - Food hygiene.

7.4.

Applications are not accepted unless all preliminary requirements are satisfied. The application names a premises manager, who is a personal licence holder. Further, a disabled access and facilities statement and certificates in relation to planning, building standards and food hygiene have been submitted.

7.5.

Any person may, by notice to the Board, object to an application on any of the grounds for refusal specified in the Act or may make representations to the Licensing Board, including representations in support of the application, as to modifications which the person considers should be made to the operating plan accompanying the application or as to conditions which the person considers should be imposed.

7.6.

The grounds for refusal under the Act are as follows:

7.6.1.

The subject premises are excluded premises – these are essentially garages or garage shops, but there is an exemption for premises which are the principal source, in their community, for groceries as well as petrol or deriv.

7.6.2.

The application must be refused if, generally, it is an application within one year of a previous refusal or seeks generally banned 24 hour opening or prohibited off-sale hours.

7.6.3.

The Board considers, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence.

7.6.4.

The Board considers that the granting of the application would otherwise be inconsistent with one or more of the licensing objectives, namely:

- Preventing crime and disorder.
- Securing public safety.
- Preventing public nuisance.
- Protecting and improving public health.
- Protecting children and young persons from harm.

7.6.5.

Having regard to:

- The nature of the activities proposed to be carried on in the subject premises.
- The location, character and condition of the premises.
- The persons likely to frequent the premises.

The Board considers that the premises are unsuitable for use for the sale of alcohol.

7.6.6.

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.

7.7.

Anyone lodging an objection on the ground detailed at section 7.6.6 above must specify the locality on which they are basing their objection.

7.8.

Where the Board is minded to refuse the application, but a modification proposed by the Board to the operating plan or layout plan (or both) would make the application acceptable to the Board, the Board must grant the application, as modified, where the applicant accepts the proposed modification.

7.9.

Where the Board refuses the application, the Board must specify the ground for refusal. If the ground for refusal is that specified in the ground detailed at sections 7.6.3. or 7.6.4. above, the Board must specify the licensing objective or objectives in question.

7.10.

The Board must, in considering and determining the application, consider whether any of the grounds for refusal applies. If none of them applies, the Board must grant the application. If any of them applies, the Board must refuse the application.

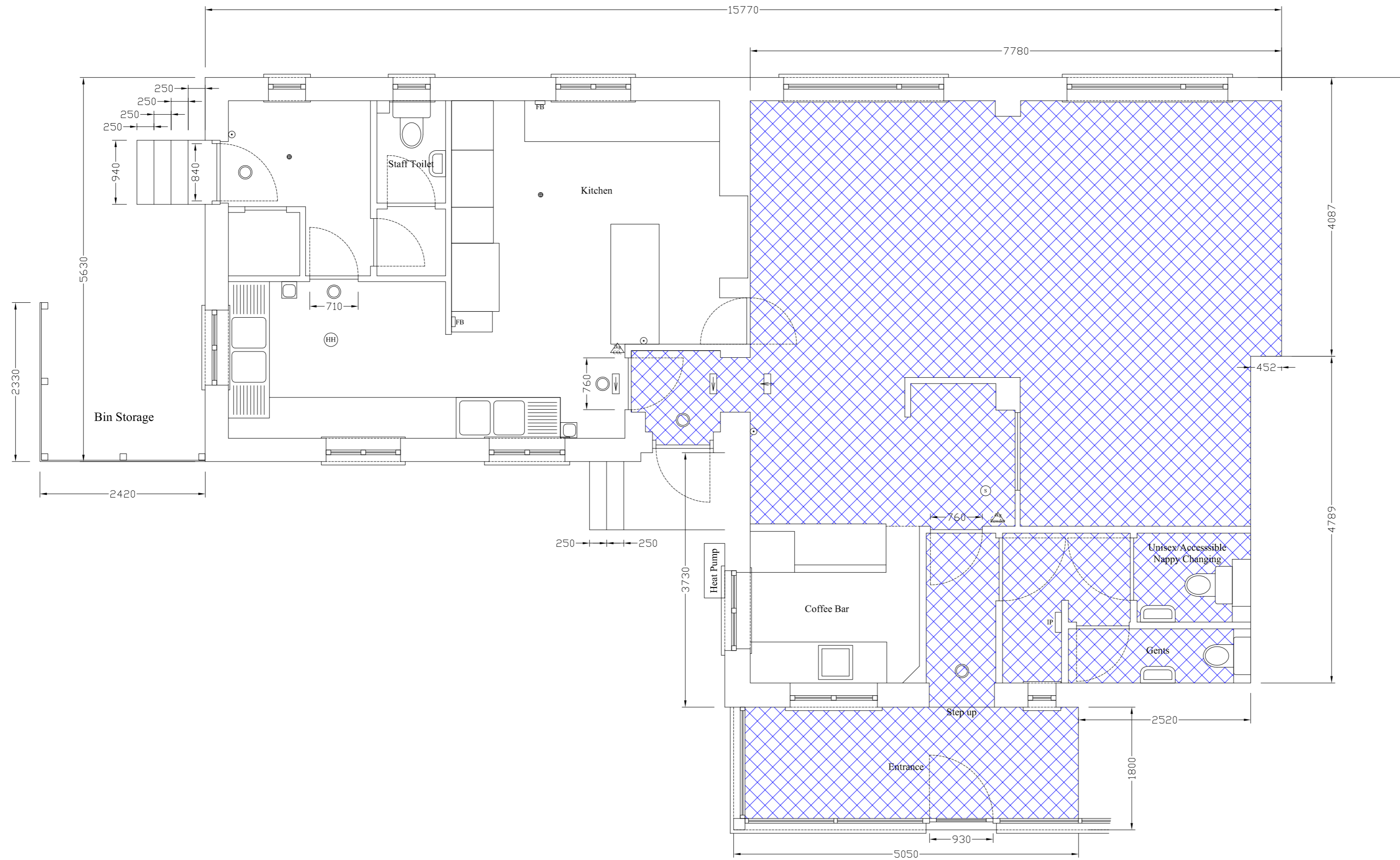
8. Contact Officers

Gavin Mitchell, Clerk to the Board, extension 2233, email gavin.mitchell@orkney.gov.uk.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

9. Appendix

Appendix 1: Layout plan of the premises.



Activities within the blue hatched area will be

- Conference facilities
- Restaurant facilities
- Bar meals
- Receptions
- Club or other group meetings
- Recorded music
- Live performances
- Films
- Gaming

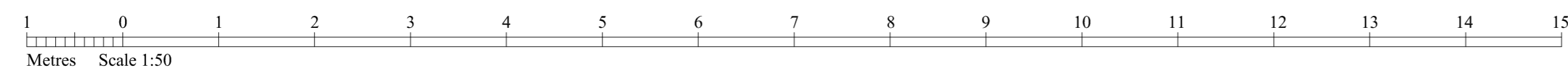
Floor Area of Restaurant is 47m²

- areas to which children or young persons have access

Ceiling Height of Restaurant is 2.3m

Fire Escape, Warning, Detection & Fighting Equipment

- Dry powder type extinguisher - capacity shown in kg.
- Carbon dioxide type extinguisher - capacity shown in kg.
- FB - Fire blanket.
- Fire alarm call point - break glass.
- IP - Fire alarm indicator panel.
- Emergency lighting point (unlettered).
- High Heat Detector
- Sprinkler Head
- Sounder
- Directional Route of Escape Sign



Stephen J Omand, FRICS, Chartered Surveyor, 14 Victoria Street, Kirkwall, KW15 1DN. Tel- 01856 876215 Fax- 01856 876199 Email- stephen@sjomand.co.uk		
Project The Waterside, Finstown, KW17 2EH.		
Title Licensing Plan.		
Licensee Christopher G Bichan & Daniel Gould, 3 Mill Street, Kirkwall, KW15 1NL.		
Date	April 2022.	Drawn By
Scale	1:50	Drwg No
		Plan size
		SJO 1627-Licensing A1
DO NOT SCALE		