

**FALKIRK COUNCIL LICENSING BOARD**

**Subject:** LICENSING (SCOTLAND) ACT 2005  
**APPEAL BY STATED CASE - HEARING ON ADJUSTMENTS**  
**Meeting:** LICENSING BOARD  
**Date:** 6 January 2010  
**Author:** CLERK TO THE LICENSING BOARD

**PREMISES:** Spar Shop  
95 Glasgow Road  
Camelon  
Falkirk

**APPELLANT:** DMS Partners  
14 Kingsburgh Road  
Edinburgh  
EH12 6DZ

**1. BACKGROUND**

- 1.1 On 13<sup>th</sup> July, 2009 the Board considered an application by DMS Partners for a premises licence for the Spar Shop, 95 Glasgow Road, Camelon, Falkirk, in terms of the transitional arrangements under the Licensing (Scotland) Act 2005. The Board refused the application, holding that the premises were “excluded premises” in terms of Section 123 of the 2005 Act.
- 1.2 DMS Partners (“the Appellant”) thereafter appealed to the Sheriff Principal. The Grounds of Appeal are set out in Note of Appeal which forms Appendix 1 hereto. The appeals procedure under the 2005 Act then requires the Board to “state a case” to the Sheriff Principal. The Stated Case, which has been issued to the Appellant in draft, sets out the facts of the application which the Board found admitted or proved, its reasons for reaching its decision, and a commentary on the grounds of appeal. It asks the Sheriff Principal to rule whether on the facts admitted or proved, the Board was entitled to reach the decision it did. The draft Stated Case forms Appendix 2 hereto.
- 1.3 The Appellant is entitled to suggest changes (“adjustments”) to the draft Stated Case prior to it being issued by the Clerk to the Board in final form. The Appellant has proposed three adjustments, which are set out in the Note at Appendix 3 hereto. If the Board propose to reject any proposed adjustment it must hold a hearing on the adjustments, which is the reason for the matter coming before the Board today. Officer advice is that adjustment 3 be rejected. If the Board adopts that advice, the rejected adjustment(s) must still be notified to the Sheriff Principal with reasons for the rejection.
- 1.4 In terms of an Order of the Sheriff (acting on behalf of the Sheriff Principal) in terms of the Appeals Rules the hearing on adjustments must take place by 7<sup>th</sup> January, 2010.

## **2. RECOMMENDATIONS**

- 2.1 To hear the Appellant's agent on the proposed Adjustments, to consider the advice of officers thereon and to determine whether or not to reject the proposed adjustments or any one of them.**

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**Clerk to the Licensing Board**

**Date: 29 December 2009**

**Contact Officer: Peter Gilmour (ext 6095)**

### **APPENDICES**

1. Note of Appeal
2. Draft Stated Case
3. Note of Proposed Adjustments