



LICENSING SUB-COMMITTEE

FRIDAY, 19 APRIL 2024 at 10.15 am

Your attendance is requested at a meeting of the **LICENSING SUB-COMMITTEE** to be held in **COMMITTEE ROOM 5 - WOODHILL HOUSE, WESTBURN ROAD, ABERDEEN, AB16 5GB**, on **FRIDAY, 19 APRIL 2024, at 10.15 am**

This meeting will be live streamed and a recording of the public part of the meeting will be made publicly available at a later date.

Thursday, 11 April 2024

Director of Business Services

To: Councillors A Stirling (Chair), M Ewenson (Vice-Chair), G Crowson, J Gifford, T Mason, L McWhinnie, R Menard and J Nicol

Substitute Members: Councillors S Dickinson, M Grant, G Hall, D Mair, D Mair, S Smith, I Taylor and J Whyte

Contact Person:- Nicole Chidester
Tel: 01467 469790
Email: nicole.chidester@aberdeenshire.gov.uk

B U S I N E S S

- | | | |
|--|--|-----------|
| 1 | Sederunt and Declaration of Members' Interests | |
| 2A | Public Sector Equality Duty
Consider, and if so desired, adopt the following resolution:- | 4 |
| | (1) to have due regard to the need to:- | |
| | (a) eliminate discrimination, harassment and victimisation; | |
| | (b) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and | |
| | (c) foster good relations between those who share a protected characteristic and persons who do not share it. | |
| | (2) where an Integrated Impact Assessment is provided, to consider its contents and take those into account when reaching a decision. | |
| 2B | Confidential Information
Consider and, if so decided, adopt the following resolution:- | |
| | “That, under Section 50A(2) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Items 7 & 8 of the business below on account of the likely disclosure of confidential information in breach of the obligation of confidence.” | |
| 3 | Minute of the Meeting of 2 February 2024 | 5 - 7 |
| 4 | Application for Grant of Short-Term Let Licence - Darroch View, 18 Braemar Road, Ballater, AB35 5RL | 8 - 36 |
| 5 | Application for Grant of Short-Term Let Licence - 2 Dunnottar Square, Stonehaven, AB39 3UJ | 37 - 72 |
| 6 | Application for Grant of Short-Term Let Licence - 7 Balnacoll Apartments, Rhu-na-haven Road, AB34 5JD | 73 - 101 |
| ITEMS WHICH THE SUB-COMMITTEE MAY WISH TO CONSIDER WITH THE PRESS AND PUBLIC EXCLUDED | | |
| 7 | Application for Grant of Taxi Driver's Licence (Case No. 1095) [Confidential] | 102 - 121 |
| 8 | Application for Grant of Taxi Driver's Licence (Case No. 1096) [Confidential] | 122 - 142 |

PUBLIC SECTOR EQUALITY DUTY – GUIDANCE FOR MEMBERS

What is the duty?

In making decisions on the attached reports, Members are reminded of their legal duty under section 149 of the Equality Act 2010 to have due regard to the need to:-

- (i) eliminate discrimination, harassment and victimisation;
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it.

The “protected characteristics” under the legislation are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; and (in relation to point (i) above only) marriage and civil partnership.

How can Members discharge the duty?

To ‘have due regard’ means that in making decisions, Members must consciously consider the need to do the three things set out above. This requires a conscious approach and state of mind. The duty must influence the final decision.

However, it is not a duty to achieve a particular result (e.g. to eliminate unlawful racial discrimination or to promote good relations between persons of different racial groups). It is a duty to have due regard to the need to achieve these goals.

How much regard is ‘due’ will depend upon the circumstances and in particular on the relevance of the needs to the decision in question. The greater the relevance and potential impact that a decision may have on people with protected characteristics, the higher the regard required by the duty.

What does this mean for Committee/Full Council decisions?

Members are directed to the section in reports headed ‘Council Priorities, Implications and Risk’. This will indicate whether or not an Integrated Impact Assessment (IIA) has been carried out as part of the development of the proposals and, if so, what the outcome of that assessment is.

An IIA will be appended to a report where it is likely, amongst other things, that the action recommended in the report could have a differential impact (either positive or negative) upon people from different protected groups. The report author will have assessed whether or not an IIA is required. If one is not required, the report author will explain why that is.

Where an IIA is provided, Members should consider its contents and take those into account when reaching their decision. Members should also be satisfied that the assessment is sufficiently robust and that they have enough of an understanding of the issues to be able to discharge their legal duty satisfactorily.

For more detailed guidance please refer to the following link:-

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsites%2Fdefault%2Ffiles%2Ftechnical_guidance_psed_scotland.docx&wdOrigin=BROWSELINK

LICENSING SUB-COMMITTEE

FRIDAY, 2ND FEBRUARY, 2024

Present: Councillors A Stirling (Chair), M Ewenson (Vice-Chair), G Crowson, J Gifford, M Grant (as substitute for L Mcwhinnie), T Mason, R Menard and J Nicol.

Apologies: Councillor L Mcwhinnie.

Officers: Barbara Alexander (Solicitor), Kelly Bissett (Trainee Solicitor), Nicole Chidester (Committee Officer), and Lynsey Kimmitt (Principal Committee Officer).

Also in attendance: Sergeant Neil Grant (Police Scotland).

1 SEDERUNT AND DECLARATION OF MEMBERS' INTERESTS

The Chair asked Members if they had any interests to declare, in terms of the Councillors' Code of Conduct. There were no interests declared.

2A PUBLIC SECTOR EQUALITY DUTY

In taking decisions on the undernoted items of business, the Committee **agreed**, in terms of Section 149 of the Equality Act 2010:-

- (1) To have due regard to the need to:-
 - (a) eliminate discrimination, harassment and victimisation;
 - (b) advance equality and opportunity between those who share a protected characteristic and persons who do not share it; and
 - (c) foster good relations between those who share a protected characteristic and persons who do not share it, and
- (2) to consider, where an Integrated Impact Assessment has been provided, its contents and to take those into consideration when reaching a decision.

2B CONFIDENTIAL INFORMATION

The Sub-Committee **agreed**, in terms of Section 50A (2) of the Local Government (Scotland) Act 1973, as amended, to exclude the public and media representatives from the meeting for Items 5, 6 and 7 of the business below on account of the likely disclosure of confidential information in breach of the obligation of confidence.

3 MINUTE OF THE MEETING OF 8 DECEMBER 2023

There had been circulated and was **approved** as a correct record the Minute of the Meeting of the Licensing Sub-Committee of 8 December 2023.

4 TAXI FARE REVIEW - INITIAL REPORT

There had been circulated a report dated 23 January 2024, by the Director of Business Services which (1) set out the timeline for the annual review of the Aberdeenshire Fare Scale and (2) sought authorisation of the Sub-Committee to undertake the Taxi Fare review.

The Licensing Authority had a statutory obligation to review taxi fares every 18 months. The last review which involved a fare increase and changes to festive season hours, was finalised by the Sub-Committee at their meeting on 10 February 2023 and took effect from 1 April 2023. At the same time, the Sub-Committee agreed to review Taxi Fares on an Annual basis rather than the statutory 18 months.

Officers intended to use the Engage platform and local press to raise awareness of the consultation. Members asked if there was an opportunity to ask the trade about their capacity to deal with demand. Officers advised that the Taxi Fare Review was a legislative requirement. Engagement on wider topics could occur separately to but still aligned with the Fare Review process.

Members asked if the Fare Review process could specifically provide an option for consultees to comment on the Festive Season tariff and if it was successful/utilised following the last review. Members were assured that comments on the festive season hours would be welcomed and considered competent.

Having considered the report, Members **agreed** to:-

- (1) approve the current Fare Scale, listed as Appendix 1 to the report, as the proposal for the purposes of pre-consultation with the taxi trade in order to reach an agreed proposed Fare Scale to use as the basis for the formal public consultation exercise; and
- (2) authorise Officers to co-ordinate the process of the review of the Fare Scale.

5 APPLICATION FOR GRANT OF TAXI DRIVER'S LICENCE (CASE NO. 1089)

There had been circulated a report dated 15 January 2024, by the Director of Business Services, which (1) requested that consideration be given to an application for the grant of a taxi driver's licence (identified as Case No. 1089), in respect of which the Chief Constable had made a representation, and (2) detailed information relevant to the application.

This application was presented to the Sub-Committee on 13 October 2023, but was deferred to allow for any further evidence and to seek clarification on details surrounding the charge, if possible.

Following the publication of the agenda pack for this meeting, officers were notified that the applicant's court cases were disposed. There were no longer any charges against the applicant. Police Scotland confirmed this and notified officers that they were withdrawing their representation.

The licence was granted under delegated powers and the Sub-Committee did not consider the case.

6 APPLICATION FOR GRANT OF TAXI DRIVER'S LICENCE (CASE NO. 1093)

There had been circulated a report dated 22 December 2023, by the Director of Business Services, which (1) requested that consideration be given to an application for the grant of a taxi driver's licence (identified as Case No. 1093), in respect of which the Chief Constable had made an objection, and (2) detailed information relevant to the application.

Having heard from the applicant's representative and the Chief Constable's representative, the Sub-Committee **agreed** unanimously:-

- (1) that there was enough evidence before the Sub-Committee to allow a determination to be made; and
- (2) to REFUSE the application for a taxi driver's licence on the basis that the applicant was not a fit and proper person to hold a licence.

7 APPLICATION FOR GRANT OF TAXI DRIVER'S LICENCE (CASE NO. 1094)

There had been circulated a report dated 22 December 2023, by the Director of Business Services, which (1) requested that consideration be given to an application for the grant of a taxi driver's licence (identified as Case No. 1094), in respect of which the Chief Constable had made a representation, and (2) detailed information relevant to the application.

Having heard from the applicant's representative and the Chief Constable's representative, the Sub-Committee **agreed** unanimously:-

- (1) that there was enough evidence before the Sub-Committee to allow a determination to be made; and
- (2) to GRANT the application for taxi driver's licence for a period of 3 years.



**REPORT TO BUSINESS SERVICES' LICENSING SUB-COMMITTEE – 19 April
2024**

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982
CIVIC GOVERNMENT (SCOTLAND) ACT 1982 LICENSING OF SHORT-TERM
LETS ORDER 2022
APPLICATION FOR GRANT OF SHORT-TERM LET LICENCE
DARROCH VIEW, 18 BRAEMAR ROAD, BALLATER, AB35 5RL**

1 Executive Summary/Recommendations

1.1 An application for the grant of a Short-Term Let Licence in respect of a secondary let has been received which has attracted an objection from a Member of the Public and so requires the Sub-Committee to determine the application.

1.2 **It is recommended that the Sub-Committee considers the materials before them and –**

1.2.1 As a preliminary matter, determines whether the objection to the application is competent and/or relevant to the application to be determined as outlined at Section 3.9 of the report below;

1.2.1.1 If the objection is found to be neither competent or relevant it cannot be taken into account when determining the application. Therefore, there is no requirement to proceed further with the hearing and the application can be granted.

1.2.1.2 If the objection is found to be competent or relevant then the Sub-Committee should proceed to conduct the hearing as per the procedure set out at Appendix 6 to this Report.

Thereafter the Sub-Committee should –

1.2.2 Determine whether there is enough evidence before the Sub-Committee to allow a determination to be made, or whether the Sub-Committee needs to defer consideration of the matter to the next available meeting; and

1.2.3 Where the Sub-Committee has concluded that there is sufficient evidence before them to allow a determination to be made, to consider whether the application should be granted or refused.

2 Decision-Making Route

2.1 This application has not been presented to the Sub-Committee previously.

3. Discussion

Application

- 3.1 Anne Petersen of The Old Farmhouse, Denside of Durriss, AB31 6DU, submitted an application for the grant of a short-term let licence in respect of premises known as Darroch View, 18 Braemar Road, Ballater, AB35 5RL, on 29th August 2023.
- 3.2 A copy of the summary application form is attached as **Appendix 1** to this Report.

Consultations

- 3.3 The Chief Constable, the Fire Service, Planning Services, Building Standards, were consulted on the application.
- 3.4 None of the consultees had comments to make in respect of the application.
- 3.5 The application and supporting documents have been verified by Environmental Health. An inspection of the premises has been carried out and no issues were identified. Officers will be happy to answer any questions Members may have during the hearing.
- 3.6 At the same time the applicant was required to display a site notice at the premises advising members of the public that an application had been made.
- 3.7 The following objection has been lodged in response to the display of the site notice:
- (a) Diane Mulholland, by letter dated 14th September 2023, received on 15th September 2023
- 3.8 A copy of the objection is attached as **Appendix 2** to this report.
- 3.9 As a Preliminary matter, Members should consider and determine whether the objection is competent and/or relevant. Officers offer the following advice:
- (a) Information relating to building warrants and change of use planning consent are enforceable under the Building Regulations and Planning Legislation and are not matters which the Licensing Authority can take into account when determining this application.
- (b) Noise issues may be relevant to the grounds of refusal for the application. Control of noise is covered in the conditions that will attach to any licence granted by the Committee and the licence holder will require to comply with those conditions in operating their STL Licence.
- (c) Soundproofing of the flat may be relevant but would equally apply to all of the flats contained within the building as a potential solution to noise nuisance. This would apply whether the flats are used for rental or are occupied as residential dwellings.
- (d) Failure to supply signage relating to CCTV is enforceable under data protection legislation and is not a matter that can be considered by the Licensing Authority in determining this application.

- (e) The Licensing Authority has no control over third party websites. The issue regarding the alleged publication of a photograph of the wrong property on a website is a matter that the objector would require to take up directly with the operator of the particular website.
- (f) Impact on neighbours in terms of potential anti-social behaviour may relate to one or more of the grounds of refusal set out in the legal test.
- (g) Parts of the objection may be relevant to protected characteristics. To that end an Integrated Impact Assessment (IIA) has been completed and is referred to at Section 4.5 of this report. This is a material consideration which requires to be considered by the Committee. However, Members should note that the evidence supporting a material consideration must be extensive to outweigh the Committee's statutory duty to determine this application in line with the grounds of refusal set out in the legal test.

It is therefore the view of officers that parts of the objection can be considered competent and relevant.

- 3.10 The objection was intimated to the Applicant by letter dated 9th November 2023.
- 3.11 The Applicant and Objector were requested to attend the meeting on 4th April 2024. All parties were given copies of this Report, the legal background, procedures for remote licensing hearings and the Guidance Document for Applicants and Objectors on procedures for licensing hearings.
- 3.12 All parties have been given the option of participating in the hearing by way of written submission and/or by telephone. Any written submissions will be circulated to Sub-Committee Members and all parties prior to the meeting taking place, where it is possible to do so. Such written submissions will form **Appendix 3** to this report.

Procedure

- 3.13 Each application should be considered on its own merits.
- 3.14 The legal test to be applied is attached as **Appendix 5** to this Report.
- 3.15 Members should follow the procedures set out at **Appendix 6** to this Report.

Options for Disposal

- 3.16 The Sub-Committee's options in disposing of the Application are:
 - (a) To defer consideration of the application to allow further evidence to be provided to the Sub-Committee
 - (b) To grant the licence as applied for subject to standard conditions
 - (c) To grant the licence subject to specific conditions in addition to standard conditions
 - (d) To refuse to grant the licence
- 3.17 When coming to a decision, the Sub-Committee must consider the contents of this report, the evidence heard, and the grounds of refusal outlined in the

Legal Test attached at **Appendix 5**. Supplementary advice and information can be requested, if required.

- 3.18 If the Sub-Committee refuses the application, the same applicant cannot apply again for a period of one year, unless there are material changes in circumstances.

Date by which application must be determined

- 3.19 Section 3 of the Civic Government (Scotland) Act 1982 requires a licensing authority to determine an application within 12 months of the date of receipt of the application.

- 3.20 This application must be determined by **28th August 2024**

Duration of Licence

- 3.21 Where the Committee determines that the application should be granted, Paragraph 8(2) of Schedule 1 to the 1982 Act provides that a licence shall have effect –

- (a) For a period of three years from the date the licence comes into force; or
- (b) for such shorter period as the licensing authority may decide at the time they grant or renew the licence.

4 Council Priorities, Implications and Risk

- 4.1 There are no Council Priorities identified in respect of this matter as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

- 4.2 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

- 4.3 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial		X	
Staffing		X	
Equalities and Fairer Scotland Duty	X		
Children and Young Peoples' Rights and Wellbeing		X	
Climate Change		X	

and Sustainability			
Health and Wellbeing		X	
Town Centre First		X	

4.4 There are no staffing or financial implications relevant to the content of this report.

4.5 An Integrated Impact Assessment (IIA) has been completed following matters potentially relating to protected characteristics being raised within the letter objecting to the grant of the application. The IIA is attached as **Appendix 4** to this report and has highlighted the following impacts:

(a) Potential impact on elderly person residing in neighbouring property and living with dementia

The impacts can be mitigated by ensuring compliance with the mandatory and local conditions that would be attached to a Short-term let licence, if granted by the Committee. The Council, as Licensing Authority, has power to ensure compliance with the terms of the licence. This ensures the business operates in a manner that does not impact on neighbours and gives the Licensing Authority powers to review the licence and consider suspension or revocation should circumstances arise that mean it is appropriate to do so. Not having a licence in place means leave these matters to be settled directly between the owners of the various properties in the building and in the neighbourhood.

5 Scheme of Governance

5.1 The Monitoring Officer within Business Services has been consulted in the preparation of this report and any comments have been incorporated into this report.

5.2 The Business Services Committee is able to consider and take a decision on this item in terms of Section C – Business Services: 1 – Committee Functions: 1.1 (a) of the List of Committee Powers in Part 2A of the Scheme of Governance which enables the Committee to decide on all policy issues and resources matters relating to the Civic Government (Scotland) Act 1982 matters with implications across Area boundaries where objections or observations are received. The Committee determined that the licensing function should be delegated to the Business Services Licensing Sub-Committee.

Alan Wood
Director of Environment and Infrastructure Services

Report prepared by:- Lucas Duncan, Civic Licensing Standards Officer (Protective Services)

Date: 4th April 2024

IDOX Reference: STL/00319/23

- Appendix 1** – Copy Application Form and Related Paperwork
- Appendix 2** – Copy Representation
- Appendix 3** – Written Submissions
- Appendix 4** – Integrated Impact Assessment
- Appendix 5** – Legal Test
- Appendix 6** – Procedure for Remote Licensing Hearings

APPENDIX 1

COPY APPLICATION

New Short-term lets report STL/00319/23

Licence Details	
Are you an existing host, (operating prior to 1st October 2022), or a new host?	Existing
What type of licence are you applying for?	Secondary let licence

Applicant Details	
Forenames	Anne
Surname	Petersen
Address	The Old Farmhouse
Town	Denside of Durris
Postcode	AB31 6DU
Email address	
Telephone number	
Mobile number	
Date of birth	
Place of birth	

Manager Details	
Forename	Anne
Surname	Petersen
Address	The Old Farmhouse
Town	Denside of Durris
Postcode	AB31 6DU
Date of birth	
Place of birth	

Convictions Details	
Has anyone named in this application ever been convicted of any crime or offence? This includes current and spent convictions.	No

Previous Licences Details	
Has anyone named in this application previously held or currently hold a short-term let licence?	No
Has anyone named in this application ever applied for and been refused a short-term let licence or had a short-term let licence suspended or revoked?	No
Has anyone named in this application ever applied for and been refused Landlord Registration or had their Landlord Registration suspended or revoked?	No

Previous Licences Details	
Has anyone named in this application ever applied for and been refused an HMO Licence or had their HMO Licence suspended or revoked?	No

Premises Location	
Address Line 1	18 Darroch View Braemar Road
Address Line 2	
Town	Ballater
Postcode	AB35 5RL

Premises Details	
Type of property	Flat
Is the premises in a rural location?	Yes
Is this licence for multiple units?	No
Does the premises lie within the Cairngorms National Park?	Yes
Please provide details about the location	Ballater
Is the premises connected to public mains or private water supply?	Mains

Occupant Details	
Number of guests	7
Number of bedrooms	4
Does the premises have any communal rooms?	True
Number of occupants the communal rooms can accommodate	
Number of communal rooms, for example living room	1
Do these communal rooms provide sleeping accommodation?	False
Number of bathrooms	3
Number of toilets	3

Amenities and Facilities Details	
What catering options do you offer to your guests?	Self catering
Do you offer any of the following facilities to your guests?	Internal or external LPG or solid fuel appliances such as barbeques, woodburning stoves, patio heaters

Document Upload Details	
Does the property have gas?	No
Do you have a PAT certificate?	Yes
Uploaded Portable Appliance Test Certificate (PAT) name	Summary Test Report Darroch View 202303090935.pdf

Document Upload Details	
Uploaded Electrical Installation Certificate (EICR) name	Ballater EICR 08.03.23.pdf
Uploaded Energy Performance Certificate name	18 Braemar Rd - Ballater Energy report.pdf
Uploaded Public Liability / Property owners' liability Insurance file name	Insurance Summary and Schedule 2022-23 18 Braemar Road, Ballater.pdf
Uploaded Fire safety checklist file name	SFRS Fire Safety checklist 18 Braemar Road.docx
Uploaded details including dimensions of rooms used for sleeping purposes file name	Sales particulars 18 Braemar Road-2.pdf

Declaration	
<p>You must display a public notice for 21 days from the date you submit this application. The notice must be displayed at or near the premises from which activities are to be operated so it can be conveniently read by the public. The notice must to comply with the requirements of Paragraph 2 of Schedule 1 to the Civic Government,(Scotland) Act 1982.</p> <p>After 21 days, you must produce Certificate of Compliance and send it to the council along with a copy of the public notice</p> <p>If unable to display the notice because you do not have rights of access or other rights that would enable you to do so, you must provide details of the reasonable efforts made, without success, to acquire these rights.</p>	
Please declare if you are able to display the public notice	Yes

Application Submitted Date	
Application submitted date	29/08/2023 12:29:12

APPENDIX 2

COPY OF OBJECTION
1. Diane Mulholland

Ms D Mulholland



14th September 2023

Head of Planning & Economy (Environmental Health)
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB513 WA

Dear Madam/Sir

Site Notice – Short-Term Let Licence

Premises: "Darroch View", 18 Braemar Road, Ballater AB35 5RL

Name: Anne Petersen

Reason for objections to application:

1. I have never received notification of any building warrants for the two additional ensuite shower rooms for the bedrooms on the top floor
2. The flat now is open plan kitchen, dining room and lounge as walls have been taken down and therefore this has led to increased noise level and eco effect in the flat
3. The floors in these rooms are all wooden which also adds to the noise level in my flat
4. No notification of change of use from Residential home to rental business
5. Anne Petersen does not live locally and will not respond when I have already had to complain about noise from occupants of the flat over the last 18 months. This includes her own daughter who partied to 3am on one occasion and 1am on another. There have also been golfers who partied to 4am one day and 3am on another. On contacting Anne Petersen regarding noise was told her monitor for noise level did not activate but did at 7pm. Seems to be unavailable after 11pm. There was also an issue with boiler/air lock twice. One of these occasions she advised that the flat was occupied and could not contact the occupants so could not do anything. Only when I advised the occupants had left someone did appear. I have never been advised what the issue was or had an apology for the inconvenience nor for her daughter's partying
6. The last six weeks occupants of the flat have woken myself and my 88-year-old mother on several occasions between 6am and 7:30 AM
7. The property is over 100 years old and was covert to two flats more than 40 years ago and has no sound proofing or sustain the volume of traffic in the flat

8. There is no doorbell so cannot contact occupants if there was an emergency as Anne Petersen does not want me to communicate with the occupants.
9. Safety issue with front windows with children hanging out of them
10. Anne Petersen has CCTV but has no signage
11. Anne Petersen uses "Small Cottages" company to advertise the Flat and states parking for two vehicles; however, the slatted area used to be a grassed garden and there is no hard core to take the weight of the vehicles especially large vehicle i.e. two Range Rovers causing issues with access to lane
12. Anne Petersen is using a photo of my front garden and front door on website instead of photo of her entrance into flat which has caused issues with people thinking they have access to my front garden
13. There is a total lack of consideration and respect shown to myself and my mother as the occupants are on holiday and do not care this is our residential home for the last 20 years

I do not get any relief when on holiday from the occupants. Anne Petersen does not give any consideration to me when I take holidays as I am still working 34 hours a week and full-time career for my mother who has Dementia

I hope you will take seriously my objections and the impact of both me and mother's mental health for what we have already endured since Anne Petersen purchased the property

Your faithfully

A large black rectangular redaction box covering the signature area.

Ms Diane Mulholland

APPENDIX 3

WRITTEN SUBMISSIONS

a) Applicant, Anne Petersen – 09/04/24

a) Written Submission from Applicant, Anne Petersen – 09/04/24

Your Ref: STL/00319/23

Licensing Sub-Committee
Aberdeenshire Council
Environmental and Infrastructure
Environmental Health
Gordon House
Blackhall Road
Inverurie
AB51 3WA

The Old Farmhouse
Denside of Durris
Aberdeenshire
AB31 6DU

9th April 2024

Dear Sirs,
Application for Grant of Short Term Let Licence
Premises: Darroch View, 18 Braemar Road, Ballater, AB35 5RL
Applicant: Anne Petersen

My family has been visiting and staying in Ballater on holiday for over 20 years. I bought the flat in July 2021 for use as a holiday let property and for my family to enjoy now and in the future. The previous owner, Treehouse Properties Ltd., renovated and furnished the flat with the intention of using it as a holiday let property.

Operating the flat as a Short Term Let (STL) has multiple benefits to the local council area and economy. It provides accommodation for tourists, those visiting family who live locally, and for those working in the area. Since 2022, the property has provided suitable accommodation for officers of the Metropolitan Police, who provide security services to the Royal Family when they stay at Balmoral or Birkhall. Operating the flat as a STL benefits the local housekeeper and tradesmen on whom I depend to maintain the property to the required standards.

Prior to 2021, the flat was unoccupied for over a year. Since buying the flat, occupancy levels vary and it is generally unoccupied for several weeks, sometimes months, of the year. When guests are staying at the flat, they tend to be out during the day, or are at work. If the licence were to be refused, and the property reverted to residential accommodation, the occupancy rate and noise levels from the flat would undoubtedly be much higher than they are now as a STL property.

Crucially, should my licence application be refused, the financial impact on me would be significant. I would require to sell the property and, having only recently bought and equipped it, would incur significant financial loss (estimated at £130k) if sold in the current market.

I put a great deal of time and care into running my business and I wish to continue to do so. I hope that the points mentioned above provide Members with some background and context to the objections made to the application. I also hope to demonstrate in my responses to the objections that I am a responsible business owner. I sincerely hope that Members seriously consider my position and grant the licence application to allow me to continue operating my business in Ballater.

I attach as an Appendix (with Enclosures) my written responses to the objections made by Ms. Diane Mulholland on 14th September 2023.

Yours faithfully,

A solid black rectangular box used to redact the signature of Anne Petersen.

Anne Petersen

APPENDIX

Your Ref: STL/00319/23

Applicant's responses to objections

1. I do not consider this objection to be competent or relevant to my application. I note from the Committee Report that Officers advise that information relating to building warrants and change of use planning consent are not matters which the Licensing Authority can take into account when determining this application. I also note from the Committee Report that Planning Services and Building Standards were consulted on this application and had no comments to make in respect of same.
2. The property was renovated by the previous owner. The wooden flooring is not only an attractive feature but is practical and easier to clean than a carpet for use as a STL business. The noise levels with an open plan layout are not considered to be greater than they would have been prior to the renovation.
3. To mitigate any noise issues from the wooden flooring, felt pads have been applied to all dining table and chair legs. In addition, a 200x300cm rug has been placed underneath the dining room table and chairs to further reduce noise levels in that area. There is a similar sized rug in the living area.

A MINUT system was installed over a year ago in the living/dining area to allow me to remotely monitor and control guest noise levels. The system sends me an alert if the noise level exceeds 75 decibels for 10 minutes, the recommended setting by the supplier. I attach an example of the system's noise monitor and information on the MINUT settings.

4. I reiterate my response as above in Point 1.
5. (a) I have responded to all Ms. Mulholland's complaints by various means (e-mail, text, WhatsApp, phone). I attach examples to evidence this.

(b) Since the installation of the MINUT system it has only alerted me once, and I immediately contacted the guest asking them to reduce noise. I also advised Ms. Mulholland of the action taken. I attach email and WhatsApp. correspondence with Ms. Mulholland regarding this.

APPENDIX (continued)

Your Ref: STL/00319/23

Applicant's responses to objections

5. (c) No parties or events are allowed in the property. This is clearly stated both on the Cottages.com website and in the Guest Information folder.

(d) There has been no problem with the boiler (which is serviced annually). The plumber changed some valves which hadn't been fitted properly. I attach email and WhatsApp. correspondence with Ms. Mulholland regarding this.

6. The Guest Information folder asks guests to comply with, inter alia, the following house rules:

Please have consideration for our neighbours and limit noise between the hours of 10pm-8am. A MINUT noise monitor system has been installed to control excessive noise. Due to wooden floors the neighbours who live in the downstairs flat are easily disturbed so please be mindful of this when using the lounge and dining area. Please do not allow children to play noisy games which would annoy the neighbours in the ground flat.

7. I reiterate my response as above in Points 2 and 3 as to the steps undertaken to reduce noise levels in my flat. I note from the Committee Report that any additional soundproofing would equally apply to all flats contained within the building. Residents and guests of buildings which contain multiple flats should expect to hear a degree of noise from the other flat(s) in the same building.
8. In case of an emergency, guests are advised to contact the emergency services. I provided Ms. Mulholland with my contact details. I have repeatedly and politely asked Ms. Mulholland to refrain from contacting guests directly and instead contact myself so I can consider taking any appropriate action. Unfortunately, Ms. Mulholland has, on various occasions, approached my guests to convey her grievances directly.
9. The windows conform to safety standards. Parents/ guardians should supervise any children.

APPENDIX (continued)

Your Ref: STL/00319/23

Applicant's responses to objections

10. I do not consider this objection to be relevant to my application. I note from the Committee Report that Officers advise that CCTV signage is not a matter that can be considered by the Licensing Authority in determining this application. In any event, a GDPR compliant CCTV sign has been placed in the porch window. Guests are also given the option to switch off the CCTV.
11. There is ample parking space for vehicles in my private parking area, which has clear signage. Guests are also advised that they can park in public parking areas. There is no issue whatsoever with restricted access to the lane.
12. The photograph of the property is taken from Braemar Road. Indeed, it is the same photograph used to market the property on ASPC. It is a double upper flat; it would be impossible to take a photograph without it including the ground floor flat. Guests are advised that they do not have access to Ms. Mulholland's garden or property.

I have given Ms. Mulholland and her mother due respect and consideration since buying the property. I acknowledge that Ms. Mulholland's mother is a person with protected characteristics. I hope to have demonstrated in my responses to the objections that I am and encourage guests to be mindful of and respectful towards neighbours, and particularly the residents of the ground floor flat. As previously mentioned, I have also sought to mitigate impacts such as reducing and monitoring noise levels and ensure that the flat is safe and suitable to be used for the purpose of a SLT business.

Enclosures:

1. Email re noise from valves.
2. WhatsApp. messages re noise from valves.
3. Email re noise from guests.
4. WhatsApp. messages re noise from guests.
5. Information re MINUT noise control system settings.
6. Example of MINUT noise control dashboard from MINUT app.

1. Email re noise from valves

From: Anne Petersen [REDACTED]
Subject: Re: Noise
Date: 1 May 2022 at 21:50:37 BST
To: "d.mulholland" [REDACTED]

Hi Diane

Audrey phoned me. I understand she has advised you that she has turned the heating and water system off as a precaution. I will arrange for a plumber to check the system.]

Sorry you and your Mum have been disturbed.

Kind regards

Anne

On 1 May 2022, at 21:27, d.mulholland [REDACTED] wrote:

Hi

No need Audrey came no guests noise stop 21:08 after 1.5 hours. She will contact you.

Sent from my Galaxy

----- Original message -----

From: Anne Petersen [REDACTED]
Date: 01/05/2022 20:56 (GMT+00:00)
To: "d.mulholland" [REDACTED]
Subject: Re: Noise

Hi Diane

I have been unable to contact the guest who is staying there. Sandy will come to the flat this evening to check the situation.

Thanks for letting me know.

Anne

On 1 May 2022, at 20:24, d.mulholland [REDACTED] wrote:

Hi Anne

If u do not call in next 5 min I will no alternative 2 call fire brigade as I do not wish something 2 go on fire. The noise has been going on for more than half hour.

Sent from my Galaxy

From: Anne Petersen [REDACTED]
Subject: Re: Noise
Date: 1 May 2022 at 20:56:15 BST
To: "d.mulholland" [REDACTED]

Hi Diane

I have been unable to contact the guest who is staying there. Sandy will come to the flat this evening to check the situation.

Thanks for letting me know.

Anne

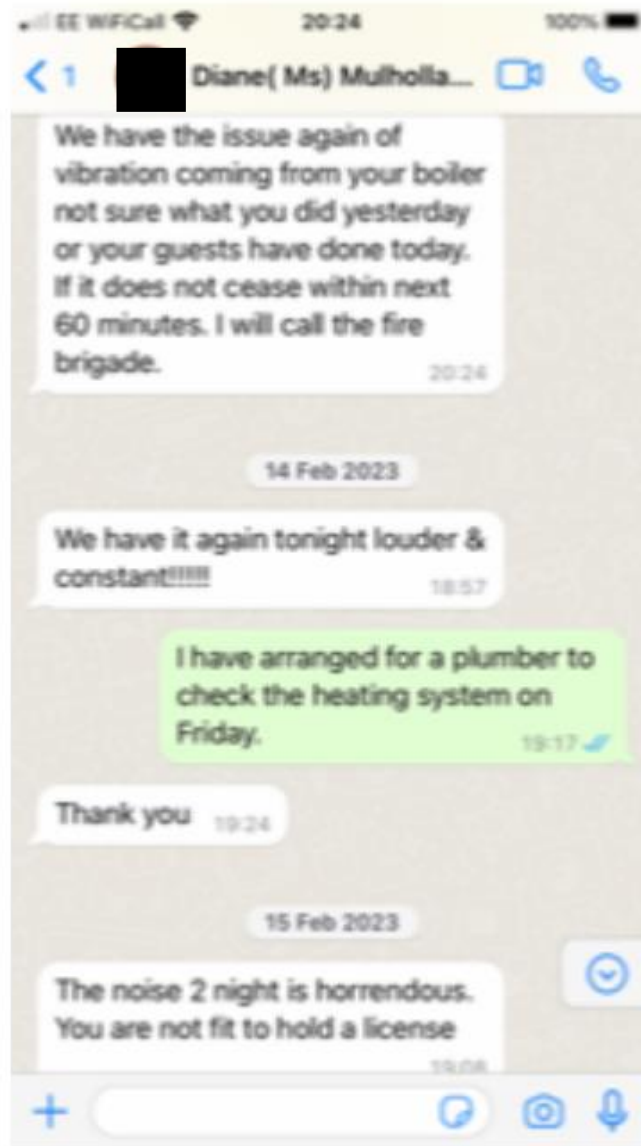
On 1 May 2022, at 20:24, d.mulholland [REDACTED] wrote:

Hi Anne

If u do not call in next 5 min I will no alternative 2 call fire brigade as I do not wish something 2 go on fire. The noise has been going on for more than half hour.

Sent from my Galaxy

2. WhatsApp messages re noise from valves



3. Email re noise from guests

From: Anne Petersen [REDACTED]
Subject: Re: Guests
Date: 15 July 2023 at 19:16:25 BST
To: Diane Mulholland [REDACTED]

Hi Diane

Thanks for your message. I have a noise level monitor which has also alerted me that the noise level has recently been high for a period. I have spoken to the guest who has booked the flat. He has assured me that they are not having a party. They are there for a golfing weekend. I have asked him to tell the group to reduce the noise level. They are going out shortly for a meal and will be playing golf tomorrow. So I hope you won't be disturbed again.

Hope you recover soon from your medical procedure.

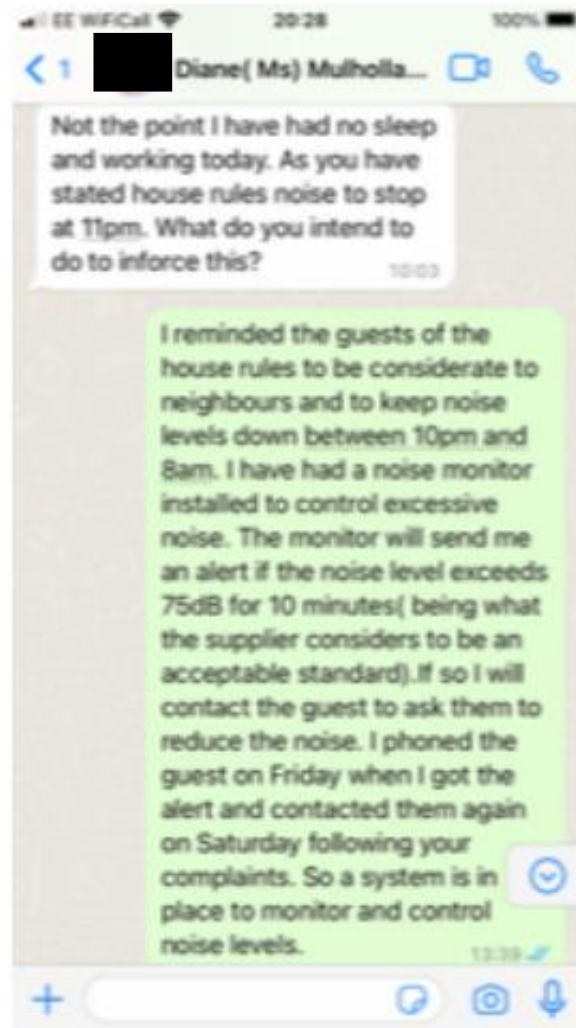
Kind regards

Anne

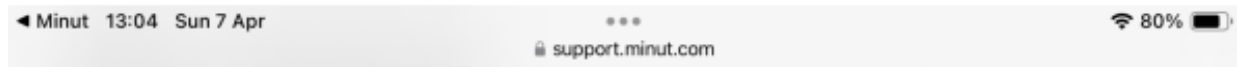
On 15 Jul 2023, at 18:40, Diane Mulholland [REDACTED] wrote:

Hi have just had your guests!!! running down stairs bottle o beer in hand welcoming another guy with more beer. You promised there would be no same sex parties. You need to seriously control your renters.
Sent from my iPhone

4. WhatsApp messages re noise from guests



5. Information re MINUT noise control system settings



Monitor noise levels in a property and get notifications if the level is too high.

Written by Ipti Niskala
Updated over a week ago

Table of contents

With Minut, you can monitor the noise levels in your home and get notifications if the noise level is too high.

How to use noise monitoring

Noise monitoring can be toggled for each added home. Tap the Noise monitoring card to toggle it on



The noise card shows the sound level in the last hour. The dashed red line shows the current noise threshold.

Default thresholds and duration

The first time you turn on sound monitoring, all thresholds and duration levels are set to default values.

Normal hours: 75 dB

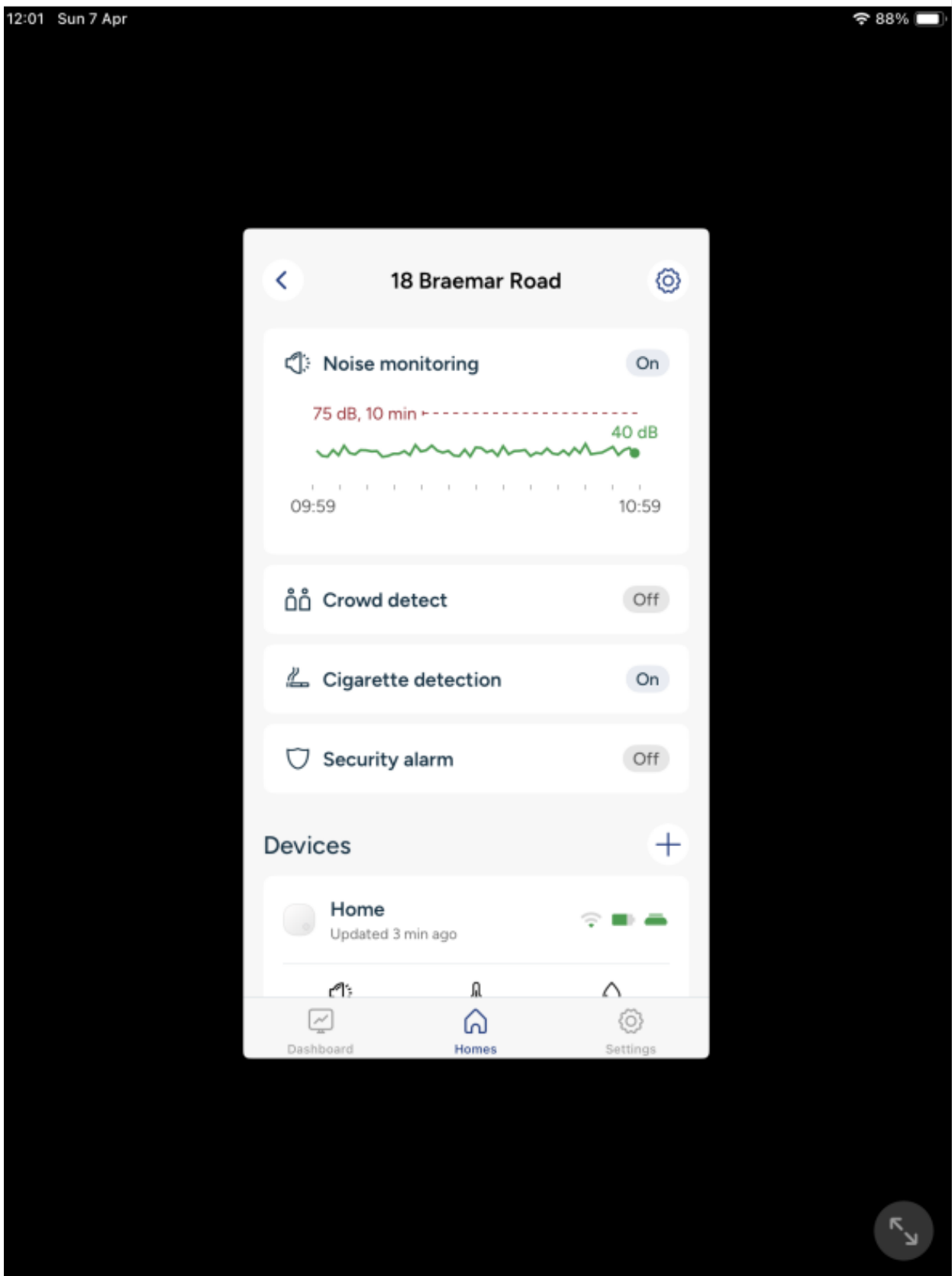
Quiet hours: 70dB

Duration: 10 min

With these values, you will be notified when the noise levels have been higher than 75/70db for more than 10 minutes.



6. Example of MINUT noise control dashboard from MINUT app



APPENDIX 4

INTEGRATED IMPACT ASSESSMENT

Aberdeenshire Council

Integrated Impact Assessment

Representation to Short-Term Let application Reference STL/00319/23

Assessment ID	IIA-001841
Lead Author	Lucas Duncan
Additional Authors	Gordon McWilliam, Shirley Duthie
Service Reviewers	Graham Robertson
Subject Matter Experts	Kakuen Mo, Caroline Hastings, Annette Johnston
Approved By	Paul Macari
Approved On	Thursday January 18, 2024
Publication Date	Friday February 02, 2024

1. Overview

This document has been generated from information entered into the Integrated Impact Assessment system.

Impact on neighboring property occupied by person with dementia

During screening 1 of 10 questions indicated that detailed assessments were required, the screening questions and their answers are listed in the next section. This led to 1 out of 5 detailed impact assessments being completed. The assessments required are:

- Equalities and Fairer Scotland Duty

In total there are 0 positive impacts as part of this activity. There are 2 negative impacts, all impacts have been mitigated.

A detailed action plan with 1 points has been provided.

This assessment has been approved by paul.macari2@aberdeenshire.gov.uk.

The remainder of this document sets out the details of all completed impact assessments.

2. Screening

Could your activity / proposal / policy cause an impact in one (or more) of the identified town centres?	No
Would this activity / proposal / policy have consequences for the health and wellbeing of the population in the affected communities?	No
Does the activity / proposal / policy have the potential to affect greenhouse gas emissions (CO2e) in the Council or community and / or the procurement, use or disposal of physical resources?	No
Does the activity / proposal / policy have the potential to affect the resilience to extreme weather events and/or a changing climate of Aberdeenshire Council or community?	No
Does the activity / proposal / policy have the potential to affect the environment, wildlife or biodiversity?	No
Does the activity / proposal / policy have an impact on people and / or groups with protected characteristics?	Yes
Is this activity / proposal / policy of strategic importance for the council?	No
Does this activity / proposal / policy impact on inequality of outcome?	No
Does this activity / proposal / policy have an impact on children / young people's rights?	No
Does this activity / proposal / policy have an impact on children / young people's wellbeing?	No

3. Impact Assessments

Children's Rights and Wellbeing	Not Required
Climate Change and Sustainability	Not Required
Equalities and Fairer Scotland Duty	All Negative Impacts Can Be Mitigated
Health Inequalities	Not Required
Town Centre's First	Not Required

4. Equalities and Fairer Scotland Duty Impact Assessment

4.1. Protected Groups

Indicator	Positive	Neutral	Negative	Unknown
Age (Younger)		Yes		
Age (Older)			Yes	
Disability			Yes	
Race		Yes		
Religion or Belief		Yes		
Sex		Yes		
Pregnancy and Maternity		Yes		
Sexual Orientation		Yes		
Gender Reassignment		Yes		
Marriage or Civil Partnership		Yes		

4.2. Socio-economic Groups

Indicator	Positive	Neutral	Negative	Unknown
Low income		Yes		
Low wealth		Yes		
Material deprivation		Yes		
Area deprivation		Yes		
Socioeconomic background		Yes		

4.3. Negative Impacts and Mitigations

Impact Area	Details and Mitigation
Age (Older)	<p>Potential impact on elderly person in neighbouring property living from dementia</p> <p>Can be mitigated Yes</p> <p>Mitigation Should a short-term let licence be granted this affords the LA greater control over how the property is operated via licence conditions and the licensing authority also has powers to consider suspension and revocation in appropriate circumstances. This should minimise or remove any potential impact on neighbouring properties.</p> <p>Timescale Ongoing during the life time of the licence</p>

Impact Area	Details and Mitigation
Disability	<p>Impact on elderly person living in neighbouring property living with dementia</p> <p>Can be mitigated Yes</p> <p>Mitigation Should a short-term let licence be granted this affords the LA greater control over how the property is operated via licence conditions and the licensing authority also has powers to consider suspension and revocation in appropriate circumstances. This should minimise or remove any potential impact on neighbouring properties.</p> <p>Timescale Ongoing during the life time of the licence</p>

4.4. Evidence

Type	Source	It says?	It Means?
External Data	Representation from a neighbouring property	It identifies an elderly person living with dementia residing in the property who is potentially being affected by noise and disturbance.	Noise and disturbance relates to one of the grounds of refusal contained in the legal test which requires to be considered by the licensing authority.
Internal Data	Aberdeenshire STL licensing policy	This document sets out requirements for properties seeking an STL licence together with the mandatory and local conditions which will apply.	This policy and conditions are designed to minimise the impact of the operation of an STL business on neighbouring properties while ensuring that the STL property is safe and suitable to be used for that purpose.

4.5. Engagement with affected groups

Statutory consultation and display of a site notice.

4.6. Ensuring engagement with protected groups

Statutory consultation covers all members of the public including those with protected characteristics.

4.7. Evidence of engagement

None. This is a quasi-judicial matter. The application and representation must be considered on their own merits

4.8. Overall Outcome

All Negative Impacts Can Be Mitigated.

Application is being considered in line with the statutory requirements and terms of the legal test

set out in the Act. This IIA is a material consideration but the legal test has primacy.

4.9. Improving Relations

N/A

4.10. Opportunities of Equality

N/A

5. Action Plan

Planned Action	Details												
Monitoring of the licence if granted, during its lifetime to ensure compliance with the terms of the licence and the conditions attached.	<table><tr><td data-bbox="654 459 869 492">Lead Officer</td><td data-bbox="869 459 1335 492">Lucas Duncan</td></tr><tr><td data-bbox="654 492 869 526">Repeating Activity</td><td data-bbox="869 492 1335 526">No</td></tr><tr><td data-bbox="654 526 869 560">Planned Start</td><td data-bbox="869 526 1335 560">Friday February 02, 2024</td></tr><tr><td data-bbox="654 560 869 593">Planned Finish</td><td data-bbox="869 560 1335 593">Monday February 01, 2027</td></tr><tr><td data-bbox="654 593 869 660">Expected Outcome</td><td data-bbox="869 593 1335 660">Full compliance with the licence.</td></tr><tr><td data-bbox="654 660 869 728">Resource Implications</td><td data-bbox="869 660 1335 728">To be met within approved budgets.</td></tr></table>	Lead Officer	Lucas Duncan	Repeating Activity	No	Planned Start	Friday February 02, 2024	Planned Finish	Monday February 01, 2027	Expected Outcome	Full compliance with the licence.	Resource Implications	To be met within approved budgets.
Lead Officer	Lucas Duncan												
Repeating Activity	No												
Planned Start	Friday February 02, 2024												
Planned Finish	Monday February 01, 2027												
Expected Outcome	Full compliance with the licence.												
Resource Implications	To be met within approved budgets.												

APPENDIX 5 – LEGAL TEST

**Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets)
Order 2022 (as amended)
Section 44 and Schedule 1 of the Civic Government (Scotland) Act 1982
Applications for Short-Term Let Licences**

2. LEGAL TEST

A **Licensing authority SHALL** refuse an application to grant or renew a licence if, in their opinion:

- a. The applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either –
 - i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
 - ii. Not a fit and proper person to be the holder of the licence
- b. The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if they made the application themselves;
- c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
 - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
 - ii. The nature and extent of the proposed activity
 - iii. The kind of persons likely to be in the premises, vehicle or vessel
 - iv. The possibility of undue public nuisance; or
 - v. Public order or public safety;
- d. the applicant would not be able to secure compliance with –
 - i. the mandatory licence conditions,
 - ii. the standard conditions and any further conditions,
- e. the application does not contain the information required under paragraph 1(2), (da)¹, or (db)² (the consent of the owners of the premises), or
- d. There is other good reason for refusing the application;

And otherwise **SHALL** grant the application.

¹ Where the applicant is not the owner of the premises, or the land on which the premises are located – (i) the name and address of the owner (or, as the case may be, each owner), and (ii) a declaration from the owner (or, as the case may be, each owner), or a person authorised to act on their behalf, that they consent to the application.

² Where the applicant shares ownership of the premises, or the land on which the premises are located – (i) the name and address of each other owner, and (ii) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application.

1. In terms of Article 4 (1) of the above Order, a licence known as a **short-term let licence**, **SHALL** be required for the use of premises as a short term-let, accommodation that is on a single premises requires only one short term licence.
2. Article 3, states that a “**short-term let**” means the use of residential accommodation provided by the host in the course of a business to a guest, where all of the following criteria are met:
 - a. the guest does not use the accommodation as their only or principal home,
 - b. the short-term is entered into for commercial consideration,
 - c. the guest is not –
 - (i) an immediate family member of the host,
 - (ii) sharing the accommodation with the host for the principal purpose of advancing the guest’s education as part of an arrangement made or approved by a school, college or further or higher educational institution, or
 - (iii) an owner or part-owner of the accommodation,
 - d. the accommodation is not provide for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host’s household,
 - e. the accommodation **is not excluded accommodation**.
In terms of Schedule 1, Paragraph 1 of the Order, excluded accommodation means accommodation which is, or is part of –
 - (i) an aparthotel³,
 - (ii) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
 - (iii) a hotel which has planning permission granted for use as a hotel,
 - (iv) a hostel⁴,
 - (v) residential accommodation where personal care⁵ is provided to residents,
 - (vi) a hospital or nursing home,
 - (vii) a residential school, college or training centre,
 - (viii) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, short-term holding centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),

³ ‘aparthotel’ means a residential building containing serviced apartments where – (a) the whole building is owned by the same person, (b) a minimum number of 5 serviced apartments are managed and operated as a single business, (c) the building has a shared entrance for the serviced apartments and (d) the serviced apartments do not share an entrance with any other flat or residential unit within the building – ‘serviced apartment’ means a flat or residential unit in respect of which - (a) services are provided to guests (such as housekeeping, a telephone desk, reception, or laundry), (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units.

⁴ ‘hostel’ means a building, other than a dwellinghouse, in which there is provided for persons generally or for any class or classes of persons – (a) residential accommodation, and (b) either or both – (i) meals, (ii) cooking facilities.

⁵ ‘personal care’ has the same meaning as in the paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010.

- (ix) a refuge⁶,
- (x) student accommodation⁷,
- (xi) accommodation which otherwise requires a licence for use for hire for overnight stays (does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006),
- (xii) accommodation which provided by the guest,
- (xiii) accommodation which is capable, without modification, of transporting guests to another location,
- (xiv) a bothy⁸, or
- (xv) accommodation owned by an employer and provided to an employee in terms of a contract of employment for the better performance of the employee's duties.

f. The short-term let **does not constitute an excluded tenancy.**

In terms of Schedule 1, Paragraph 2 of the Order, an excluded tenancy means a tenancy within any of the following definitions –

- (i) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984),
- (ii) an assured tenancy (within the meaning of section 12 of the ... Act 1988),
- (iii) a short assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988),
- (iv) a tenancy of a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993),
- (v) a tenancy of holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland) Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
- (vi) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001),
- (vii) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001),
- (viii) a 1991 tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003),
- (ix) a limited duration tenancy (within the meaning of section 5A of the Agricultural Holdings (Scotland) Act 2003),
- (x) A short limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003),
- (xi) a tenancy under a lease which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003),
- (xii) a private residential tenancy (within the meaning of section 1 of the Housing (Tenancies) (Scotland) Act 2016),
- (xiii) a student residential tenancy⁹.

⁶ 'refuge' means accommodation used wholly or mainly for persons who have been subject to any incident or pattern of incidents, of – (a) controlling, coercive or threatening behaviour, (b) physical violence, (c) abuse of any other description (whether physical or mental in nature), or (d) threats of any such violence or abuse.

⁷ 'student accommodation' means residential accommodation which has been built or converted predominately for the purpose of being provided to students.

⁸ 'bothy' means a building of no more than two storeys which (a) does not have any form of – (i) mains electricity, (ii) piped fuel supply, and (iii) piped mains water supply, (b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984), and (c) is 100 metres or more from the nearest habitable building.

3. Section 3B (1) of the Civic Government (Scotland) Act 1982, states that, a **licensing authority, MAY** attach standard conditions to a short-term let licence, however, these **MUST NOT** impose a limit on the number of nights for which premises may be used for secondary letting¹⁰.
4. A **licensing authority, SHALL NOT**, in a case where a certificate falls to be submitted to them (in relation to the display of a site notice) reach a final decision on an application to which the certificate relates until it has been so submitted.

⁹ 'student residential tenancy' means a tenancy – (a) for the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student and (b) to which sub-paragraph (2) or (3) of schedule 1 (tenancies which cannot be private residential tenancies) of the Housing (Tenancies) (Scotland) Act 2016 applies).

¹⁰ 'secondary letting' means a short-term let consisting of the entering into an agreement for the use of accommodation which is not, or is not part of, the licence holder's only or principal home.

APPENDIX 6 – Procedure for remote Licensing Hearings (APPLICATIONS)

- (a) Identify whether the applicant and his/her advisors are present.
- (b) Identify whether the Objector(s) and his/her advisors are present. [in turn]
- (c) If there are no protected convictions, go to (h) below.

PROTECTED CONVICTIONS

- (d) Where the applicant has protected convictions the Chair should:-
 - (i) Invite the representative of the Chief Constable to satisfy the Sub-Committee that justice cannot be done unless the protected convictions are taken into account. (In the undernoted case, it is indicated that it would be improper to invite the applicant to make comment on the spent convictions)
 - (ii) The Chair should invite members of the Sub-Committee to ask questions;

NOTE: In the case of O'Docherty v Renfrewshire Council 1998 SLT 327, it is suggested that “at the least some sort of inquiry as to the age and general nature of the convictions would be essential to any proper decision.

- (e) The Sub-Committee then has to determine whether or not it is satisfied that there is no other way of doing justice than to look at the protected convictions in considering the application. The Sub-Committee **MAY** go into private session to consider the submissions made. It is recommended, however, that the Sub-Committee not reach any decision during the retreat.

NOTE TO PARTIES

If the Sub-Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to reinvite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (f) Thereafter, the Chair should:
 - (i) Call for a motion regarding the protected convictions
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Chair should confirm with the Sub-Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (g) If the Sub-Committee has determined to consider the protected convictions, they will then be circulated to Members separately by email for the Sub-Committee's perusal.

NOTE FOR PARTIES

Where the hearing is in public, the recording of the meeting will be paused until the Chair is satisfied that all members have read and understood the document circulated, at which point the recording will be restarted

THEREAFTER:

- (h) Invite the applicant to speak to his application (outline to the Sub-Committee why the application has been made and make any comments in relation to any observation/objection made in respect of the application)
- (i) Ask the Objector(s) to speak to the Objection(s) or Observation(s) [in turn]
- (j) Give the applicant an opportunity to address any issues raised by the Objector(s).

NOTE TO PARTIES

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof;**
 - **Cross Examination by the parties is not generally permitted**
 - **Hearsay evidence is admissible.**
- (k) Members MAY then question all parties present.
 - (l) Chair should invite concluding remarks (objector(s) then applicant), but no new evidence, before considering the application.

NOTE TO PARTIES

Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Sub-Committee Member.

- (m) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

NOTE TO PARTIES

If the Sub-Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to re-invite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (n) Thereafter, the Chair should confirm with Members that they have sufficient evidence upon which to make a decision.

- If the Sub-Committee determines that there is not sufficient evidence upon which to make a decision, the application will be **deferred** to a future meeting of the Committee for further evidence to be obtained.
 - If the Sub-Committee determines that there is sufficient evidence upon which to make a decision, the Chair will then:
 - (i) Call for a motion
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Chair should confirm with the Sub-Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (o) The Legal Officer will confirm the decision taken by the Sub-Committee

NOTE TO PARTIES

The parties will then be asked to leave the meeting, failing which the Committee Officer will remove the parties from the meeting.



REPORT TO BUSINESS SERVICES' LICENSING SUB-COMMITTEE – 19th April 2024

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982
CIVIC GOVERNMENT (SCOTLAND) ACT 1982 LICENSING OF SHORT-TERM LETS ORDER 2022
APPLICATION FOR GRANT OF SHORT-TERM LET LICENCE
2 DUNNOTTAR SQUARE, STONEHAVEN, AB39 3UJ**

1 Executive Summary/Recommendations

1.1 An application for the grant of a Short Term Let Licence in respect of a secondary let has been received which has attracted objections from Members of the Public and so requires the Sub-Committee to determine the application.

1.2 It is recommended that the Sub-Committee considers the materials before them and –

1.2.1 As a preliminary matter, determines whether the objections to the application are competent and/or relevant to the application to be determined as outlined at Section 3.8 of the report below;

1.2.1.1 If all of the objections are found to be neither competent or relevant, part, they cannot be taken into account when determining the application. Therefore, there is no requirement to proceed further with the hearing and the application can be granted.

1.2.1.2 If any or all of the objections are found to be competent or relevant, then the Sub-Committee should proceed to conduct the hearing as per the procedure set out at Appendix 5 to this Report.

Thereafter the Sub-Committee should –

1.2.2 Determine whether there is enough evidence before the Sub-Committee to allow a determination to be made, or whether the Sub-Committee needs to defer consideration of the matter to the next available meeting; and

1.2.3 Where the Sub-Committee has concluded that there is sufficient evidence before them to allow a determination to be made, to consider whether the application should be granted or refused.

2 Decision-Making Route

2.1 This application has not been presented to the Sub-Committee previously.

3. Discussion

Application

- 3.1 Raymond Edward Garden of 57/3 Mao8, Tambon Pho Sam Ton, Aomphur Bang Pahan, Ayutthaya, 13220, Thailand, submitted an application for the grant of a short-term let licence in respect of premises known as 2 Dunnottar Square, Stonehaven, AB39 3UJ, on 25th September 2023.
- 3.2 A copy of the summary application form is attached as **Appendix 1** to this Report.

Consultations

- 3.3 The Chief Constable, the Fire Service, Planning Services, Building Standards, were consulted on the application.
- 3.4 None of the consultees had comments to make in respect of the application.
- 3.5 At the same time the applicant was required to display a site notice at the premises advising members of the public that an application had been made.
- 3.6 The following objections have been lodged in response to the display of the site notice:
- (a) Anthony and Mary Ray, by letter dated 13th October 2023
 - (b) David and Jayne Thurley, by letter dated 13th October 2023
 - (c) Graham Wark, by letter dated 16th October 2023
 - (d) John and Veronica Robertson, by letter dated 14th October 2023
 - (e) Richard Turnbull, by letter date 13th October 2023
- 3.7 Copies of the objections are attached as **Appendix 2** to this report.
- 3.8 As a Preliminary matter, Members should consider and determine whether the Objections are competent and/or relevant. Officers offer the following advice:

a. Objection from Anthony and Mary Rae

1. Restrictions in Title Deeds are a separate legal matter which cannot be considered by the Licensing Authority in determining the application.
2. Issues relating to common ground are a separate legal matter which cannot be considered by the Licensing Authority in determining the application.
3. Issues relating to inconvenience are potentially relevant to the legal test.
4. Issues relating to recycling and bins are potentially relevant to the legal test.

b. Objection from David and Jane Thurley

1. Issues relating to inconvenience are potentially relevant to the legal test.
2. Issues relating to volume of cars are not relevant to the legal test and cannot be considered by the Licensing Authority in determining the application.

3. Issues relating to common ground are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.
4. Impact on the value and saleability of properties in the vicinity of the application premises cannot be considered by the Licensing Authority in determining the application.
5. Issues relating to display of the site notice were remedied by the Licensing Authority requiring the applicant to redisplay it in 2023.

c. Objection from Graham Wark

1. Issues relating to parking are not relevant to the legal test and cannot be considered by the Licensing Authority in determining the application.
2. Issues relating to encroachment on neighbouring gardens are potentially relevant to the legal test.
3. Issues relating to the sewerage system are not relevant to the legal test and cannot be considered by the Licensing Authority in determining the application.
4. Issues relating to nuisance are potentially relevant to the legal test.

d. Objection from John and Veronica Robertson

1. Issues relating to display of the site notice were remedied by the Licensing Authority requiring the applicant to redisplay it in 2023.
2. Issues relating to parking are not relevant to the legal test and cannot be considered by the Licensing Authority.
3. Issues relating to common ground and amenities are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.
4. Issues relating to nuisance are potentially relevant to the legal test.

e. Objection from Richard Turnbull

1. Issues related to display of the site notice were remedied by the Licensing Authority requiring the applicant to redisplay it in 2023.
2. Issues relating to public nuisance are potentially relevant to the legal test.
3. Issues relating to vehicles are not relevant to the legal test and cannot be considered by the Licensing Authority in determining the application.
4. Issues relating to Title Deed restrictions are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.
5. Issues relating to common ground and amenities are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.

3.9 The objections were intimated to the Applicant by letter dated 22nd November 2023.

3.10 The Applicant and Objectors were requested to attend the meeting on 4th April 2024. All parties were given copies of this Report, the legal background, procedures for remote licensing hearings and the Guidance Document for Applicants and Objectors on procedures for licensing hearings.

- 3.11 All parties have been given the option of participating in the hearing by way of written submission and/or by telephone. Any written submissions will be circulated to Sub-Committee Members and all parties prior to the meeting taking place, where it is possible to do so. Such written submissions will form **Appendix 3** to this report.

Procedure

- 3.12 Each application should be considered on its own merits.
- 3.13 The legal test to be applied is attached as **Appendix 4** to this Report.
- 3.14 Members should follow the procedures set out at **Appendix 5** to this Report.

Options for Disposal

- 3.15 The Sub-Committee's options in disposing of the Application are:
- (a) To defer consideration of the application to allow further evidence to be provided to the Sub-Committee
 - (b) To grant the licence as applied for subject to standard conditions
 - (c) To grant the licence subject to specific conditions in addition to standard conditions
 - (d) To refuse to grant the licence
- 3.16 When coming to a decision, the Sub-Committee must consider the contents of this report, the evidence heard, and the grounds of refusal outlined in the Legal Test attached at **Appendix 4**. Supplementary advice and information can be requested, if required.
- 3.17 If the Sub-Committee refuses the application, the same applicant cannot apply again for a period of one year, unless there are material changes in circumstances.

Date by which application must be determined

- 3.18 Section 3 of the Civic Government (Scotland) Act 1982 requires a licensing authority to determine an application within 12 months of the date of receipt of the application.
- 3.19 This application must be determined by **24th September 2024**

Duration of Licence

- 3.20 Where the Committee determines that the application should be granted, Paragraph 8(2) of Schedule 1 to the 1982 Act provides that a licence shall have effect –
- (a) For a period of three years from the date the licence comes into force; or
 - (b) for such shorter period as the licensing authority may decide at the time they grant or renew the licence.

4 Council Priorities, Implications and Risk

- 4.1 There are no Council Priorities identified in respect of this matter as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.
- 4.2 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.
- 4.3 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial		X	
Staffing		X	
Equalities and Fairer Scotland Duty		X	
Children and Young Peoples' Rights and Wellbeing		X	
Climate Change and Sustainability		X	
Health and Wellbeing		X	
Town Centre First		X	

- 4.4 There are no staffing or financial implications relevant to the content of this report.
- 4.5 An Integrated Impact Assessment (IIA) is not needed in this case as the Committee is considering this application as licensing authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation. This application does not engage any of the areas included as part of the IIA.

5 Scheme of Governance

- 5.1 The Monitoring Officer within Business Services has been consulted in the preparation of this report and any comments have been incorporated into this report.
- 5.2 The Business Services Committee is able to consider and take a decision on this item in terms of Section C – Business Services: 1 – Committee Functions: 1.1 (a) of the List of Committee Powers in Part 2A of the Scheme of Governance which enables the Committee to decide on all policy issues and resources matters relating to the Civic Government (Scotland) Act 1982 matters with implications across Area boundaries where objections or observations are received. The Committee determined that the licensing

function should be delegated to the Business Services Licensing Sub-Committee.

Alan Wood
Director of Environment and Infrastructure Services

Report prepared by:- Gordon McWilliam, Civic Licensing Standards Officer
(Protective Services)

Date: 18th March 2024

IDOX Reference: STL/00756/23

Appendix 1 – Copy Application Form and Related Paperwork

Appendix 2 – Copy Representation

Appendix 3 – Written Submissions

Appendix 4 – Legal Test

Appendix 5 – Procedure for Remote Licensing Hearings

APPENDIX 1

COPY APPLICATION



**The Civic Government (SCOTLAND) ACT 1982
(Licensing of Short-Term Lets) Order 2022
Application for the Grant of a Licence for a Short -Term Let**

For office use only (Form STL/1)

First or further application	
Ref No	
Date Registered	
Fee / Receipt No	

Answer questions 1 and 2 followed by **either** question 3 or question 4 and all other questions

1. (a) Type of Licence required: (Definition of Licence types are defined within the guidance notes) Please tick.	Secondary Let Licence	<input checked="" type="checkbox"/>
	Home Let Licence	<input type="checkbox"/>
	Home Share Licence	<input type="checkbox"/>
	Home Let & Home Share Licence	<input type="checkbox"/>
(b) Are you an existing host (operating prior to 1 st October 2022) or a new host?	Existing <input checked="" type="checkbox"/> New <input type="checkbox"/>	
2. Name (if any) and address of premises for which a licence is required (hereinafter called "the premises"). For premises with multiple units (e.g., yurts or lodges) please advise on each unit and supply a site plan.	2 DUNNOTTAR SQUARE STONEHAVEN Post Code:	
3. TO BE COMPLETED IF THE APPLICANT IS AN INDIVIDUAL (if a company please go to Q4)		
a) Full Name (block letters) (NB: The applicant must be the owner of the building and details of all owners must be provided)	Surname	Christian Name(s)
	1. GARDEN 2.	RAYMOND EDWARD
b) Home Address	57/3 MAO 8 TAMBON PHO SAM TON KOMPON BANG PAHAN, AYUTTHAYA Post Code: 13220 THAILAND	
c) Email address		
d) Telephone Number / Mobile		
e) Age, Date & Place of Birth		

<p>f) Is applicant to carry out day to day supervision of the Premises to be licensed?</p> <p>If no, do you employ a manager or agent? Give full name & address, date of birth and place of birth of any manager or agent.</p>	<p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>SHARON GARDEN 11 WEST PARK CRESCENT INVERBERGIE, MONTROSE DD10 0TX [REDACTED]</p>													
<p>Telephone Number / Email</p>	<p>[REDACTED]</p>													
<p>4. TO BE COMPLETED IF APPLICANT IS A COMPANY OR PARTNERSHIP</p>														
<p>a) Full Name of Company or Partnership</p>	<p></p>													
<p>b) Address of Principal or Registered Office</p>	<p></p>													
<p>c) Telephone Number</p>	<p></p>													
<p>d) Email address</p>	<p></p>													
<p>e) Full names, addresses, dates & places of birth of company directors, partners or other persons responsible for management of the company (use separate sheet if required)</p>	<p></p>													
<p>f) Full name, address, place and date of birth of the director or employee responsible for the day-to-day supervision of the premises to be licensed</p>	<p></p>													
<p>5. Type of Property</p>														
<p>Please select the type of property:</p>	<table border="0"> <tr> <td>Detached House</td> <td><input type="checkbox"/></td> <td rowspan="6"> <p>Details:</p> <p>2 BEDROOMS 1 LIVING ROOM 1 KITCHEN 1 TOILET 1 BATHROOM FRONT & REAR ENTRANCE</p> </td> </tr> <tr> <td>Semi-detached house</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Terraced House</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Flat</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Unconventional accommodation</td> <td><input type="checkbox"/></td> </tr> <tr> <td>(Please specify)</td> <td></td> </tr> </table>	Detached House	<input type="checkbox"/>	<p>Details:</p> <p>2 BEDROOMS 1 LIVING ROOM 1 KITCHEN 1 TOILET 1 BATHROOM FRONT & REAR ENTRANCE</p>	Semi-detached house	<input type="checkbox"/>	Terraced House	<input checked="" type="checkbox"/>	Flat	<input type="checkbox"/>	Unconventional accommodation	<input type="checkbox"/>	(Please specify)	
Detached House	<input type="checkbox"/>	<p>Details:</p> <p>2 BEDROOMS 1 LIVING ROOM 1 KITCHEN 1 TOILET 1 BATHROOM FRONT & REAR ENTRANCE</p>												
Semi-detached house	<input type="checkbox"/>													
Terraced House	<input checked="" type="checkbox"/>													
Flat	<input type="checkbox"/>													
Unconventional accommodation	<input type="checkbox"/>													
(Please specify)														

6. Location of Property / Water Supply			
a) Does the property lie within a National Park? If yes, provide details b) Is the property connected to public mains or private water supply?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Details:
	Mains <input checked="" type="checkbox"/>	Private <input type="checkbox"/>	
7. Number of Occupants (for multiple units requiring one licence, please advise on the total number of persons the licence will relate to)			
a) Total number of guests to be accommodated at any one time		5	
b) Total number of owner/s family normally resident at any one time (home sharing only)		0	
8. Number of Rooms (for multiple units requiring one licence e.g. lodges, please list the rooms per unit e.g. lodge 1 - 2 bedrooms etc)			
a) Number of bedrooms providing sleeping accommodation		2 BEDROOMS	
b) Number of bathrooms or separate toilets (including any en-suite)		Bathrooms 1	Toilets 1
c) Number of communal rooms e.g., living room		1	
d) Do these common rooms provide sleeping accommodation? Y or N If Yes, for how many occupants?		No	
9. What Catering Arrangements are provided to guests?		select one option below	
a) Bed and Breakfast accommodation		<input type="checkbox"/>	
b) Full Board accommodation		<input type="checkbox"/>	
c) Self Catering accommodation with kitchen for guest use		<input checked="" type="checkbox"/>	
d) No catering facility		<input type="checkbox"/>	
10. Has/Have the applicant(s) or any other person named in this application ever been convicted of any crime or offence, (This includes current and spent convictions)? (Enter YES or NO only)		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

<p>11.</p> <p>(a) Has the applicant or any person named in section 3 or 4 above previously held or currently hold a Short-Term Let Licence?</p> <p>If YES: -</p> <p>(i) Which Council granted the Licence?</p> <p>(ii) What was the licence number, date of grant and date of expiry?</p> <p>(b) Has the applicant or any person named in section 3 or 4 above ever applied for and been refused a Short-Term Let Licence or had a Short-Term Let Licence suspended or revoked?</p> <p>If YES: -</p> <p>(i) Which Council refused, suspended or revoked the Licence?</p> <p>(ii) When was the Licence refused, suspended or revoked?</p> <p>(c) Has the applicant or any person named in section 3 or 4 above ever applied for and been refused Landlord Registration or had their Landlord Registration suspended or revoked?</p> <p>If YES: -</p> <p>(i) Which Council refused, suspended or revoked the Registration?</p> <p>(ii) When was the Registration refused, suspended or revoked?</p> <p>(d) Has the applicant or any person named in section 3 or 4 above ever applied for and been refused an HMO Licence or had an HMO Licence suspended or revoked?</p> <p>If YES: -</p> <p>(i) Which Council refused, suspended or revoked the Licence?</p> <p>(ii) When was the Licence refused, suspended or revoked?</p>	<p>YES / NO</p> <p>(i)</p> <p>(ii)</p> <p>YES / NO</p> <p>(i)</p> <p>(ii)</p> <p>YES / NO</p> <p>(i)</p> <p>(ii)</p> <p>YES / NO</p> <p>(i)</p> <p>(ii)</p>
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<p>12. Are any of the following facilities available to the guests or included as part of the accommodation booking?</p> <p><i>Please tick where appropriate</i></p> <p>(a) Hot tub</p> <p>(b) Swimming pool</p> <p>(c) Sauna</p> <p>(d) Sun Bed</p> <p>(e) Sports equipment such as Bicycles; watercraft; skis/snowboards</p> <p>(f) Outdoor play equipment</p> <p>(g) Internal / external LPG or solid fuel appliances such as BBQ; woodburning stove; patio heater</p>	<p>a) <input type="checkbox"/></p> <p>b) <input type="checkbox"/></p> <p>c) <input type="checkbox"/></p> <p>d) <input type="checkbox"/></p> <p>e) <input type="checkbox"/></p> <p>f) <input type="checkbox"/></p> <p>g) <input type="checkbox"/></p>
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When completed, this form should be lodged with: STL@aberdeenshire.gov.uk or posted to -

The Head of Planning and Economy
(Environmental Health)
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3WA

For an application to be considered, the form must be completed, both declarations must be completed and signed and submitted along with the necessary documents, as stated below –

Checklist		To Follow (provide date)
Please enclose the following: -		
Application form	✓	
Gas Certificate (if applicable)	✓	
Electrical Installation Certificate (EICR)	✓	
Portable Appliance Test Certificate (PAT)	✓	
Public Liability / Property owners' liability Insurance	✓	+RECEIPT
Energy Performance Certificate (conventional secondary lets only)	✓	
SFRS Checklist and Fire Risk Assessment (this will be passed to the fire service)	✓	
Location and/or site plan for rural premises with multiple units (if applicable)		
Details including dimensions of rooms used for sleeping purposes	✓	5M x 4.4M 5m x 3.1M
Wholesome Private Water Supplies – evidence of satisfactory results within the last 12 months (if applicable)		
Has the correct fee been submitted? Please provide receipt number if known	Yes / No	Receipt No.
Site Notice to be displayed for 21 days from the date of this application	Yes / No	
Do not return the 21-day notice or the compliance certificate with this application.		

GDPR

The applicant, and, where the applicant is a company, business or other body or any person who has supplied personal information as part of this application **MUST READ AND UNDERSTAND THE ATTACHED PRIVACY NOTICE.**

Aberdeenshire Council will manage your personal data in accordance with the requirements set out in the General Data Protection Regulations 2018 (GDPR). The attached Privacy Notice provides further information about this. **Please retain the Privacy Notice**

Any person who in connection with the making of this application makes any statement which he/she knows to be false or recklessly makes any statement which is false in a material shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £2500.

Please complete, date and sign the above 'display of public notice' declaration and read the attached Privacy Notice before dating and signing page 5 and returning your application form.

Date: 25/09/23

Signature of

Applicant/Agent: S. GARDEN

Address of Agent (if any): 11 WEST PARK
CRESCENT
INVERSLIVIE DD10 0TX

Position of Applicant in the Company or other MANAGER

Organisation if not otherwise stated:

Failure to give the above consents will mean the application cannot be processed and a licence cannot be granted.

IF YOU HAVE ANY QUERIES REGARDING COMPLETION OF THIS FORM, OR REQUIRE FURTHER ASSISTANCE, PLEASE CONTACT:

Aberdeenshire Council, Environmental Health Service, Tel: 01467 539039 or email: STL@aberdeenshire.gov.uk

DISPLAY OF PUBLIC NOTICE DECLARATION

*[A] I/We declare that I/we shall for a period of 21 days from this date, display at or near the premises from which the activity or activities is/are to be operated so that it can be conveniently read by the public, a Notice complying with the requirements of Paragraph 2 of Schedule 1 to the Civic Government (Scotland) Act 1982. Once the 21-day period has expired, I/We will produce to the Council a Certificate of Compliance together with a copy of the Notice (see [B] of the Appendix).

Or

*[B] I/We declare that I am/we are unable to display a Notice complying with the requirements of Paragraph 2 of Schedule 1 to the Civic Government (Scotland) Act 1982 at or near the premises from which the activity or Activities is/are to be operated because I/we have no rights of access or other rights enabling me/us to do so, but I/we have taken the following steps to acquire the necessary rights without success, namely: (see [C] of the Appendix) {continue on a separate sheet if Necessary}.

Signature:



Date:

25/09/23

Signature:

Date:

I/We declare that I/We have read the terms of this application form and any related guidance. I/We declare that the particulars given by me/us on this form are correct to the best of my/our knowledge and belief.

*Delete as inapplicable

APPENDIX 2

COPY OF OBJECTIONS

- a) Anthony and Mary Ray, by letter dated 13th October 2023
- b) David and Jane Thurley, by letter dated 13th October 2023
- c) Graham Wark, by letter dated 16th October 2023
- d) John and Veronica Robertson, by letter dated 14th October 2023
- e) Richard Turnbull, by letter dated 13th October 2023

a) Anthony and Mary Ray, by letter dated 13th October 2023

Anthony Ray



Head of Planning & Economy
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3WA

13th October 2023

Reference: Short Term Let License – 2 Dunnottar Square, Stonehaven, AB39 3UJ – dated 25th Sept 2023

Dear Sir/Madam,

Please find this Letter of Objection to the above referenced AirB&B short term let application on the ground stated below. It should also be noted that the application was visible on the property from circa 9th October 2023 – almost 2 weeks after the date, and close to the 16day objection period.

The objection is based on the following:

The property is frequently used by commercial businesses with multiple vehicles (frequently up to 3) parked outside of the property and in other resident parking locations. This property (per deeds) has an allocation of 1 allocated parking space in open space.

The property is part of development with common ground (lawns, pathways, trees/plants) and utilities (septic tanks) which require maintenance and attendance. The property owner or management agent do not contribute to this upkeep in any shape or form yet benefit in the setting, with disregard to the other homeowners.

Inconvenience as new persons with difficulties to enter the property or utilities regularly roam and come to other residences for assistance with an expectation that we know how they get in or are responsible to remedy any issues.

Do not respect the recycling. The property has a row of refuse and recycling bins with the segregation of recyclables routinely not respected by the property's guests (despite frequent reminders to agent when she can be contacted whilst at the property). This has led to our bins not being collected and requires other home owning residents to then a) segregate their waste, b) make alternative arrangements to deal with their un-recyclables and deal with excess materials until next collection.

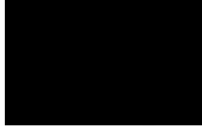
Yours Sincerely



Anthony & Mary Ray

b) David and Jane Thurley, by letter dated 13th October 2023

13th October 2023



Attention: Head of Planning & Economy (Environmental Health)

Dear Sirs:

We would like to submit this letter of objection in relation to an Airbnb short-term let application for 2 Dunnottar Square.

Our objection is based on the following points:

- Guests tend to turn up through the day and night. As we are an isolated development in Dunnottar Woods it isn't desirable to have new strangers constantly coming and going.
- Some guests have 2 vehicles, and, in some circumstances, they are commercial vehicles.
- The owner of this property resides abroad full-time and does not contribute towards day-to-day upkeep of the development / grounds.
- Having Airbnb properties in proximity can have a negative affect on neighboring property resale.
- The application notice was not displayed at the property as per date shown 25/09/2023. We didn't see it until 09/10/2023.
- The application notice has not been displayed in a public place and no notification has been given to any of the other properties sharing this small development.
- The application notice was only displayed through a glass windowpane in the front door which is offset from public access.

Sincerely,



David & Jayne Thurley

c) Graham Wark, by letter dated 16th October 2023

Graham Wark

16 October 2023

Dear Sir,

OBJECTION TO SHORT TERM LET – 2 DUNNOTTAR SQUARE

Following the notice regarding the application for a short term let at 2 Dunnottar Square, Stonehaven, I hereby formally object to the issuing of a licence.

The AirB'n'B type arrangement causing frequent difficulties and challenges as a resident. There have been issues regarding parking of vehicles on a regular basis which interferes with normal day to day life. Access for resident vehicles as well as school transport, household deliveries, visitors etc is often compromised due to the parking approach by those who use the property. I have also had occasion to remove children from my garden who have been staying at the property. There has also been concerns about the use of the sewerage system with damaging products entering the system and affecting the septic tank. Misuse of the refuse and recycling bins is often happens. One of my main concerns is regarding attempting to approach those who stay in the property about any of the above given I know nothing about them and the way in which they may react. I often have to tolerate unacceptable behaviour which, at times, makes my, and my family's life intolerable.

I would normally suggest better management of the property is required but the on-going issues, particularly of access, have not improved since the property has been used for short term lets.

Yours sincerely,

Graham Wark

d) John and Veronica Robertson, by letter dated 14th October 2023

John & Veronica Robertson

Head of Planning & Economy
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3WA

14th October 2023

Re: 2 Dunnotar Square, Stonehaven, AB39 3UJ - Short-term Letting Licence dated 25th September 2023.

To Whom It May Concern,

I am writing to formally express my objections to the application for short-term property letting at the aforementioned address. My concerns are as follows:

The application for short-term letting was only made visible on the property window on 9th October 2023 - a delay of two weeks beyond the date shown on the application (25th September 2023). It was also not posted in a public place. This oversight raises questions about the transparency and compliance of the application process.

Guests frequently occupy multiple parking spaces, despite the property having only one designated parking space due to the presence of a garage. These vehicles are often of a commercial nature. The property's listing on www.lodging-world.com for example, states 'free private parking' which doesn't imply that only one parking space is allowed for this particular property.

Neither the property owners nor their guests make any contributions, monetary support nor physical effort, towards the maintenance and care of shared facilities, including lawns, pathways, forest debris, plants, trees, and the shared septic tank. Other residents bear the costs and labour involved in maintaining these communal areas.

Our community in Dunnotar Woods is a close-knit and isolated one. The frequent arrival and departure of strangers, especially during nighttime hours, can cause discomfort and concern to residents.

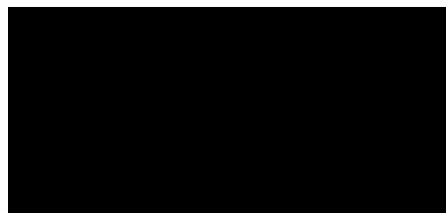
In light of these issues, I kindly request that the relevant authorities review this objection and consider the implications of granting a short-term letting license at this property. Your attention to these matters is greatly appreciated.

Yours Sincerely,


John Robertson & Veronica Robertson

e) Richard Turnbull, by letter dated 13th October 2023

(1)



SENDER:

13 October 2023

RICHARD TURNBULL
,

OBJECTIONS to SHORT-TERM
LETS at 2 Dunottar Sq.
STONEHAVEN AB39 3UJ

We write to you with great concern over constant disturbances during the last two years in our peaceful, family neighbourhood here in Dunottar Square.

Before we go into detail, we must point out that the notice for complaint/objections to neighbours was only displayed on Wednesday 11th October and was displayed in a very small window. This was not displayed prominently where anyone could see it. The display states that the application was made on the

②
24th of September. This, in theory, leaves objectors some 5 days out of the 21 to submit their objections.

BACKGROUND:- Dunnottar Square is a very secluded converted stable block consisting of eight private properties set within the confines of Dunnottar woodland Park.

Our house, N° 1, is situated on the front of the square. A picture of it is prominently displayed in all advertising for Air B'n'B lettings for N° 2.

We then get constant disturbances at all hours of night, trying to find N° 2. This wakes us up at night, our security lights come on and our dog starts barking. We feel concerned as sometimes, there can be as many as three different lettings in one week, with complete

③ Strangers wandering around. This caused problems during Covid lockdown, when N°2 was still being let out, resulting in call-outs to police to evict the occupants.

The constant stream of unknown vehicles turning up on our doorstep, which includes white vans and contractors, is starting to take its toll.

We have lived here for nearly 25 years. The last two years have left us feeling that our house and garden are no longer ours.

It is worth noting that the applicant, Raymond Garden, resides permanently in Thailand and allows his sister, Sharon Walker, to rent it out and collect a considerable rental fee.

(4)

Number 2 is advertised on Air B'n'B, Booking Dot Com, Sykes Scottish Lettings, as Dunnottar Woods Cottage or Dunnottar Woods House. (Our house, N°1, is the picture which is used for letting.

We have looked closely at our Title Deeds, where it is clearly stated that properties in Dunottar Square shall not be used for commercial purposes. A copy of title deeds ~~for~~ showing this is enclosed. All title deeds for Dunottar Square are drafted in the same format.

No 2 Dunottar Square contributes ZERO towards the maintenance of the grounds. It uses the same large, remote Klargester Sewage Plant which is shared by four

(5) households. This requires constant maintenance/discharging, and we have no control over what non-residents may discharge into the system. Number 2 does not pay for any servicing or discharge costs for the expensive sewage plant. This is done by my neighbour, Mr Graham Wark, residing at Number 4.

Finally, over the last few years, our concerns over short-term let issues with N° 2 Dunnottar Square have been shared with our local M.P., Mr Andrew Bowie, and also with our local counsellor, Wendy Agnew. Both have shared our concerns and have been very helpful.

Yours sincerely,



Richard Turnbull

(Land Registration (Scotland) Rules 1980, Rule 14)

LAND REGISTER OF SCOTLAND

LAND
CERTIFICATE

Title Number: KNC6063

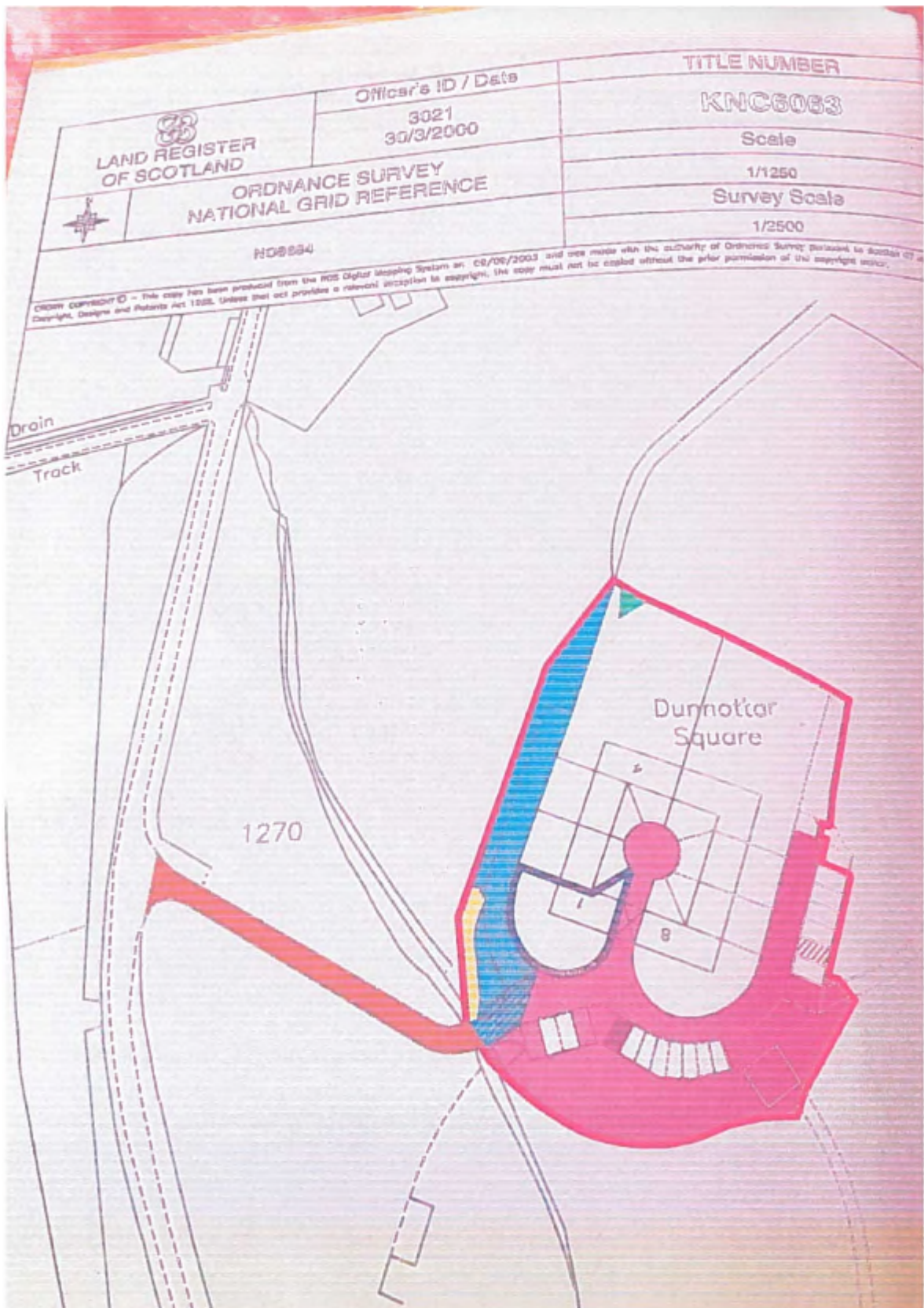
Subjects: [REDACTED]

This Land Certificate, issued pursuant to section 5(2) of the Land Registration (Scotland) Act 1979, is a copy of the Title Sheet relating to the above subjects.

STATEMENT OF INDEMNITY

Subject to any specific qualifications entered in the Title Sheet of which this Land Certificate is a copy, a person who suffers loss as a result of the events specified in section 1(1) of the above Act shall be entitled to be indemnified in respect of that loss by the Keeper of the Registers of Scotland in terms of that Act.

ATTENTION IS DRAWN TO THE NOTICE AND GENERAL INFORMATION OVER BAR



OCTOBER 2023, £4.05



LAND REGISTER OF SCOTLAND



TITLE NUMBER KNC6063

D 5

D. BURDENS SECTION

ENTRY
10

SPECIFICATION

pavilion end and incorporating Victorian Style finials on the ridge.

(2) No television aerial or satellite transmission receiver or dish or radio receiver shall be permitted on the exterior of any of the dwellinghouses or within any plot without our prior written consent.

(3) Each garage shall be used only as a private garage for the sole use of the proprietor or occupant of the dwellinghouse to which it pertains and shall not be sold or let separately therefrom nor used for any commercial or trading or business purpose.

(4) Each car parking space shall be used only as a private parking space for the sole use of the proprietor or occupant of the dwellinghouse to which it pertains and shall not be sold or let separately therefrom nor used for any commercial or trading or business purpose.

(5) Each of the two visitors car parking spaces shall be used for the parking of motor car vehicles belonging to visitors to the proprietors of Plots of the Development; overnight parking of motor car vehicles on the visitors car parking spaces will not be permitted by the same visitor to any one dwellinghouse proprietor for more than one night in any particular week; the use of the two visitors car parking spaces shall be regulated by the mutual agreement of the dwellinghouse proprietors.

(6) Each plot so far as not occupied by buildings as aforesaid or footpaths shall be laid out and maintained as ornamental garden or pleasure ground and for no other purpose whatsoever and shall be maintained as such in a neat and tidy condition in all time coming.

(7) Every proprietor shall be bound to control vermin and carry out immediate treatment of any dry rot or other form of rot or



APPENDIX 3

WRITTEN SUBMISSIONS

a) Applicant, Raymond Garden – 12/04/24

a) Written Submission from Applicant, Raymond Garden – 11/04/24

Response to Objections to STL Licence Ref /00756/23
2 Dunnotar Square, Stonehaven AB393UJ Dated 11 April 2024

Background.

I have owned the property for around 25 Years. I resided there for around 3 years. I have very fond memories of my time in Dunnottar Square. Due to a moving abroad. I decided to lease out the house. I live in Thailand and will most probably remain there.

I commenced leasing out the property in 2002. I had 2 tenants in total. One for 13 years and another who stayed for 1 year.

Prior to the last tenant leaving the property, there were a number of issues. Property damage, noise at the weekend and smoking. I had seriously thought about selling the house at that point. I had no desire to repeat the experience of another bad tenant or pay an agent for basically sending out a bill once a month. All the time the property was leased, 14 years, I had only ever received one direct complaint. That was about the damage caused by my tenant to the sewage system by putting incorrect items down the toilet. I am not sure how anyone could possibly know what people flush down their toilet, that has never been explained to me. I called Briggs who service and repair the system. They told me they were not aware of any problem.

It was a prejudicial remark and I just left it at that.

I decided to go the holiday let route. It would supplement my pension and give Sharon some income too. And pay enormous sums in commission. It has become an important part of both our income streams in the last year or two it has business has slowed down considerably.

Sharon is the house manger. She has high standards, very competent, thorough nt and approachable. I have total confidence in her. I would never have attempted it with anyone else.

If am honest, I can say I had not given the neighbours as much consideration as I should have. Not long after we got started Mr Wark, suggested I should have informed all the neighbours of my plans. There had been so much hostility directed at myself and Sharon. I decided not to, which was a mistake on my behalf.

Statement

I want to put this right at the top of the agenda. My sister, Sharon Garden and guests to a lesser extent have both been, intimidated and confronted aggressively by one neighbour in particular. This can be backed up by some the reviews and comments in the visitors book. I am pretty sure the rest of the neighbours are of better character and don't know anything about it. If I am mistaken and they do support that kind of approach. **I will withdraw my application immediately.** If I cannot be sure about my guest's safety which is what the license is all about. I would prefer not to continue. Sounds a bit dramatic, but, please, do not doubt my sincerity.

There already has been a very serious incident where one of the guests was so aggressively confronted, with his young family present, by his own volition, called the police. He wanted action taken to ensure that this behavior was not repeated.

Sharon thinks residents at Dunnottar don't want her there. She has been confronted, sometimes quite aggressively.

Judging by your objections I feel there is an element of ganging up here. Some people live at the other side of the square and could not possibly be disturbed in any way.

Most items can be resolved by taking a commonsense approach and better communication.

There is not one constructive proposal in any of these objections. Everyone wants to complain but no one wants to fix it. In other words you say what you don't want but never say what you do want or how it can be achieved. We are willing to work with the community to try and resolve any issues.

In some cases, there seems to be a rule for me and not anyone else. Some the comments are really quite inappropriate.

Response To Objections

First of all, I would like to thank those who took the time and trouble to object.

There are some serious accusations, none of which have been substantiated, some items disingenuous. some at best are general comments.

However, I do take your objections seriously will and endeavor to answer as honestly and openly as I can.

I will start by commenting on the most common objections first and proceed to comment on each individual objection. Where I have already addressed an issue, I will refer you back to my previous comment.

Public Notice

The public notice has come into a lot of scrutiny. I possess time stamped photos to substantiate it was posted no later than 30 Sep. They were taken on 30th Sep, a few days after it was posted. I asked Sharon to take the photos as I knew, going by the track record there would be accusations made. To say the public notice was not posted until mid-October is completely wrong.

The date is correct, where it was displayed is correct and duration correct. I followed the guidelines. If you feel the guidelines are not robust enough or misleading, I am the wrong person to take it up with.

If the notice had been placed, if the notice were posted in say upstairs bedroom window or not posted at all I fully understand why people would accuse me of being deceitful.

Further to that, it was placed inside the house because I did not want to present an opportunity for sabotage.

I am astounded so many have brought this into their objection. No one can have first hand knowledge because the accusation is untrue and can be substantiated. So, unless you think I have been up to some kind of electronic trickery I you have to take the evidence at face value.

Sounds to me someone has just said mid - October and their word has been taken to be correct. What other explanation could there be?

Perhaps some people should examine their own integrity instead of questioning mine.

Sadly, that is where it has got to I do share some of the responsibility. If I had been on good terms with the neighbours, I could have informed them it was posted.

See photos, the date stamped ones are pretty clear. I had to take the photos of my phone. I don't know how to produce them with the date actually on the picture itself but I think they are clear enough.





Form STU2	<p style="text-align: center;">Aberdeenshire Council Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 Paragraph 2 of Schedule 1 Site Notice - Short-Term Let Licence</p>	
<p>NOTICE IS HEREBY GIVEN that application has been made on Date: 25/9/2023</p>		
<p>To the Head of Planning & Economy (Environmental Health) of ABERDEENSHIRE COUNCIL for a Short-Term Let Licence in respect of premises at - (insert address) -</p>		
By:	Name:	* RAYMOND GARDEN
	Address:	* 673 MOOB, TAMON PHO SAN TON DUMPHRIE ROAD, PHANH AVUTTHAYA, THAILAND
Day-to-Day Manager	Name:	* SUREEN GARDEN
	Address:	* 11 WEST PARK CRESCENT DD10 0TF INVERBERVIE, MONTROSE
<p>Any objections or representations in relation to the application may be made to ABERDEENSHIRE COUNCIL, per the HEAD OF PLANNING & ECONOMY at the address below, generally within 21 days of the above-mentioned date. Objections or representations should be made in accordance with the following provisions, namely:-</p>		
<p>(1) Any objection or representation relating to an application for the grant or renewal of a licence shall be entertained by the licensing authority if, but only if, the objection or representation-</p>		
<p>(a) is in writing;</p>		
<p>(b) Specifies the grounds of objection or, as the case may be, the nature of the representation;</p>		
<p>(c) Specifies the name and address of the person making it;</p>		
<p>(d) Is signed by him on his behalf;</p>		
<p>(e) Was made to them within 21 days of whichever is the later, or as the case may be, the latest of the following dates:-</p>		
<p>(i) Where public notice of the application was given in a newspaper, the date when it was first given;</p>		
<p>(ii) Where ABERDEENSHIRE COUNCIL have required the applicant to display the Notice again from a specified date, that date;</p>		
<p>(iii) In any other case, the date when the application was made to them.</p>		
<p>(2) Notwithstanding (1)(e) above, it shall be competent for a licensing authority to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are satisfied that there is sufficient reason why it was not made to them at the time required.</p>		
<p>(3) An objection or representation shall be made for the purposes of (1) above if it is delivered by hand within the time there specified to the licensing authority or posted (by registered or recorded delivery post) so that in the normal course of post it might be expected to be delivered to them within that time.</p>		
<p>Objections or representations should be made to:-</p>		
<p>Head of Planning & Economy (Environmental Health) Aberdeenshire Council Gordon House Blackhall Road Inverurie AB51 3WA</p>		



Commercial Vehicles

I am not sure how accurate the statements are about multiple commercial vehicles. We target tourists. We had never envisaged workers (for want of a better term) showing up. One group behaved badly, smoking in the house, moving furniture and leaving the house in poor condition, took 6 hours work to get it ready for incoming. We had some Spanish tourists who removed property from the house. That is the only problem we have had with occupants in 7 years. The agents we use do not vet the clients.

We will have another look at the booking conditions to see if there is a way of excluding commercial vehicles or maybe only allowing one.

Parking

There should be no issue here if **everyone** follows the rules and uses common sense. One of the neighbours has demanded of guests, often in an aggressive manner, to remove their cars from the car park. This has been recorded in the both the visitors book and in some reviews. Some of the guests are good natured enough to laugh about it others are not, and probably never will return.

This is nothing more than harassment

The person doing this, have absolutely no authority to do so. I seriously question the interpretation of the rules as per the title deeds. The whole idea that someone can misunderstand what the deeds say and then use that as a mark of authority to evict people, who have a perfect right to be there is ludicrous and discriminatory.

My sister Fiona when she visited my house Was asked by a lady who resides at Dunnottar to remove her vehicle from car park. Obviously she thought it was one of my guests. This type of prejudice is not acceptable and inappropriate.

My understanding as per the title deeds is.

Every household has been allocated 1 parking space. It also says occupants are entitled to use that space. This has been completely overlooked. My clients are are legitimately occupants and therefore have every right to use the car park.

Staying overnight in a visitor space is not permitted. It clearly states that on the title deeds that Mr Turnbull kindly provided. If the letter of the law is to be followed exactly. It means any visitor, that is, not an owner or an occupier, staying overnight are not allowed to leave their vehicle in the car park if the allotted space for that particular residence or occupant is already in use.

Can every resident put up their hand and say they follow those rules? Exactly I don't think so. It does not make any sense that family, friends etc. staying overnight at Dunnottar Square should be asked to remove their car. Has anyone ever asked their visitors to remove their vehicle?

Seems to me my guests again are being discriminated against.

There is an inconsistency. If you want me to follow the rules then everyone else has to do the same if that's what you want.

At the last count one neighbour had 4 cars and a camper van, see photo, maybe not correct now but it was at the time. He also has a method of parking his vehicles to take up the maximum space. (Same neighbour that evicts my guests from the car park)

I have absolutely no objection at all, in fact I really don't care.

What I do object to, is my guests being excluded. They have every right to use the carpark.

In the title deeds commercial activity being undertaken in the car park is not allowed. Provision of goods or services from the car park has never been a problem as far as I know. Is parking a van a commercial enterprise? If that is the correct interpretation, in the interests of fairness is any commercial vehicle, regardless of who it belongs to should be excluded. I don't think any of the resident will tolerate that.

One way of handling this, is that the car park be divided up and one space numbered for each household and then 2 visitor spaces. I have no problem paying my fair share. I am pretty sure its an idea that won't be supported, why should it? All reasonable behavior should be tolerated with out imposing or having to enforce unreasonable rules or in the worst case, just making them up.

In fact I feel there has been no issues with parking that cannot be approached sensibly I am surprised it forms such a dominant part of these objections.

Recently a large sign was erected (see photo) saying the parking is for residents only. This is **not correct**. Obviously no one has pointed this out to the originator. Its obviously designed to prevent any of my so called guests using the car park. What other purpose could it have? I use the term guests very loosely as its obvious they are not welcome at Dunnottar Square.

My answer to all this parking issues is, tell me what you want and if its reasonable and everyone else is following the same rule I will comply too. I have not seen any suggestion on how to resolve issues around parking. Which seems to bother people so much.





Sewage System Maint and Repair.

In the past, Mr Turnbull and subsequently Mr Wark arranged the servicing and repairs with Briggs Environmental. I was then sent a copy of the invoices. I always paid my share promptly.

I have not received an invoice for payment for a number of years. After reading these objections. I telephoned Briggs Monday 8th April, they informed me they have not serviced or repaired the machine for almost 4 years. Their process is to to have their invoices paid up front. The invoice had been sent to Dunnottar Square for payment. After they had sent several reminders they stopped. No contact has been made since then.

So, unless the vendor has been changed, which Sharon and I have never heard about. I am surprised its still running.

For the neighbours that say they are very concerned about the sewage system it seems to me they are not concerned enough have it serviced regularly. If the machine breaks down due to lack of servicing, and an expensive repair is incurred 4 houses are affected. We all know how inconvenient that will be. By the sounds of it I will probably get the blame anyway.

All this talk about who is putting what down the toilet I find quite incredible. How has such knowledge been acquired? I have notices posted in the house addressing this. Again, another example of discrimination.

This same accusation was made several years ago. I called Briggs who informed me they were not aware of any issues.

Recycling And Waste

Is there absolute certainty that all the recycling and waste issues originate with No 2? Why do you think that?

Sharon goes to the house every time a guest departs. It is one of her tasks to check the recycling, garbage etc. She is very diligent. As guests normally don't stay more than a few days they don't generate much in the way of waste. Sharon told me that one of the residents had approached her about garbage which was actually put there by no 3. There is also a notice in the house saying guests will be charged extra if we need to intervene with their recycling. See attachment. Someone at Dunnottar is not as diligent with their recycling as the objections would suggest. One of our guests reported someone had dumped a load of

rotting fish into our recycle bin. Our guest didn't mind too much about clearing it up. I sincerely would like to think it was not a deliberate act.

Common Grounds Maint and Contribution

More than happy to contribute financially. Is there a system in place to contribute on a monthly basis? How is this money collected? Do I owe any money? No one has ever mentioned it.

There had been some talk in the past with Mr Turnbull and Mr Wark about appointing a factor I fully supported the idea. It never came to anything. If that is still an option, I would be more than happy to contribute. There was also talk about tarring the road outside houses 1 to 4 The neighbour at No 3 had no interest in contributing and that was the end of that. If the new occupant is interested in tarring the road I am quite happy to pay my share.

Response to individual objections

There is a great of similarity in these objections. Where I have already commented to a same or similar subject I will refer you back to my previous comment.

Anthony and Mary Ray Objection Dated 13 October

Date of posting notice. I refer you to my previous comment.

Commercial Vehicles. To my knowledge no one has ever showed up with 3 commercial vehicles. However, I accept your point. I will talk to Sharon to see if booking conditions can be changed to one commercial vehicle max. I will also add that any guests arriving have no more than two vehicles.

Parking I refer you my previous comments.

Common grounds maintenance. I refer you to my previous comments.

Difficulties in accessing the house It's a sad fact of life that some people cannot read and follow simple instructions.

I believe this only happened once several years ago when a resident actually offered to help. I do take your point.

All of them have Sharon's contact details. It's a very simple system, park the car outside the property, get the key from the key safe and you are in. They already know the combination. So, unless do not understand English I am baffled how anyone could misunderstand

I will discuss with Sharon to see if this needs improved.

Recycling. I refer you to my previous comment.

Non collection of bins. When exactly did the council refuse to collect the bins? Do you have a record of that. Bit strange no one else has mentioned this incident or incidents in their objections. I would say that is a quite a serious accusation and am sure it would have been brought up elsewhere.

My sister, Sharon is not an agent she is the property manager. She is very approachable, and takes her work seriously, you can contact her by phone, text or e mail if you have any issues.

Recycling and waste, I refer you to my previous comment.

David and Jane Thurley Objection dated 13th October

People coming and going What actual impact does it have on you? I understand people arriving late at night or early hours of the morning and banging about would make me very annoyed too. This may happen but very rarely I will revisit the booking conditions so its made clear arrival time is no later than 9 pm.

Sometimes guests show up that have two vehicles one of which is allowed to use my allotted space in the car park and the other one can be parked outside my house. I will have the booking conditions altered to say no more than 2 vehicles. I don't particularly want people coming in vans but I think in the 7 years we have been operating its does not happen often.
See my previous about parking.

Day to Day up keep I refer you to previous comment.

Property Resale values. Is this a general comment or specifically about Dunnottar Square? Have you had this verified?

Public notice date, duration and location I refer you to my previous comments

John and Veronica Robertson objection dated 14 October

Public notice date, duration and location. I refer you to my previous comment.

Guests Occupying Parking spaces. I refer you to my previous comments. Free parking has been offered, that is a true statement. What exactly is your objection here? There is no fee for parking. Its appropriate to include info about parking in the booking conditions. Go to a hotel downtown Edinburgh many have no parking. This made obvious when booking. Thank you for acknowledging I have a parking space. Having a garage means you can occupy only one space. Is this something new? Never heard this before. Does it say that in the title deeds? Is everyone following this rule? Everyone has 1 parking space any way. I refer you to my previous comments about parking.

Contributing to the upkeep of communal property. I refer you to my previous comment.

Concerns about Dunnottar Community. I don't know what to say except we are obviously not included. .

Graham Wark 16 Oct

Parking Of Vehicles Please refer to my recent comments.

I am not sure I understand what you mean by my guests' parking habits interfering with your day to day living at Dunnottar Square. I only know of one such occasion where you told me there was an issue with the condition of the van used by a contractor working at my house. You also informed me about 2 vans

parked outside number 3 which were in a very poor state and blocking your entrance. Turns out they were carrying out work for no 3 which you very well knew at the time. I think this was conveyed to you anyway at the time. I am not clear about how this relates to deliveries, school buses etc. Again, another complaint about parking and no constructive suggestions regarding the issue of parking.

Kids playing in your garden I was informed, first guest actually, about 6 years ago that some young kids showed up in your garden and were playing there. Part of a family that were staying in my house. Did they damage your property. You did not seem particularly perturbed about it at the time. Has this reoccurred? How often has it happened? Would you condemn this behavior if it had been any of the other residents' kids or their friends? I had previously received a complaint from a neighbour about kids riding their bikes adjacent to his house on Xmas day. There is provision in the booking conditions for neighbours, their property and their right to privacy. This has also been posted in the house. We do make it clear in the booking conditions about respect for neighbours and private property I will review it with my Sharon.

Sewage system. I was not aware we still had septic tanks I thought everything went through the sewage plant. Apart from that, I refer you to my previous comment.

Recycle and garbage see my previous comments I have my suspicions why this is happening.

Reluctance to Approach Guests I am sorry to hear you don't feel confident enough to approach any of the guests. If any issue should arise. Let Sharon know by text or call her. She will take whatever action is necessary. You know her number and my e mails address if you want to call me, please be aware of the time difference.

Some neighbours don't want us to use the car park and you don't want vehicles parked outside my house. Short of guests arriving by helicopter or parachute, what am I to do? You suggest bad management, think that is unfair and an exaggeration. If the whole development were managed properly or even at all,

None of these items would be an issues. As usual, instead of taking any responsibly, you are allowing people to behave badly and then pointing the finger at me.

Mr Turnbull 13 October 2023

Public notice. I refer you back to my previous comment. Posted on the 24 Sep is not correct, it was 25th

Constant disturbance? Can you be a bit more specific? What is the nature of the disturbance? We do tell guests that there is a quiet time at 22:00. Most guests are tourists and don't usually go out late. Preferring to stay in the house. If you inform me or Sharon we will talk to the guests and evict them if they persist with anti-social behavior. Hopefully that will never happen. I appreciate your house is the most public at Dunnottar and you are our closest neighbour, physically speaking of course. Everyone coming to Dunnottar Square has to pass your house. How can you be certain every disturbance is from our guests?

People coming and going, noise at night. Please refer to my previous statements

No Concern for neighbours It is not correct to suggest that. We put signs up in the house about noise, recycling and, not disturbing neighbours are mentioned in the booking conditions. The guests are normally very considerate of the fact this is a quiet and secluded area. That's why they book the house in the first place. Why do you feel your house and gardens are no longer yours?

Police Called to Evict People from the property. I wasn't aware police had the power to evict people from a property when they have a legal right to be there. My nephew used the house to self isolate, which you were very well aware of. The police arrived, asked my nephew a few pertinent questions and disappeared into the night.

The second time I had a family self-isolating at the house, perfectly legal. He was approached aggressively in front of his young family. He felt so threatened that he called the police.

I had offered the guest some more free time in the house by way of compensation which he declined. An apology was made and hopefully that will not happen again.

Thankfully he did not make a comment in the review, it would have shown Dunnottar Square in a very bad light.

These guests were behaving responsibly and staying well away from the other properties at Dunnottar.

I don't understand your point about me living in Thailand. I do not "allow" Sharon to manage the property, we are a partnership.

Rental fees. I don't think this is an appropriate subject for an objection.

Advertising of property I need to look further into that. I certainly don't want to mislead guests and have them going to the wrong door. Has this actually happened or are you concerned it may happen?

Advertising the Property Yes, I advertise on all these forums which is common practice. What is the issue?

Title Deeds My interpretation is different from yours. They don't say an awful lot but the ones pertinent to the house and car park. I think the meaning is clear. I can see absolutely no reference to letting out property, leased or otherwise being a prohibited activity. Several houses at Dunnottar have been leased out over the years. It has never been an issue. There is nothing to say the practice is not permitted as long as all the safety requirements are met.

Parking

The big sign that has been installed on a tree in the car park is incorrect and misleading. The target is obviously my guests who have a perfect to right use the car park for one vehicle.

Next item is visitor spaces. No parking overnight. Is that a rule being followed by every one? I don't care either way but there cannot be one rule for me and one rule for everyone else. I refer you back to my previous response.

Maintenance of sewage plant, contributing to maint of common areas I refer you to my previous comments

I don't know the local MP but I am pretty sure he would be my MP too. If you think you have a case then put it to him, I quite happy to talk with him.

Summing Up Remarks

I am very sorry it has come to this. You all have rights but I have rights, Sharon and guests have rights too. One right they have is not to be subjected to bullying and intimidation. As occupiers they have every right to use the facilities at Dunnottar Square and not be discriminated against.

Of course we want our activity to have the minimum impact on every one. Nonsense to suggest other wise. By far the majority of people coming to the house behave in a responsible way. They want peace and quiet too, that's why they book the property. In the whole time we have been operating, we have only had two guests who caused a problem for us.

Sharon or I were never invited (or wanted to be) to join your WhatsApp group. From what I have heard both Sharon and I came in for a good deal of abuse. I was told this by someone who left the group because of it. What was it they said about good men doing nothing?

Most issues could be resolved by better communication and management. Frankly I think you have chosen the wrong person as your spokesman. Length of tenure does not equate to being in an authority and doing what every he sees fit. I must admit I don't respond well to some of the e mails I have had. For example I have been threatened with court action one. Withdrawn and an apology the next day. One note I received told me that I was to be disciplined in front of the whole Dunnottar community. I still have them and won't produce them. I think there has been enough antagonism. I am fed up with it now.

I am pretty sure who sent them has totally misjudged the character of the people of Dunnottar.

My suggestion is that you appoint someone, or no more than 2 people who can bring all the real issues, compiled in such a way they are not repeated. We can

then meet and find common ground for improvement. We can do this regularly annually or whatever you suggest. It can be used as forum for gathering up concerns, as they arise as long as it remains constructive I am in favour. Sharon is quite capable of handling this, I will over in August this year I can attend if you want. Its really up to all the neighbours (residents and occupiers alike) I am certain the situation can be resolved by better and regular communication and I don't mean abusive e mails.

Let Sharon know what you want to do. If you don't, I will assume every thing is OK I cannot produce documents in the house a Sharon is in London. However if any one is interested in seeing them contact Sharon she will give you access to the house.

Sincerely

Raymond Garden

Birthday Wishes



Small text at top right corner, partially obscured

OCTOBER 2021, 24th



LAND REGISTER OF SCOTLAND



TITLE NUMBER H4C5063

D. BURDENS SECTION

1/1

DEED

SPECIFICATION

pavilion end and incorporating Victorian Style finials on the ridge.

(2) No television aerial or satellite transmission receiver or dish or radio receiver shall be permitted on the exterior of any of the dwellinghouses or within any plot without our prior written consent.

(3) Each garage shall be used only as a private garage for the sole use of the proprietor or occupant of the dwellinghouse to which it pertains and shall not be sold or let separately therefrom nor used for any commercial or trading or business purpose.

(4) Each car parking space shall be used only as a private parking space for the sole use of the proprietor or occupant of the dwellinghouse to which it pertains and shall not be sold or let separately therefrom nor used for any commercial or trading or business purpose.

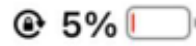
(5) Each of the two visitors car parking spaces shall be used for the parking of motor car vehicles belonging to visitors to the proprietors of Plots of the Development. Overnight parking of motor car vehicles on the visitors car parking spaces will not be permitted by the same visitor to any one dwellinghouse proprietor for more than one night in any particular week; the use of the two visitors car parking spaces shall be regulated by the mutual agreement of the dwellinghouse proprietors.

(6) Each plot so far as not occupied by buildings as aforesaid or footpaths shall be laid out and maintained as ornamental garden or pleasure ground and for no other purpose whatsoever and shall be maintained as such in a neat and tidy condition in all time coming.

(7) Every proprietor shall be bound to control, remove and carry out immediate treatment of any dog or other form of rot or



16:22



Smoking, vaping,
e-cigarettes
allowed



Quiet hours



From

22:00



To

07:00



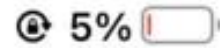
Commercial
photography and
filming allowed



Confirm



16:25



checkout times

Arrive between 15:00 - 22:00

Leave before 10:00

Number of guests

[Edit](#)

5

Additional rules

[Edit](#)

-There is a strict recycle policy, please pay attention to the information provided, bins are checked after each check-out and a fee will be charged should guidelines not be followed correctly.

Confirm

APPENDIX 4 – LEGAL TEST

**Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets)
Order 2022 (as amended)
Section 44 and Schedule 1 of the Civic Government (Scotland) Act 1982
Applications for Short-Term Let Licences**

2. LEGAL TEST

A **Licensing authority SHALL** refuse an application to grant or renew a licence if, in their opinion:

- a. The applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either –
 - i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
 - ii. Not a fit and proper person to be the holder of the licence
- b. The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if they made the application themselves;
- c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
 - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
 - ii. The nature and extent of the proposed activity
 - iii. The kind of persons likely to be in the premises, vehicle or vessel
 - iv. The possibility of undue public nuisance; or
 - v. Public order or public safety;
- d. the applicant would not be able to secure compliance with –
 - i. the mandatory licence conditions,
 - ii. the standard conditions and any further conditions,
- e. the application does not contain the information required under paragraph 1(2), (da)¹, or (db)² (the consent of the owners of the premises), or
- d. There is other good reason for refusing the application;

And otherwise **SHALL** grant the application.

¹ Where the applicant is not the owner of the premises, or the land on which the premises are located – (i) the name and address of the owner (or, as the case may be, each owner), and (ii) a declaration from the owner (or, as the case may be, each owner), or a person authorised to act on their behalf, that they consent to the application.

² Where the applicant shares ownership of the premises, or the land on which the premises are located – (i) the name and address of each other owner, and (ii) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application.

1. In terms of Article 4 (1) of the above Order, a licence known as a **short-term let licence**, **SHALL** be required for the use of premises as a short term-let, accommodation that is on a single premises requires only one short term licence.
2. Article 3, states that a “**short-term let**” means the use of residential accommodation provided by the host in the course of a business to a guest, where all of the following criteria are met:
 - a. the guest does not use the accommodation as their only or principal home,
 - b. the short-term is entered into for commercial consideration,
 - c. the guest is not –
 - (i) an immediate family member of the host,
 - (ii) sharing the accommodation with the host for the principal purpose of advancing the guest’s education as part of an arrangement made or approved by a school, college or further or higher educational institution, or
 - (iii) an owner or part-owner of the accommodation,
 - d. the accommodation is not provide for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host’s household,
 - e. the accommodation **is not excluded accommodation**.
In terms of Schedule 1, Paragraph 1 of the Order, excluded accommodation means accommodation which is, or is part of –
 - (i) an aparthotel³,
 - (ii) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
 - (iii) a hotel which has planning permission granted for use as a hotel,
 - (iv) a hostel⁴,
 - (v) residential accommodation where personal care⁵ is provided to residents,
 - (vi) a hospital or nursing home,
 - (vii) a residential school, college or training centre,
 - (viii) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, short-term holding centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),

³ ‘aparthotel’ means a residential building containing serviced apartments where – (a) the whole building is owned by the same person, (b) a minimum number of 5 serviced apartments are managed and operated as a single business, (c) the building has a shared entrance for the serviced apartments and (d) the serviced apartments do not share an entrance with any other flat or residential unit within the building – ‘serviced apartment’ means a flat or residential unit in respect of which - (a) services are provided to guests (such as housekeeping, a telephone desk, reception, or laundry), (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units.

⁴ ‘hostel’ means a building, other than a dwellinghouse, in which there is provided for persons generally or for any class or classes of persons – (a) residential accommodation, and (b) either or both – (i) meals, (ii) cooking facilities.

⁵ ‘personal care’ has the same meaning as in the paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010.

- (ix) a refuge⁶,
- (x) student accommodation⁷,
- (xi) accommodation which otherwise requires a licence for use for hire for overnight stays (does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006),
- (xii) accommodation which provided by the guest,
- (xiii) accommodation which is capable, without modification, of transporting guests to another location,
- (xiv) a bothy⁸, or
- (xv) accommodation owned by an employer and provided to an employee in terms of a contract of employment for the better performance of the employee's duties.

f. The short-term let **does not constitute an excluded tenancy.**

In terms of Schedule 1, Paragraph 2 of the Order, an excluded tenancy means a tenancy within any of the following definitions –

- (i) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984),
- (ii) an assured tenancy (within the meaning of section 12 of the ... Act 1988),
- (iii) a short assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988),
- (iv) a tenancy of a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993),
- (v) a tenancy of holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland) Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
- (vi) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001),
- (vii) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001),
- (viii) a 1991 tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003),
- (ix) a limited duration tenancy (within the meaning of section 5A of the Agricultural Holdings (Scotland) Act 2003),
- (x) A short limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003),
- (xi) a tenancy under a lease which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003),
- (xii) a private residential tenancy (within the meaning of section 1 of the Housing (Tenancies) (Scotland) Act 2016),
- (xiii) a student residential tenancy⁹.

⁶ 'refuge' means accommodation used wholly or mainly for persons who have been subject to any incident or pattern of incidents, of – (a) controlling, coercive or threatening behaviour, (b) physical violence, (c) abuse of any other description (whether physical or mental in nature), or (d) threats of any such violence or abuse.

⁷ 'student accommodation' means residential accommodation which has been built or converted predominately for the purpose of being provided to students.

⁸ 'bothy' means a building of no more than two storeys which (a) does not have any form of – (i) mains electricity, (ii) piped fuel supply, and (iii) piped mains water supply, (b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984), and (c) is 100 metres or more from the nearest habitable building.

3. Section 3B (1) of the Civic Government (Scotland) Act 1982, states that, a **licensing authority, MAY** attach standard conditions to a short-term let licence, however, these **MUST NOT** impose a limit on the number of nights for which premises may be used for secondary letting¹⁰.
4. A **licensing authority, SHALL NOT**, in a case where a certificate falls to be submitted to them (in relation to the display of a site notice) reach a final decision on an application to which the certificate relates until it has been so submitted.

⁹ 'student residential tenancy' means a tenancy – (a) for the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student and (b) to which sub-paragraph (2) or (3) of schedule 1 (tenancies which cannot be private residential tenancies) of the Housing (Tenancies) (Scotland) Act 2016 applies).

¹⁰ 'secondary letting' means a short-term let consisting of the entering into an agreement for the use of accommodation which is not, or is not part of, the licence holder's only or principal home.

APPENDIX 5 – Procedure for remote Licensing Hearings (APPLICATIONS)

- (a) Identify whether the applicant and his/her advisors are present.
- (b) Identify whether the Objector(s) and his/her advisors are present. [in turn]
- (c) If there are no protected convictions, go to (h) below.

PROTECTED CONVICTIONS

- (d) Where the applicant has protected convictions the Chair should:-
 - (i) Invite the representative of the Chief Constable to satisfy the Sub-Committee that justice cannot be done unless the protected convictions are taken into account. (In the undernoted case, it is indicated that it would be improper to invite the applicant to make comment on the spent convictions)
 - (ii) The Chair should invite members of the Sub-Committee to ask questions;

NOTE: In the case of O'Docherty v Renfrewshire Council 1998 SLT 327, it is suggested that “at the least some sort of inquiry as to the age and general nature of the convictions would be essential to any proper decision.

- (e) The Sub-Committee then has to determine whether or not it is satisfied that there is no other way of doing justice than to look at the protected convictions in considering the application. The Sub-Committee **MAY** go into private session to consider the submissions made. It is recommended, however, that the Sub-Committee not reach any decision during the retreat.

NOTE TO PARTIES

If the Sub-Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to reinvite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (f) Thereafter, the Chair should:
 - (i) Call for a motion regarding the protected convictions
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Chair should confirm with the Sub-Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (g) If the Sub-Committee has determined to consider the protected convictions, they will then be circulated to Members separately by email for the Sub-Committee's perusal.

NOTE FOR PARTIES

Where the hearing is in public, the recording of the meeting will be paused until the Chair is satisfied that all members have read and understood the document circulated, at which point the recording will be restarted

THEREAFTER:

- (h) Invite the applicant to speak to his application (outline to the Sub-Committee why the application has been made and make any comments in relation to any observation/objection made in respect of the application)
- (i) Ask the Objector(s) to speak to the Objection(s) or Observation(s) [in turn]
- (j) Give the applicant an opportunity to address any issues raised by the Objector(s).

NOTE TO PARTIES

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof;**
 - **Cross Examination by the parties is not generally permitted**
 - **Hearsay evidence is admissible.**
- (k) Members MAY then question all parties present.
 - (l) Chair should invite concluding remarks (objector(s) then applicant), but no new evidence, before considering the application.

NOTE TO PARTIES

Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Sub-Committee Member.

- (m) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

NOTE TO PARTIES

If the Sub-Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to re-invite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (n) Thereafter, the Chair should confirm with Members that they have sufficient evidence upon which to make a decision.

- If the Sub-Committee determines that there is not sufficient evidence upon which to make a decision, the application will be **deferred** to a future meeting of the Committee for further evidence to be obtained.
 - If the Sub-Committee determines that there is sufficient evidence upon which to make a decision, the Chair will then:
 - (i) Call for a motion
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Chair should confirm with the Sub-Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (o) The Legal Officer will confirm the decision taken by the Sub-Committee

NOTE TO PARTIES

The parties will then be asked to leave the meeting, failing which the Committee Officer will remove the parties from the meeting.



**REPORT TO BUSINESS SERVICES' LICENSING SUB-COMMITTEE – 19th April
2024**

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982
CIVIC GOVERNMENT (SCOTLAND) ACT 1982 LICENSING OF SHORT-TERM
LETS ORDER 2022
APPLICATION FOR GRANT OF SHORT-TERM LET LICENCE
7 BALNACOIL APARTMENTS, RHU-NA-HAVEN ROAD, AB34 5JD**

1 Executive Summary/Recommendations

1.1 An application for the grant of a Short-Term Let Licence in respect of a home let has been received which has attracted objections from Members of the Public and so requires the Sub-Committee to determine the application.

1.2 **It is recommended that the Sub-Committee considers the materials before them and –**

1.2.1 As a preliminary matter, determines whether the objections to the application are competent and/or relevant to the application to be determined as outlined at Section 3.9 of the report below;

1.2.1.1 If all of the objections are found to be neither competent or relevant they cannot be taken into account when determining the application. Therefore, there is no requirement to proceed further with the hearing and the application can be granted.

1.2.1.2 If any or all of the objections are found to be competent or relevant then the Sub-Committee should proceed to conduct the hearing as per the procedure set out at Appendix 5 to this Report.

Thereafter the Sub-Committee should –

1.2.2 Determine whether there is enough evidence before the Sub-Committee to allow a determination to be made, or whether the Sub-Committee needs to defer consideration of the matter to the next available meeting; and

1.2.3 Where the Sub-Committee has concluded that there is sufficient evidence before them to allow a determination to be made, to consider whether the application should be granted or refused.

2 Decision-Making Route

2.1 This application has not been presented to the Sub-Committee previously.

3. Discussion

Application

- 3.1 Bruce Booth of 7 Balnacoil Apartments, Rhu-na-haven Road, Aboyne, AB34 5JD, submitted an application for the grant of a short-term let licence in respect of premises known as 7 Balnacoil Apartments, Rhu-na-haven Road, AB34 5JD, on 27th September 2023.
- 3.2 A copy of the summary application form is attached as **Appendix 1** to this Report.

Consultations

- 3.3 The Chief Constable, the Fire Service, Planning Services, Building Standards, were consulted on the application.
- 3.4 None of the consultees had comments to make in respect of the application.
- 3.5 The application and supporting documents have been verified by Environmental Health. An inspection of the premises has been carried out and no issues were identified. Officers will be happy to answer any questions Members may have during the hearing.
- 3.6 At the same time the applicant was required to display a site notice at the premises advising members of the public that an application had been made.
- 3.7 The following objections have been lodged in response to the display of the site notice:
- (a) Nigel Dyer, by letter dated 11th October 2023 (amended objection letter received on 26th December 2023)
 - (b) Jonathan Machin, by letter dated 12th October 2023 (amended objection letter received on 27th December 2023)
 - (c) Neil Fraser, by letter dated 15th October 2023 (amended objection letter received on 24th December 2023)
- 3.8 Copies of the objections are attached as **Appendix 2** to this report.
- 3.9 As a Preliminary matter, Members should consider and determine whether the objection is competent and/or relevant. Officers offer the following advice:

a. Objection from Nigel Dyer

1. Issues relating to the location, character or condition of the premises are potentially relevant to the legal test.
2. Issues relating to nuisance are potentially relevant to the legal test.
3. Issues relating to the date the property was marketed are not relevant as the deadline for submission of applications for existing operators was 1st October 2023. Existing operators are permitted to trade until the licence is issued with the Licensing Authority having 12 months in which to issue the licence.
4. Issues relating to parking are not relevant to the legal test and cannot be considered by the Licensing Authority.

5. Issues relating to safety are potentially relevant to the legal test.

b. Objection from Jonathon Machin

1. Issues relating to common ground and amenity are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.
2. Issues relating to the date the property was marketed are not relevant as the deadline for submission of applications was 1st October 2023. Operators are permitted to trade until the licence is issued with the Licensing Authority having 12 months in which to issue the licence.
3. Issues relating to safety are potentially relevant to the legal test.
4. Issues relating to nuisance are potentially relevant to the legal test.
5. Issues relating to the application running contrary to other legal or contractual requirements are a separate legal matter and cannot be considered by the Licensing Authority.

c. Objection from Neil Fraser

1. Issues relating to nuisance are potentially relevant to the legal test.
2. Issues relating to safety are potentially relevant to the legal test.
3. Issues relating to the location, character or condition of the premises are potentially relevant to the legal test.
4. Issues relating to the common grounds of the property are a separate legal matter and cannot be considered by the Licensing Authority in determining the application.

3.10 The objections were intimated to the Applicant by letter dated 13th December 2023.

3.11 The Applicant and Objectors were requested to attend the meeting on 4th April 2024. All parties were given copies of this Report, the legal background, procedures for remote licensing hearings and the Guidance Document for Applicants and Objectors on procedures for licensing hearings.

3.12 All parties have been given the option of participating in the hearing by way of written submission and/or by telephone. Any written submissions will be circulated to Sub-Committee Members and all parties prior to the meeting taking place, where it is possible to do so. Such written submissions will form **Appendix 3** to this report.

Procedure

3.13 Each application should be considered on its own merits.

3.14 The legal test to be applied is attached as **Appendix 4** to this Report.

3.15 Members should follow the procedures set out at **Appendix 5** to this Report.

Options for Disposal

3.16 The Sub-Committee's options in disposing of the Application are:

- (a) To defer consideration of the application to allow further evidence to be provided to the Sub-Committee
- (b) To grant the licence as applied for subject to standard conditions
- (c) To grant the licence subject to specific conditions in addition to standard conditions
- (d) To refuse to grant the licence

3.17 When coming to a decision, the Sub-Committee must consider the contents of this report, the evidence heard, and the grounds of refusal outlined in the Legal Test attached at **Appendix 4**. Supplementary advice and information can be requested, if required.

3.18 If the Sub-Committee refuses the application, the same applicant cannot apply again for a period of one year, unless there are material changes in circumstances.

Date by which application must be determined

3.19 Section 3 of the Civic Government (Scotland) Act 1982 requires a licensing authority to determine an application within 12 months of the date of receipt of the application.

3.20 This application must be determined by **26th September 2023**

Duration of Licence

3.21 Where the Committee determines that the application should be granted, Paragraph 8(2) of Schedule 1 to the 1982 Act provides that a licence shall have effect –

- (a) For a period of three years from the date the licence comes into force; or
- (b) for such shorter period as the licensing authority may decide at the time they grant or renew the licence.

4 Council Priorities, Implications and Risk

4.1 There are no Council Priorities identified in respect of this matter as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

4.2 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Sub-Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

4.3 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial		X	

Staffing		X	
Equalities and Fairer Scotland Duty		X	
Children and Young Peoples' Rights and Wellbeing		X	
Climate Change and Sustainability		X	
Health and Wellbeing		X	
Town Centre First		X	

4.4 There are no staffing or financial implications relevant to the content of this report.

4.5 An Integrated Impact Assessment (IIA) is not needed in this case as the Committee is considering this application as licensing authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation. This application does not engage any of the areas included as part of the IIA.

5 Scheme of Governance

5.1 The Monitoring Officer within Business Services has been consulted in the preparation of this report and any comments have been incorporated into this report.

5.2 The Business Services Committee is able to consider and take a decision on this item in terms of Section C – Business Services: 1 – Committee Functions: 1.1 (a) of the List of Committee Powers in Part 2A of the Scheme of Governance which enables the Committee to decide on all policy issues and resources matters relating to the Civic Government (Scotland) Act 1982 matters with implications across Area boundaries where objections or observations are received. The Committee determined that the licensing function should be delegated to the Business Services Licensing Sub-Committee.

Alan Wood
Director of Environment and Infrastructure Services

Report prepared by:- Lucas Duncan, Civic Licensing Standards Officer (Protective Services)

Date: 4th April 2024

IDOX Reference: STL/00863/23

Appendix 1 – Copy Application Form and Related Paperwork

Appendix 2 – Copy Representation

Appendix 3 – Written Submissions

Appendix 4 – Legal Test

Appendix 5 – Procedure for Remote Licensing Hearings

APPENDIX 1

COPY APPLICATION



**The Civic Government (SCOTLAND) ACT 1982
(Licensing of Short-Term Lets) Order 2022
Application for the Grant of a Licence for a Short -Term Let**

For office use only (Form STL/1)

First or further application	
Ref No	
Date Registered	
Fee / Receipt No	

Answer questions 1 and 2 followed by either question 3 or question 4 and all other questions

1. (a) Type of Licence required: (Definition of Licence types are defined within the guidance notes) Please tick.	Secondary Let Licence	<input type="checkbox"/>
	Home Let Licence	<input checked="" type="checkbox"/>
	Home Share Licence	<input type="checkbox"/>
	Home Let & Home Share Licence	<input type="checkbox"/>
(b) Are you an existing host (operating prior to 1 st October 2022) or a new host?	Existing <input checked="" type="checkbox"/> New <input type="checkbox"/>	
2. Name (if any) and address of premises for which a licence is required (hereinafter called "the premises"). For premises with multiple units (e.g., yurts or lodges) please advise on each unit and supply a site plan.	7 BALWACOLL APARTMENTS RHE-NA-HAVEN ROAD ABDYNE Post Code: AB34 5JD	
3. TO BE COMPLETED IF THE APPLICANT IS AN INDIVIDUAL (if a company please go to Q4)		
a) Full Name (block letters) (NB: The applicant must be the owner of the building and details of all owners must be provided)	Surname	Christian Name(s)
	1. BOOTH	BRUCE
	2. McRORIE	ISOBEL
b) Home Address AS ABOVE	CORRESPONDENCE ADDRESS: 96 GLASGOW ROAD Post Code: DENNY FK6 5DN	
c) Email address	[REDACTED]	
d) Telephone Number / Mobile		
e) Age, Date & Place of Birth		

N.B. Isobel McRorie is not an applicant. They are the day-to-day manager, and the above correspondence address is their home address.

<p>f) Is applicant to carry out day to day supervision of the Premises to be licensed?</p> <p>If no, do you employ a manager or agent? Give full name & address, date of birth and place of birth of any manager or agent.</p>	<p>YES <input checked="" type="checkbox"/> NO <input type="checkbox"/></p>	
<p>Telephone Number / Email</p>		
<p>4. TO BE COMPLETED IF APPLICANT IS A COMPANY OR PARTNERSHIP</p>		
<p>a) Full Name of Company or Partnership</p>		
<p>b) Address of Principal or Registered Office</p>		
<p>c) Telephone Number</p>		
<p>d) Email address</p>		
<p>e) Full names, addresses, dates & places of birth of company directors, partners or other persons responsible for management of the company (use separate sheet if required)</p>		
<p>f) Full name, address, place and date of birth of the director or employee responsible for the day-to-day supervision of the premises to be licensed</p>		
<p>5. Type of Property</p>		
<p>Please select the type of property:</p>	<p>Detached House <input type="checkbox"/></p> <p>Semi-detached house <input type="checkbox"/></p> <p>Terraced House <input type="checkbox"/></p> <p>Flat <input checked="" type="checkbox"/></p> <p>Unconventional accommodation <input type="checkbox"/></p> <p>(Please specify)</p>	<p>Details:</p>

N.B. The above-named Isobel McRorie is responsible for day-to-day supervision of the premises to be licensed.

6. Location of Property / Water Supply		
a) Does the property lie within a National Park? If yes, provide details b) Is the property connected to public mains or private water supply?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Details:
	Mains <input checked="" type="checkbox"/> Private <input type="checkbox"/> If the property is located in a rural setting a location plan must be submitted along with this application	
7. Number of Occupants (for multiple units requiring one licence, please advise on the total number of persons the licence will relate to)		FOUR
a) Total number of guests to be accommodated at any one time		FOUR
b) Total number of owner/s family normally resident at any one time (home sharing only)		-
8. Number of Rooms (for multiple units requiring one licence e.g. lodges, please list the rooms per unit e.g. lodge 1 - 2 bedrooms etc)		TWO BEDROOMS
a) Number of bedrooms providing sleeping accommodation		TWO BEDROOMS
b) Number of bathrooms or separate toilets (including any en-suite)		Bathrooms 2 Toilets -
c) Number of communal rooms e.g., living room		ONE
d) Do these common rooms provide sleeping accommodation? Y or N If Yes, for how many occupants?		NO
9. What Catering Arrangements are provided to guests?		select one option below
a) Bed and Breakfast accommodation		<input type="checkbox"/>
b) Full Board accommodation		<input type="checkbox"/>
c) Self Catering accommodation with kitchen for guest use		<input checked="" type="checkbox"/>
d) No catering facility		<input type="checkbox"/>
10. Has/Have the applicant(s) or any other person named in this application ever been convicted of any crime or offence, (This includes current and spent convictions)? (Enter YES or NO only)		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

<p>11.</p> <p>(a) Has the applicant or any person named in section 3 or 4 above previously held or currently hold a Short-Term Let Licence?</p> <p>If YES: -</p> <p>(i) Which Council granted the Licence?</p> <p>(ii) What was the licence number, date of grant and date of expiry?</p> <p>(b) Has the applicant or any person named in section 3 or 4 above ever applied for and been refused a Short-Term Let Licence or had a Short-Term Let Licence suspended or revoked?</p> <p>If YES: -</p> <p>(i) Which Council refused, suspended or revoked the Licence?</p> <p>(ii) When was the Licence refused, suspended or revoked?</p> <p>(c) Has the applicant or any person named in section 3 or 4 above ever applied for and been refused Landlord Registration or had their Landlord Registration suspended or revoked?</p> <p>If YES: -</p> <p>(i) Which Council refused, suspended or revoked the Registration?</p> <p>(ii) When was the Registration refused, suspended or revoked?</p> <p>(d) Has the applicant or any person named in section 3 or 4 above ever applied for and been refused an HMO Licence or had an HMO Licence suspended or revoked?</p> <p>If YES: -</p> <p>(i) Which Council refused, suspended or revoked the Licence?</p> <p>(ii) When was the Licence refused, suspended or revoked?</p>	<p>YES / NO</p> <p>(i)</p> <p>(ii)</p> <p>YES / NO</p> <p>(i)</p> <p>(ii)</p> <p>YES / NO</p> <p>(i)</p> <p>(ii)</p> <p>YES / NO</p> <p>(i)</p> <p>(ii)</p>
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<p>12. Are any of the following facilities available to the guests or included as part of the accommodation booking? <i>Please tick where appropriate</i></p> <p>(a) Hot tub</p> <p>(b) Swimming pool</p> <p>(c) Sauna</p> <p>(d) Sun Bed</p> <p>(e) Sports equipment such as Bicycles; watercraft; skis/snowboards</p> <p>(f) Outdoor play equipment</p> <p>(g) Internal / external LPG or solid fuel appliances such as BBQ; woodburning stove; patio heater</p>	<p>a) <input type="checkbox"/></p> <p>b) <input type="checkbox"/></p> <p>c) <input type="checkbox"/></p> <p>d) <input type="checkbox"/></p> <p>e) <input type="checkbox"/></p> <p>f) <input type="checkbox"/></p> <p>g) <input checked="" type="checkbox"/></p>
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DISPLAY OF PUBLIC NOTICE DECLARATION

*[A] I/We declare that I/we shall for a period of 21 days from this date, display at or near the premises from which the activity or activities is/are to be operated so that it can be conveniently read by the public, a Notice complying with the requirements of Paragraph 2 of Schedule 1 to the Civic Government (Scotland) Act 1982. Once the 21-day period has expired, I/We will produce to the Council a Certificate of Compliance together with a copy of the Notice (see [B] of the Appendix).

Or

*[B] I/We declare that I am/we are unable to display a Notice complying with the requirements of Paragraph 2 of Schedule 1 to the Civic Government (Scotland) Act 1982 at or near the premises from which the activity or Activities is/are to be operated because I/we have no rights of access or other rights enabling me/us to do so, but I/we have taken the following steps to acquire the necessary rights without success, namely: (see [C] of the Appendix) (continue on a separate sheet if Necessary).

Signature:



Date: 27/09/2023

Signature:

Date: 27/09/2023

I/We declare that I/We have read the terms of this application form and any related guidance. I/We declare that the particulars given by me/us on this form are correct to the best of my/our knowledge and belief.

*Delete as inapplicable

GDPR

The applicant, and, where the applicant is a company, business or other body or any person who has supplied personal information as part of this application **MUST READ AND UNDERSTAND THE ATTACHED PRIVACY NOTICE.**

Aberdeenshire Council will manage your personal data in accordance with the requirements set out in the General Data Protection Regulations 2018 (GDPR). The attached Privacy Notice provides further information about this. **Please retain the Privacy Notice**

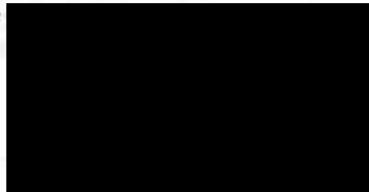
Any person who in connection with the making of this application makes any statement which he/she knows to be false or recklessly makes any statement which is false in a material shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £2500.

Please complete, date and sign the above 'display of public notice' declaration and read the attached Privacy Notice before dating and signing page 5 and returning your application form.

Date: 24/09/2023

Signature of
Applicant/Agent:

Address of Agent (if any):



Position of Applicant in the Company or other
Organisation if not otherwise stated:

Failure to give the above consents will mean the application cannot be processed and a licence cannot be granted.

IF YOU HAVE ANY QUERIES REGARDING COMPLETION OF THIS FORM, OR REQUIRE FURTHER ASSISTANCE, PLEASE CONTACT:

Aberdeenshire Council, Environmental Health Service, Tel: 01467 539039 or email: STL@aberdeenshire.gov.uk

Appendix

[A] Insurance

If an application for a Short-Term Let is granted, then it will be a condition of the Licence that the Activity or Activities is/are covered by a Public Liability or Property Owners Insurance Policy with a reputable Insurance Company for an amount of cover acceptable to the Council. During the term of the Licence, the Licence holder(s) will be required to exhibit to the Council on demand evidence that the Policy is still in force and that the premiums have been paid. The Policy and the Premium Receipt(s) can accompany the completed application. Unless these items are produced to the Head of Planning & Economy, no Licence can be issued.

[B] Display of Notice

The Notice must give the address of the premises and state that an application for a Short-Term Let Licence has been made to the Council. It must also give the applicant's full name and address. In the case of a Company, Firm, Public Body or Voluntary Organisation the names and private addresses of the Directors, Partners, Committee Members or other person(s) responsible for the management of the Activity or Activities, must also be shown. A copy of the Notice together with the Certificate of Compliance must be produced once the 21-day time limit has expired. If the Notice is removed, covered or defaced during that period the Certificate must state the reasonable steps taken for its protection or, if need be, its replacement. If the Council are of the opinion that the Notice does not comply with these requirements or that reasonable steps have not been taken to protect or replace the Notice the Council may require the Applicant to re-display the Notice for a further period of 21 days before making a final decision on the application.

[C] Notice Unable to be Displayed

If the applicant declares that a Notice cannot be displayed because he does not have rights of access or other rights in respect of the premises to enable this to be done, then he must also declare and specify what reasonable steps have been taken without success to acquire these rights.

[D] Planning Permission

In certain circumstances (secondary letting or unconventional premises) planning permission may be required for change of use or for the siting of such unconventional units. If you are unsure if planning permission would be required, Applicants must contact Aberdeenshire Council Planning Service for information, advice and if required, submit a planning application prior to applying for a Short-Term let licence. On receipt of this application, Environmental Health will consult with the planning service. Should planning permission be required, The Short-Term Let Licence will not be issued until such permissions have been obtained.

When completed, this form should be lodged with: STL@aberdeenshire.gov.uk or posted to -

**The Head of Planning and Economy
(Environmental Health)
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3WA**

For an application to be considered, the form must be completed, both declarations must be completed and signed and submitted along with the necessary documents, as stated below -

Checklist		To Follow (provide date)
Please enclose the following: -		
Application form	✓	
Gas Certificate (if applicable)	- N/A	
Electrical Installation Certificate (EICR)		AIM IS HOPEFULLY BY END OF OCTOBER
Portable Appliance Test Certificate (PAT)		AIM IS HOPEFULLY BY END OF OCTOBER
Public Liability / Property owners' liability Insurance	✓	
Energy Performance Certificate (conventional secondary lets only)	- N/A	
SFRS Checklist and Fire Risk Assessment (this will be passed to the fire service)	✓	
Location and/or site plan for rural premises with multiple units (if applicable)	~ N/A	
Details including dimensions of rooms used for sleeping purposes	✓	
Wholesome Private Water Supplies - evidence of satisfactory results within the last 12 months (if applicable)	~ N/A	
Has the correct fee been submitted? Please provide receipt number if known	Yes / no	Receipt No. <div style="background-color: black; width: 100px; height: 15px;"></div>
Site Notice to be displayed for 21 days from the date of this application	Yes / no	<div style="background-color: black; width: 100px; height: 15px;"></div>
Do not return the 21-day notice or the compliance certificate with this application.		

APPENDIX 2

COPY OF OBJECTIONS

- a) Nigel Dyer, amended objection letter dated 26th December 2023
- b) Jonathan Machin, amended objection letter dated 27th December 2023
- c) Neil Fraser, amended objection letter dated 24th December 2023

a) Nigel Dyer, amended objection letter dated 26th December 2023

Nigel Dyer

26th December 2023 (Redacted version of letter dated 11th October 2023 in response to council letter dated 13th December)

Head of Planning & Economy (Environmental Health)
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3EA

**Dear Head of Planning & Economy (Environmental Health)
Aberdeenshire Council,**

I am writing to object to the granting of a short-term-let license for 7 Balnacoil, Rhu-na-haven Road, Aboyne requested by Mr Bruce Booth on the 27th September 2023.

Balnacoil Apartments (of which no.7 is a part of) is a conversion of a Victorian era hotel located on the banks of the river Dee with approximately 2 acres of common ground around it. The building was converted to 8 apartments in 1994/5 and was subsequently listed in 2000. I have lived at this property for 27 years - and up to one year ago there was a generally harmonious environment.

On the 27th September 2022 Mr Bruce indicated he was planning to use his apartment as an Airbnb with the first customer arriving on 21st October 2022. At this stage I pointed out that I was against having an Airbnb due to:

1. The unique characteristics of the property would lead to a loss of privacy and security - with groups of people, unknown to the existing residents, arriving on a regular basis and moving around the grounds and buildings.
2. The fact that the hotel was converted (in 1994/5) before building codes supported adequate sound proofing required residents modulating their behaviour to avoid degrading quality of others lives - eg. learning impact of noise on neighbours and avoiding or changing time of noise producing activity - this learning would be impossible in an Airbnb with regular flows of temporary guests and thus would lead to noise disruption.

Despite this Mr Booth proceeded to go-ahead and market his property through Airbnb and take paying guests even though he should have been aware that he needed a license for short term rentals started after the 1st October 2022. His subsequent comment that he had paying guests in July 2022 is inconsistent with his original e-mail saying his first guest was due on 21st October and I have seen no evidence of the property being marketed prior to October 2022.

During the period no. 7 has been on short term let through Airbnb there have been numerous issues with guests including:

1. Excessive noise until around 2am, and on one occasion verbal abuse of a resident when asked to Airbnb guests to keep the noise down.
2. Guests walking around looking to get access to no. 7 and knocking on other resident's doors and looking through windows to get attention.
3. Parking on grass areas.
4. Security issues with uncertainty around numerous people around the property who we do not know whether they are Airbnb guests or third parties walking through.
5. It is now not uncommon for guests to arrive with e-bikes - no.7 does not have direct ground floor access (it shares a common entry with another apartment and is located on the first and second floors of the building) so there are fire concerns associated with potential charging of these in the apartment.

Overall, the quality of life in Balnacoll has been significantly degraded by having an Airbnb in one of the apartments. Granting a license for this apartment could set a precedent for other owners to request a short term let license which would amplify the degradation of the unique living environment at Balnacoll that most residents who have lived here for many years cherish.

I strongly urge you to reject this license application under Legal Test section c and potentially section a. I am happy to answer any queries you may have to reach a decision.

Yours sincerely,

A black rectangular redaction box covering the signature of Nigel Dyer.

Nigel Dyer

b) Jonathan Machin, amended objection letter dated 27th December 2023

27th December 2023.

Head of Planning & Economy (Environmental Health)
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie
AB51 3WA

From: Jonathan Machin



By email delivery.

Ref: Site Notice – Short Term Let Licence, 7 Balnacoil Apartments, Aboyne AB34 5JD

I wish to proceed with this objection letter. This is a requested re-submission of the original letter submitted on 12th October 2023.

As per the above Site Notice, I write to deliver my grave objections to this Application. I am a direct neighbour of this apartment. My own apartment is directly underneath the applicant.

The objections are for the reasons as stated below. I have cut and paste from the Scottish Government website as template for the list (<https://www.gov.scot/publications/short-term-lets-scotland-licensing-scheme-part-1-guidance-hosts-operators-3/pages/4/>).

4.13. The primary purpose of the licensing scheme is to ensure short-term lets are safe and take account of local needs and circumstances. Competent grounds for objection to a licensing application may include:

- *concerns that the application is inaccurate or misleading;*
- *concerns about the safety of guests, neighbours or others;*
- *concerns about noise or nuisance; and*
- *concerns that the application runs contrary to other legal or contractual requirements.*

Following the detailed points on the template:

concerns about the safety of guests, neighbours or others;

No. 7 Balnacoil Apartments is contained within a quiet residential development on the outskirts of Aboyne Village. The property was specifically designed as the conversion made around 40 years ago from a much older building, for long term residential use and amenity. The property contains an open-access communal garden lovingly maintained by and for the enjoyment of the residents.

I purchased my apartment at the time of original conversion 40 years ago. The Balnacoll apartments are it would be fair to say a close-knit community where safety is valued above all else and neighbours take care to watch over each other and their properties. Great pride is taken in our communal garden with shared facilities which the neighbours have in the past rarely needed to lock.

However, the apartment in the application has actually been marketed for Airbnb purposes for some time now, estimated over 1-year (the exact dates are unclear to me). While we try to remain on cordial terms with fellow owner Mr Bruce Booth, he has become only too aware of the neighbours mounting severe concerns over this short term Airbnb business. To be blunt, I carry a large amount of stress worrying about personal safety due to the multiple different transient customers who come and go sometimes daily, the risk of damage they might cause, and safety implications to our residential community.

concerns about noise or nuisance; and

There have been in the course of the last months several egregious cases of noise and disturbance caused by the AirBnb business now underway at Apartment 7. For example, on or around the night of Saturday 12th August 2023 several Airbnb customers of Apartment 7 woke up myself, my children and other neighbours at approx. 1AM with shouting in what appeared to be a drunken fight underway on the communal garden. Upon being challenged by myself, and another neighbour from apartment 8, the Airbnb customers became unpleasantly aggressive and returned to Apartment No 7. A tremendous noise of shouting and crashing continued for a further hour or two from within the apartment but keeping us awake.

My kids aged 16 and 18 were studying for critical re-sit exams at the time and this incident has caused them tangible distress. This is one example, and there are others.

concerns that the application runs contrary to other legal or contractual requirements.

I am also flagging up that I do indeed have "concerns that the application runs contrary to other legal or contractual requirements".

Yours faithfully,



Jonathan Bruce Machin



c) Neil Fraser, amended objection letter dated 24th December 2023

Neil Fraser



24 December 2023

Head of Planning and Economy
Aberdeenshire Council
Gordon House
Blackhall Road
Inverurie AB51 3WA

Your ref: STL/00863/23. (Revised objection letter previously submitted 19 Oct 23)

Dear Sir / Madam,

I am writing to you regarding the short term let licence application pertaining to:

7 Balnacoil Apts, Rhu Na Haven Rd, Aboyne. AB345JD

I would like to object in the strongest possible terms.

Having resided very happily in this communal building for almost 25 years, the current short term lease arrangement on the above mentioned property is causing continual grief to ourselves primarily due to noise, nuisance and loss of privacy. This lease has also had a detrimental impact to the traditionally safe environment within our private grounds..

One of the main reasons for the purchase of our home at Balnacoil Apartments, was the privacy, safety and peace afforded by its location and surroundings, which has been completely ruined recently with the constant turnover of strangers on our premises.

It is unfair that we, as residents, are put in the very uncomfortable (and potentially unsafe) position of having to confront, at times drunken, loud strangers late at night to inform them that their behaviour is inappropriate.

During the conversion of this building into apartments (late 1990s), very little effort was put into adequately insulating walls/ceilings/floors to prevent internal noise disturbance from neighbouring apartments. Having constant turnover of people who are not aware of these issues has become severely problematic. I firmly believe there has been a relatively high turnover of apartments here as a result of these noise issues.

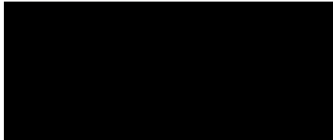
Furthermore many years ago we had to introduce a 5mph speed limit in the grounds which we, as residents, strictly adhere to and enforce, due to near misses with children/pets in the past. Short term tenants regularly ignore/disregard this limit and it has now become a serious safety concern.

As mentioned above, this short term let venture is inconsiderate and to the detriment/ wellbeing of the remaining homeowners. Therefore we trust that our objections to this application are strongly considered.

Yours Faithfully,



Neil Fraser



APPENDIX 3

WRITTEN SUBMISSIONS

(TO BE CIRCULATED IF LODGED IN ADVANCE OF THE HEARING BY THE
PARTIES)

APPENDIX 4 – LEGAL TEST

**Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets)
Order 2022 (as amended)
Section 44 and Schedule 1 of the Civic Government (Scotland) Act 1982
Applications for Short-Term Let Licences**

2. LEGAL TEST

A **Licensing authority SHALL** refuse an application to grant or renew a licence if, in their opinion:

- a. The applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either –
 - i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
 - ii. Not a fit and proper person to be the holder of the licence
- b. The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if they made the application themselves;
- c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
 - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
 - ii. The nature and extent of the proposed activity
 - iii. The kind of persons likely to be in the premises, vehicle or vessel
 - iv. The possibility of undue public nuisance; or
 - v. Public order or public safety;
- d. the applicant would not be able to secure compliance with –
 - i. the mandatory licence conditions,
 - ii. the standard conditions and any further conditions,
- e. the application does not contain the information required under paragraph 1(2), (da)¹, or (db)² (the consent of the owners of the premises), or
- d. There is other good reason for refusing the application;

And otherwise **SHALL** grant the application.

¹ Where the applicant is not the owner of the premises, or the land on which the premises are located – (i) the name and address of the owner (or, as the case may be, each owner), and (ii) a declaration from the owner (or, as the case may be, each owner), or a person authorised to act on their behalf, that they consent to the application.

² Where the applicant shares ownership of the premises, or the land on which the premises are located – (i) the name and address of each other owner, and (ii) a declaration from each other owner, or a person authorised to act on their behalf, that they consent to the application.

1. In terms of Article 4 (1) of the above Order, a licence known as a **short-term let licence**, **SHALL** be required for the use of premises as a short term-let, accommodation that is on a single premises requires only one short term licence.
2. Article 3, states that a “**short-term let**” means the use of residential accommodation provided by the host in the course of a business to a guest, where all of the following criteria are met:
 - a. the guest does not use the accommodation as their only or principal home,
 - b. the short-term is entered into for commercial consideration,
 - c. the guest is not –
 - (i) an immediate family member of the host,
 - (ii) sharing the accommodation with the host for the principal purpose of advancing the guest’s education as part of an arrangement made or approved by a school, college or further or higher educational institution, or
 - (iii) an owner or part-owner of the accommodation,
 - d. the accommodation is not provide for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host’s household,
 - e. the accommodation **is not excluded accommodation**.
In terms of Schedule 1, Paragraph 1 of the Order, excluded accommodation means accommodation which is, or is part of –
 - (i) an aparthotel³,
 - (ii) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
 - (iii) a hotel which has planning permission granted for use as a hotel,
 - (iv) a hostel⁴,
 - (v) residential accommodation where personal care⁵ is provided to residents,
 - (vi) a hospital or nursing home,
 - (vii) a residential school, college or training centre,
 - (viii) secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, short-term holding centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),

³ ‘aparthotel’ means a residential building containing serviced apartments where – (a) the whole building is owned by the same person, (b) a minimum number of 5 serviced apartments are managed and operated as a single business, (c) the building has a shared entrance for the serviced apartments and (d) the serviced apartments do not share an entrance with any other flat or residential unit within the building – ‘serviced apartment’ means a flat or residential unit in respect of which - (a) services are provided to guests (such as housekeeping, a telephone desk, reception, or laundry), (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units.

⁴ ‘hostel’ means a building, other than a dwellinghouse, in which there is provided for persons generally or for any class or classes of persons – (a) residential accommodation, and (b) either or both – (i) meals, (ii) cooking facilities.

⁵ ‘personal care’ has the same meaning as in the paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010.

- (ix) a refuge⁶,
- (x) student accommodation⁷,
- (xi) accommodation which otherwise requires a licence for use for hire for overnight stays (does not include an HMO licence granted under section 129 of the Housing (Scotland) Act 2006),
- (xii) accommodation which provided by the guest,
- (xiii) accommodation which is capable, without modification, of transporting guests to another location,
- (xiv) a bothy⁸, or
- (xv) accommodation owned by an employer and provided to an employee in terms of a contract of employment for the better performance of the employee's duties.

f. The short-term let **does not constitute an excluded tenancy.**

In terms of Schedule 1, Paragraph 2 of the Order, an excluded tenancy means a tenancy within any of the following definitions –

- (i) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984),
- (ii) an assured tenancy (within the meaning of section 12 of the ... Act 1988),
- (iii) a short assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988),
- (iv) a tenancy of a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993),
- (v) a tenancy of holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland) Act 1993) to which any provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
- (vi) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001),
- (vii) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001),
- (viii) a 1991 tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003),
- (ix) a limited duration tenancy (within the meaning of section 5A of the Agricultural Holdings (Scotland) Act 2003),
- (x) A short limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003),
- (xi) a tenancy under a lease which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003),
- (xii) a private residential tenancy (within the meaning of section 1 of the Housing (Tenancies) (Scotland) Act 2016),
- (xiii) a student residential tenancy⁹.

⁶ 'refuge' means accommodation used wholly or mainly for persons who have been subject to any incident or pattern of incidents, of – (a) controlling, coercive or threatening behaviour, (b) physical violence, (c) abuse of any other description (whether physical or mental in nature), or (d) threats of any such violence or abuse.

⁷ 'student accommodation' means residential accommodation which has been built or converted predominately for the purpose of being provided to students.

⁸ 'bothy' means a building of no more than two storeys which (a) does not have any form of – (i) mains electricity, (ii) piped fuel supply, and (iii) piped mains water supply, (b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984), and (c) is 100 metres or more from the nearest habitable building.

3. Section 3B (1) of the Civic Government (Scotland) Act 1982, states that, a **licensing authority, MAY** attach standard conditions to a short-term let licence, however, these **MUST NOT** impose a limit on the number of nights for which premises may be used for secondary letting¹⁰.
4. A **licensing authority, SHALL NOT**, in a case where a certificate falls to be submitted to them (in relation to the display of a site notice) reach a final decision on an application to which the certificate relates until it has been so submitted.

⁹ 'student residential tenancy' means a tenancy – (a) for the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student and (b) to which sub-paragraph (2) or (3) of schedule 1 (tenancies which cannot be private residential tenancies) of the Housing (Tenancies) (Scotland) Act 2016 applies).

¹⁰ 'secondary letting' means a short-term let consisting of the entering into an agreement for the use of accommodation which is not, or is not part of, the licence holder's only or principal home.

APPENDIX 5 – Procedure for remote Licensing Hearings (APPLICATIONS)

- (a) Identify whether the applicant and his/her advisors are present.
- (b) Identify whether the Objector(s) and his/her advisors are present. [in turn]
- (c) If there are no protected convictions, go to (h) below.

PROTECTED CONVICTIONS

- (d) Where the applicant has protected convictions the Chair should:-
 - (i) Invite the representative of the Chief Constable to satisfy the Sub-Committee that justice cannot be done unless the protected convictions are taken into account. (In the undernoted case, it is indicated that it would be improper to invite the applicant to make comment on the spent convictions)
 - (ii) The Chair should invite members of the Sub-Committee to ask questions;

NOTE: In the case of O'Docherty v Renfrewshire Council 1998 SLT 327, it is suggested that “at the least some sort of inquiry as to the age and general nature of the convictions would be essential to any proper decision.

- (e) The Sub-Committee then has to determine whether or not it is satisfied that there is no other way of doing justice than to look at the protected convictions in considering the application. The Sub-Committee **MAY** go into private session to consider the submissions made. It is recommended, however, that the Sub-Committee not reach any decision during the retreat.

NOTE TO PARTIES

If the Sub-Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to reinvite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (f) Thereafter, the Chair should:
 - (i) Call for a motion regarding the protected convictions
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Chair should confirm with the Sub-Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (g) If the Sub-Committee has determined to consider the protected convictions, they will then be circulated to Members separately by email for the Sub-Committee's perusal.

NOTE FOR PARTIES

Where the hearing is in public, the recording of the meeting will be paused until the Chair is satisfied that all members have read and understood the document circulated, at which point the recording will be restarted

THEREAFTER:

- (h) Invite the applicant to speak to his application (outline to the Sub-Committee why the application has been made and make any comments in relation to any observation/objection made in respect of the application)
- (i) Ask the Objector(s) to speak to the Objection(s) or Observation(s) [in turn]
- (j) Give the applicant an opportunity to address any issues raised by the Objector(s).

NOTE TO PARTIES

- **Presentation of a case may be through the use of documents (which must be provided to all parties prior to the start of the Hearing), oral submissions made at the hearing, written submissions lodged no later than 7 days in advance of the hearing, or a combination thereof;**
 - **Cross Examination by the parties is not generally permitted**
 - **Hearsay evidence is admissible.**
- (k) Members MAY then question all parties present.
 - (l) Chair should invite concluding remarks (objector(s) then applicant), but no new evidence, before considering the application.

NOTE TO PARTIES

Once you have been asked to make concluding remarks you are not entitled to speak again, unless to answer a question from a Sub-Committee Member.

- (m) Members may then deliberate the application and/or ask for legal advice if required. Members can choose to deliberate the application in private, however, no decisions will be made during any adjournment to deliberate in this way.

NOTE TO PARTIES

If the Sub-Committee opts to adjourn the meeting to deliberate in private, the parties will be asked to leave the meeting, failing which, the Committee Officer will remove the parties from the meeting. Where the hearing is in public, the recording of the meeting will be paused. On resuming the bench, the Committee Officer will contact all parties to re-invite them back into the meeting. On confirming all parties are again present, the recording of the meeting will be restarted

- (n) Thereafter, the Chair should confirm with Members that they have sufficient evidence upon which to make a decision.

- If the Sub-Committee determines that there is not sufficient evidence upon which to make a decision, the application will be **deferred** to a future meeting of the Committee for further evidence to be obtained.
 - If the Sub-Committee determines that there is sufficient evidence upon which to make a decision, the Chair will then:
 - (i) Call for a motion
 - (ii) Call for a seconder to the motion
 - (iii) Call for any amendment to the motion
 - (iv) Call for a seconder to any amendment proposed.
 - (v) If there is no amendment, the Chair should confirm with the Sub-Committee that the decision is unanimous. **[This will be done by roll call vote for transparency purposes]**
 - (vi) If there is an amendment, then there **MUST** be a vote. The Chair has the casting vote.
- (o) The Legal Officer will confirm the decision taken by the Sub-Committee

NOTE TO PARTIES

The parties will then be asked to leave the meeting, failing which the Committee Officer will remove the parties from the meeting.

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