

**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 Durris, 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