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Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100678570-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	JJF Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Joe	Building Name:	
Last Name: *	Fitzpatrick	Building Number:	35
Telephone Number: *	07974426615	Address 1 (Street): *	Aytoun Crescent
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Burntisland
Fax Number:		Country: *	United Kingdom
		Postcode: *	KY3 9HS
Email Address: *	joe.fitzpatrick390@gmail.com		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:

Mr

You must enter a Building Name or Number, or both: *

Other Title:

Building Name:

First Name: *

David

Building Number:

Last Name: *

Dourley

Address 1
(Street): *

Company/Organisation

Address 2:

Telephone Number: *

Town/City: *

Extension Number:

Country: *

Mobile Number:

Postcode: *

Fax Number:

Email Address: *

joe.fitzpatrick390@gmail.com

Site Address Details

Planning Authority:

Perth and Kinross Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

2 Birnam Terrace Birnam

Northing

741751

Easting

303167

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Change of use from flat to short-term let unit (in retrospect).

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See Notice of Review Statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

SUPPORTING DOCUMENTS 1. Personal Statement by Applicant, 2. Short-term Let Licence, 3. Decision Notice 15th May 2024, 4. Delegated Report of Handling – 23/01707/FLL, 5. Delegated Report of Handling - 22/01826/FLL, 6. Delegated Report of Handling - 22/00143/FLL, 7. Perth and Kinross Council Non-statutory Guidance – Change of Use of Residential Property to STL, 8. Scottish Government Circular 1/2023 – Short-term Lets and Planning, 9. The Town and Country Planning (Short-term Let C

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

23/01707/FLL

What date was the application submitted to the planning authority? *

10/10/2023

What date was the decision issued by the planning authority? *

15/05/2024

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Joe Fitzpatrick

Declaration Date: 15/07/2024

Joe Fitzpatrick
Planning Consultant

Joe.fitzpatrick390@gmail.com
07974426615
01592874360

Notice of Review Statement

Planning Application 23/01707/FLL Change of use from flat to short-term let unit (in retrospect) | 2 Birnam Terrace Birnam Dunkeld PH8 ODR

1.0 INTRODUCTION

- 1.1 This Grounds for Review Statement provides the supporting justification for approval of planning application reference 23/01707/FLL for Change of Use (In Retrospect) from Flat to Short Term Let at 2 Birnam Terrace Birnam Dunkeld. The Short Term Let use has been operating for a period of 2 years, as detailed in my clients supporting justification (Document 1).
- 1.2 The application was submitted following approval of a Short Term Let Licence (Licence No: PK11185F) by Perth and Kinross Council under The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (Document 2). It will be noted that under the section relating to Planning Permission the terms of the Licence state:

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997(4) ("the 1997 Act"), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either—

- a. an application has been made for planning permission under the 1997 Act and has not yet been determined, or*
- b. planning permission under the 1997 Act is in force.*

- 1.3 Despite there being no short term let control area designated for Dunkeld and Birnam, my client was aware of the Councils proposals to make such a designation under Section 26B of the Town and Country Planning (Scotland) Act 1997 (As Amended) and in preparation for this, they sought to respond positively to the good intent shown by the Council in granting the Short Term Let Licence by voluntarily applying for planning permission to consolidate the change of use.

- 1.4 The application was subsequently refused under delegated powers on 15th May 2024. The Decision Notice (Document 3) stated the following reasons for refusal:

1 The proposal is contrary to National Planning Framework 4 (2023) Policy 14(c): Design, Quality and Place and Perth and Kinross Local Development Plan 2 (2019), Policies 1A Placemaking and Policy 17 (d) Residential Areas as the short-term let accommodation would adversely impact on the amenity of neighbouring residents and the short-term let use would not be compatible with the amenity and character of the surrounding residential area.

2 The proposed retrospective change of use is contrary to Policy 30(e): Tourism of National Planning Framework 4 (2023) as the proposal would result in:

- i) An unacceptable impact on local amenity and character of the area, and*
- ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

2.0 TERMS OF ASSESSMENT

2.1 In presenting the case for approval of the application, the terms of assessment are set out within the Town and Country Planning (Scotland) Act 1997 (the Act). Specifically, Sections 25 and 37(2) of the Act provide the primary legislative context within which Planning Authorities are required to reach decisions on individual applications for planning permission. Section 25 advises that:

Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

2.2 Section 37(2) of the Act further advises that:

In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

2.3 The development plan comprises TAYplan -2017, the Perth & Kinross Local Development Plan 2 – 2019 and the National Planning Framework 4 – 2023 (NPF4). Contrary to the Councils assessment of the application under the above primary legislative requirements, as set out within the Report of Handling (RoH) (Document 4), it is considered that the development plan and other material considerations provide a strong case for approval of this application.

2.4 In this regard, in addition to the above development plan context, the following material considerations will be addressed in support of approval of this application:

- The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (Document 5);
- Planning Circular 1/2023 – Short-term Lets and Planning (Document 6);
- The Perth and Kinross Non-statutory Planning Guidance – Change of Use of Residential Property to Short-term Let (Document 7)
- Planning Permission 22/01826/FLL - Report of Handling (Document 8); and
- Planning Permission 22/00143/FLL – Report of Handling (Document 9).

3.0 GROUNDS FOR REVIEW

3.1 The primary considerations under development plan policy in relation to an assessment of an application for a short-term let are set out under NPF4 Policy 30 Tourism. Although reference is made to NPF4 Policy 14 (c) and Policy 1A of the Perth & Kinross Local Development Plan, the matters raised are essentially the same. In this regard, the criteria can be summarised as assessing:

- effect on local amenity and the character of an area; and
- effect on the local housing supply.

3.2 In relation to both these criteria, the Council has concluded that the retrospective approval of the short-term let at 2 Birnam Terrace would have an adverse effect. However, the Councils conclusions are considered to be flawed in that the reasoning behind such conclusions is based on a false presupposition that the Council is powerless to take remedial action to avoid the above effects.

3.3 The RoH (Document 4) advises that it is the cumulative impact of the number of short-term lets within an area that is the cause for concern. In this regard the RoH states:

The property to which this application refers, falls within the area that has been consulted on as a potential short-term let control area, where the number of short-term lets may be impacting on the availability of appropriate housing for local residents.

3.4 In terms of addressing this cumulative impact, my client fully agrees that the Council is entirely justified in seeking to take remedial action in the interests of making sure there is sufficient housing for local people. However, my client is concerned that the Council's decision to refuse this application is predicated on a presupposition that it is powerless to take action to take remedial measures to prevent a growing cumulative adverse impact on local amenity, the character of the area and housing supply.

3.5 In this regard, it would be understandable for the Council to refuse the application if a position had been reached whereby there were a large number of lawfully operating short-term lets within the Dunkeld and Birnam area that the Council was powerless to do anything about through recourse via enforcement action to achieving restoration to a predominance of standard Class 9 residential uses. However, this is far from the case in relation to the situation within the Dunkeld and Birnam area.

3.6 Since 2019 there have been only 12 applications for planning permission for a change of use to form a short-term let within the Dunkeld and Birnam area. Therefore, although it is acknowledged that there are a large number of short-term lets within the Dunkeld and Birnam area and that this may be impacting local housing supply, the vast majority of these short-term lets are operating without planning permission. In this regard the Council has stated that it considers all changes of use from a residential property to a short-term let to constitute a material change that requires planning permission.

3.7 Therefore, in view of the above, it lies within the Council's power to prevent the above concerns over cumulative impact via the planning system. On this basis, it is considered unreasonable for the Council to penalise my client due to an assessment of a cumulative impact that may be happening, when it lies within the Council's power to ensure that such a cumulative impact does not happen.

3.8 It is undoubtedly the case that the Council recognises the importance of supporting tourism in the interests of sustaining a healthy local economy in the long term and this is reflected in the policies of the Perth & Kinross LDP. However, it is also recognised that there is a need to maintain a healthy supply of housing for local people, especially affordable housing, and that this must also be a priority for the Council. Maintaining a sustainable balance between these two competing objectives is crucial.

3.9 However, at present the Council lacks sufficient information upon which to base decisions which will lead to such a sustainable balance being achieved. In this regard, the Council's decision to refuse my client's application has been taken without any information on how many short-term lets there are in the area and how many such uses the area can sustain. There is also strong evidence that the Short-term Let Licencing procedure itself is having an effect in reducing the overall number of short-term let uses without the need for such reductions to be achieved via the planning system. The situation at Birnam Terrace provides a prime example of this in that there were previously 4 such short-term let uses there prior to the Licencing process being introduced. There are now only two, including the use at 2 Birnam Terrace. The RoH makes no mention of this crucial piece of information, no doubt for no other reason than the fact that such information is simply unavailable to Case Officers.

- 3.10 In addition, there is no information on the extent to which the lack of housing supply and the consequent elevated house prices in Dunkeld and Birnam are being driven by the number of short-term lets. A strong factor in this, if not the primary factor, is the lack of an adequate local housing land supply. Again, it lies within the Council's power to address this by allocating more land for housing within the Dunkeld and Birnam area.
- 3.11 Within such an information vacuum there is a danger that decisions will be taken which are not in the best overall public interest in achieving a sustainable balance between the economic interests of supporting short-term let uses and the social interests of ensuring an adequate housing supply, especially so given the strength of local opinion regarding housing costs.
- 3.12 Given the lack of objective information upon which to base decisions on short-term let applications, a more appropriate course of action would be for the Council to define the number of short-term lets that it considers to be an acceptable amount in the Dunkeld and Birnam area and then use this figure as a benchmark against which the consideration of proposals for short-term let uses will be assessed. My client should not be penalised for having voluntarily come forward to assist the Council to initiate the process of achieving such a balanced position when the real source of the problem is down to the actions of others who have not yet sought to work with the Council by submitting an application for planning permission.
- 3.13 In addition, although it is recognised that the Council needs to address local housing issues, the current situation in Birnam wasn't arrived at overnight and in order to avoid the risk of an adverse impact on the local economy, the remedy should be applied progressively. The Council now has an opportunity to apply such a progressive remedy and manage a solution to the local housing situation through gradual change via the planning system. This is the only safe way of ensuring that the legitimate response to local housing need is not achieved to the detriment of tourism based support for the local economy.
- 3.14 As a further consideration, a strategy of refusing applications for short-term let uses, in advance of carrying out the necessary work to assess the number of such uses an area can sustain, will effectively deter operators of existing unauthorised short-term lets from coming forward and submitting an application. Although the Council has the option of pursuing enforcement action to address this, such action would be much more effective if it were to be taken against a background of an objective assessment of capacity thresholds.
- 3.15 Unless such an approach is taken there is little prospect of the Council resolving the impact of short-term lets on local housing supply. To the contrary, far from resolving the issue, arbitrary refusals of planning permission in the absence of objective information upon which to base such refusals will simply consolidate the problem in that the operators of existing unauthorised properties will lack any incentive to come forward, thereby forcing the Council into very resource intensive enforcement action.
- 3.16 If the Council were to carry out some level of assessment to identify the number of short-term lets the area can sustain in achieving a balance between the social imperative of maintaining an adequate supply of housing and the economic imperative of ensuring provision of tourist accommodation, and if the Council were to then make such a figure known locally, the problem relating to the impact of short-term lets on local housing supply would be solved overnight. Operators would be falling over themselves to get their application in and approved prior to the capacity figure being reached. Such an approach would have the added benefit that the Council would then be in a much stronger position to pursue enforcement action against unauthorised uses.
- 3.17 In seeking to set out criteria for the selection of short-term lets that should gain favourable consideration within the overall capacity limits set for a particular area, priority should be given to those properties where sustainable transportation objectives can be achieved. In this regard, the RoH advises that:

The application site is however within convenient distance of public transport options in the form of bus stops on Perth Road and Birnam Railway Station. In these respects, the proposal accords with NPF4 Policy 13, Sustainable Transport and LDP2 policy 60B.

In particular, the property at 2 Birnam Terrace is located close to the railway station and is in easy walking distance. Guest frequently arrive by train and then use the train and local bus services for onwards links to popular visitor destinations. As such there is considerable merit in approving this application in terms of promoting sustainable modes of transportation

- 3.18 Turning now to more detailed consideration under the reasons for refusal offered by the Council. In relation to the effect on amenity and the character of the area, although the reason for refusal offered is definite in stating the adverse effects, the RoH does not portray such a confident stance. In detailing the assessment relating to effect on amenity the RoH even confirms that the use is not significantly different from a residential use:

In respect of criterion (i) of NPF4 Policy 30(e), the proposed use of the property as a short term let would not be significantly different from a flat in terms of its physical appearance, the extent of guest footfall or noise emanating from the property, so long as good management practices are in place.

- 3.19 In view of this it is perplexing to note the conclusion reached in the RoH:

However, the high turnover of guests would likely be higher than typical private rented or owner-occupied accommodation, and this could have an impact on noise and disturbance to neighbours and may contribute to a cumulative adverse impact on the residential character of the area.

- 3.20 In addition to this contradictory position, the use of terms such as “would likely”, “could have” and “may contribute” are hardly the decisive and robust terms of assessment that would justify refusal of the application. As such the assessment is considered to be based mainly on subjective conjecture on what may happen in the future as opposed to being based on any objective assessment of the current position.
- 3.21 Although it could be argued that such an objective assessment is not possible for a new short-term let proposal, it will be noted that this is a retrospective application and that there have been no complaints whatsoever from neighbours in the two years it has been in operation. In addition, it will be noted that the planning application itself did not attract any objections.
- 3.22 These two factors are considered to provide a strong basis for an objective assessment by the Council that the proposals will not have a negative effect on amenity. Given the Councils clear uncertainty in the RoH over whether or not such an amenity impact will occur, far from swinging towards a refusal, it is considered that the lack of any complaints or objections should provide the Council with a high degree of confidence in swinging to towards a conclusion that no amenity impact will occur.
- 3.23 Mention is made in the RoH of the Reporters appeal decision at Merlin Court Birnam in support of an adverse assessment regarding impact on amenity and the character of the area at 2 Birnam Terrace. However, for the reasons stated above, the situation at Merlin Court is radically different to that at 2 Birnam Terrace. The application at Merlin Court was not retrospective therefore there was no objective means of assessing the impact. In addition, the application at Merlin Court attracted a high number of objections from local residents. These considerations substantially diminish the extent to which the Reporters decision on Merlin Court should be treated as a material consideration in the assessment of the application at 2 Birnam Terrace.

- 3.24 It is also noted that applications for short-term lets in the immediate vicinity of 2 Birnam Terrace have been given an entirely different assessment in relation to effect on amenity and the character of the area.
- 3.25 In March of 2023, Flat 2 at Parkview Station Road Birnam was granted planning permission for a change of use to short-term let use. The RoH for this application is included as Document 5. In order to provide clarity on the location of this approval the RoH has been amended to include the location plan. It will be noted that Flat 2 Parkview is on the other side of Birnam Terrace from the property forming the subject of this Review.
- 3.26 Despite this close proximity, the RoH for the planning permission at Parkview notes in relation to effect on the amenity and character of the area that the proposed change of use is entirely acceptable. Specifically, the RoH advises:

In respect of criterion (i), the proposed use of the property as a short term let would result in footfall associated with guests staying at the property. However, the footfall would not be significantly different from the footfall associated with use as a residential flat. The flat is accessed through a communal entrance and noise from the use of the property as a short term let is not considered to be significantly different from its use as a residential flat. The use of on street parking and communal garden would be in keeping with the residential use.

- 3.27 The RoH states that the above assessment is based on the lack of any complaints during the 2 years the property has been operating as a short-term let. In this regard the RoH states:

The supporting statement notes the property has been operating as short term let accommodation for 2 years with no complaints reported from neighbours to the property. It states that the rentals are professionally managed by an independent business.

- 3.28 The obvious question is, why is the same basis for assessment not being applied to the retrospective change of use at 2 Birnam Terrace where, as is the case at Parkview, no complaints have been made over the three year period the short-term let has been operating at 2 Birnam Terrace and no objections were submitted in response to the planning application. Particularly when the property at Parkview is within whispering distance of 2 Birnam Terrace.

- 3.29 In addition, the property at Parkview is accessed through a communal entrance thereby giving rise to a much higher potential for disturbance than exists at 2 Birnam Terrace where there are two separate dedicated entrances, one off Birnam Terrace and the other to the rear in the courtyard area.

- 3.30 The Council has also recently approved another application for change of use, including holiday accommodation units, at Merryburn Station Road Birnam (Ref: 22/00143/FLL). As will be seen from the RoH (Document 6), this property diagonally adjoins 2 Birnam Terrace. Again, the RoH offers a very positive assessment in relation to the effect of the proposed short term lets on amenity and the character of the area. In this regard the RoH states:

The proposed development would be in keeping with the character and appearance of the existing building and the conservation area. As a result it would have a positive impact on the quality of the surrounding built and natural environment, residential amenity and the character and appearance of the conservation area.

- 3.31 The only possible explanation for the above inconsistencies, associated with properties right next door to and even adjoining 2 Birnam Terrace, relates the Reporters decision at Merlin Court. However, for the reasons stated at paragraph 3.23, the situation at 2 Birnam Terrace is radically different from that at Merlin Court.

- 3.32 It should also be noted that the property at 2 Birnam Terrace was previously part of the Merryburn Hotel before it was sold as a private dwelling. The approval of this application for a short-term let will therefore simply be restoring the use of the property to its previous status.
- 3.33 In addition, it will be noted from my clients submission that they have carried out extensive works on the property, works which have restored the external appearance to a standard commensurate with the best interests of preserving the character and appearance of the conservation area.
- 3.34 In relation to the refusal on amenity grounds and effect on the residential character of the area, the Council also refers to Policy 17 – Residential Areas, of the Perth & Kinross LDP. However, contrary to the Councils assertion, Policy 17, and in particular Policy 17(d), provides direct support for approval of the application.
- 3.35 The overall objective of Policy 17 is to safeguard the amenity of residential areas whilst also allowing uses which are compatible with a residential use. In this regard Policy 17 states:

Generally, encouragement will be given to proposals which fall into one or more of the following categories of development and which are compatible with the amenity and character of the area:

- (a) Infill residential development at a density which represents the most efficient use of the site while respecting its environs.*
- (b) Improvements to shopping facilities where it can be shown that they would serve local needs of the area.*
- (c) Proposals which will improve the character and environment of the area or village.*
- (d) Business, homeworking, tourism or leisure activities.*
- (e) Proposals for improvements to community and educational facilities.*

- 3.36 It will be noted that one of the categories of development that will be encouraged within a residential area is tourism under part (d). Therefore, as well as supporting the argument that a tourism use, such as a short-term let use, is compatible with a residential area in terms of amenity and effect on the character of an area, Policy 17(d) also provides direct development plan policy support for approval of this application.
- 3.37 In relation to the second reason for refusal, this focuses on the two criteria set out under NPF4 Policy 30(e) in the assessment of proposals for short-term uses. Specifically, the Council states that the retrospective application for the short-term let use at 2 Birnam Terrace is contrary to the second criterion in that approval will result in:

ii) the loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

- 3.38 In addressing this reason for refusal, it will be noted from my clients submission (Document 1) that his primary purpose in purchasing the property is related to supporting his role as a senior officer withing the Scottish Fire and Rescue Service. The short-term let use is purely a secondary use. As such, in the event that this secondary use as a short-term let is refused, the primary use of the property will remain. Therefore, the loss of the residential use is a consequence of the property being purchased in order to support my clients employment. The second reason for refusal is therefore incorrect in stating that approval of the short-term let use will result in the loss of the residential use of the property as part of the local housing supply.

- 3.39 This position will remain the case once my client retires from the Fire Service in that he then intends to move to Birnam on a permanent basis.
- 3.39 Although, the issue regarding my clients employment needs as the primary purpose in purchasing the property was raised in an email to the Council dated 25th February 2024, it is noted that the RoH does not mention this. This is not only relevant to the above consideration but also to the following matters.
- 3.40 Notwithstanding the above, the second reason for refusal also introduces the aspect of assessment relating to the economic justification for the loss of the residential use. This consideration is also raised under the Perth and Kinross Non-statutory Planning Guidance – Change of Use of Residential Property to Short-term Let (Document 7) which states:
- 6. Is there anything which demonstrates that the loss of the residential accommodation will be outweighed by the benefits of the proposal to the local economy?*
- 3.41 In addressing the above economic imperative, given that my client's primary purpose in purchasing the property is to support his employment needs and that the property will be retained to meet this need regardless of the outcome of this application, refusing the application will result in an overall detrimental impact in planning terms in that there will be a consequent loss to the local economy for no social advantage in terms of housing supply. Conversely, to approve the application will result in an overall positive planning outcome by maintaining the local economic input derived from promoting tourism, despite the loss of the property to the local housing supply, an impact which will exist irrespective of the short-term let use ceasing.
- 3.42 As a further consideration relating to the fact that my client purchased the property in order to support his employment, as opposed to the primary purpose relating to the establishment of a short term let, the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (Document 8) and Planning Circular 1/2023 – Short-term Lets and Planning (Document 9) set out criteria defining what constitutes the provision of a short-term let. In this regard, Section 2 part (c) of the above Regulations and Annex A of the Circular advise that:
- 2.(1) For the purposes of section 26B of the Act, and subject to section 26B(3) of the Act, a short-term let is provided where all of the following criteria are met—*
- (c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,*
- 3.43 Therefore, given that my client purchased the property for the principal purpose of facilitating the provision of work, once the Short-term Let Control Area is designated, the short-term let use will be exempt from the requirement to obtain planning permission under Section 26B of the Town and Country Planning (Scotland) Act 1997 (As Amended).
- 3.44 Although it will be noted from my clients submission that demand for the use of the property for work purposes varies, the Regulations make no distinction in the intensity of such use in qualifying as an exemption under Section 2(c). In this regard the Regulations simply relate the exemption to the “principal purpose” not the principal use. Therefore, despite the variation in the intensity of the use of the property to support his employment needs, it remains the case that the principal purpose is to support such employment needs and the exemption under the Regulations applies.
- 3.45 Also, the Council's view is that any change of use from a residential flat to a short-term let constitutes a material change of use, irrespective of issues of fact and degree relating to each

case. Given the fact that the above Regulations advise that a short-term let is not being provided where the primary purpose is to facilitate the provision of work, then this provides a strong material consideration in support of an assessment that a material change in the nature of the use has not occurred in this case.

4.0 Conclusion.

4.1 The above Grounds for Review are considered to provide a strong justification for approval of this retrospective application for the change of use to short term let use at 2 Birnam Terrace, Birnam, Dunkeld. The reasons in support of such approval can be summarised as:

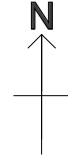
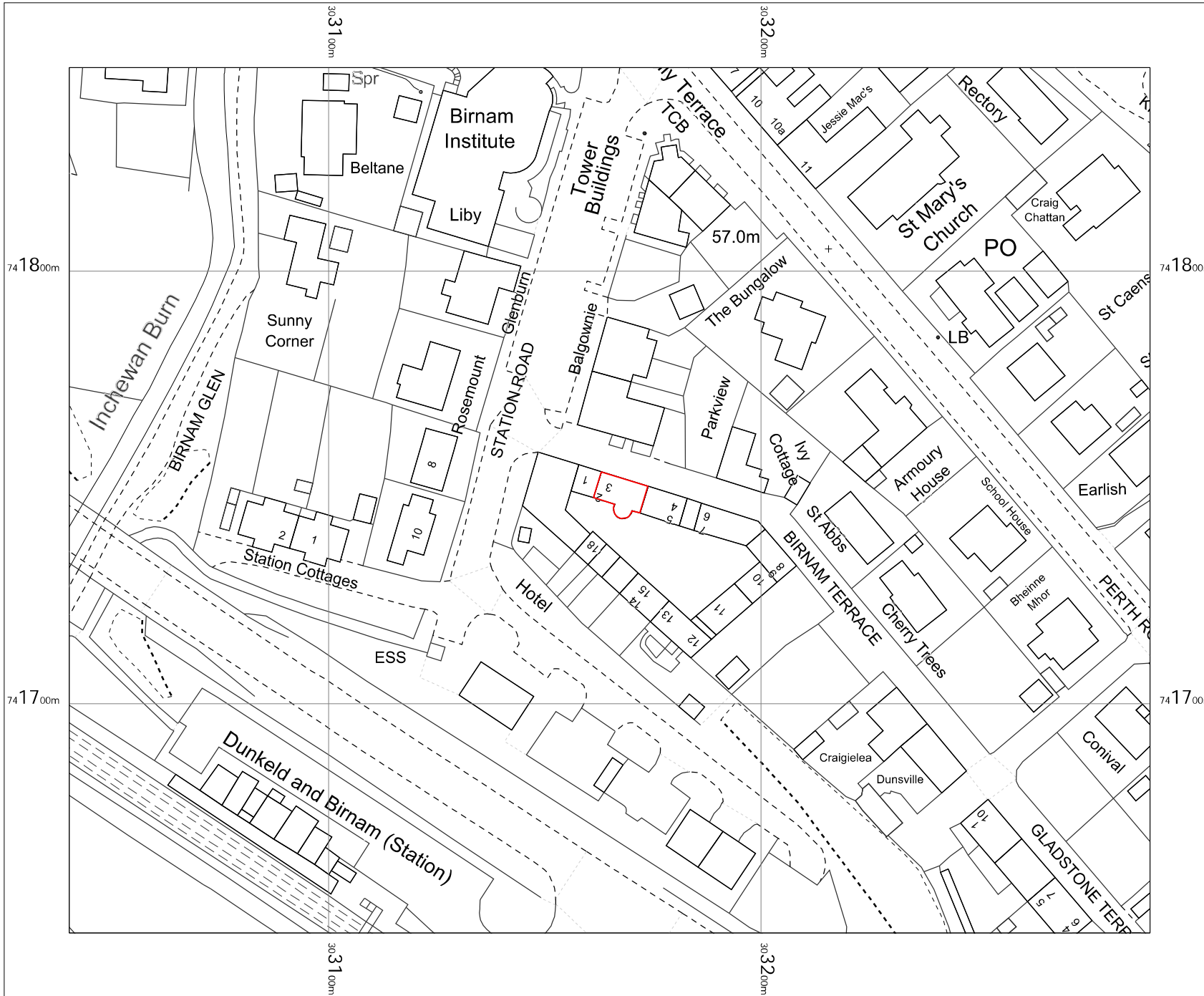
- it lies within the Council's power to prevent the cumulative impact on amenity, character of the area and housing supply that are the root cause of the Council's decision to refuse this application. The Council in refusing the application has done so based on concerns over the cumulative impact of short-term lets in the area without having adequate information on the extent of the problem and, most importantly, without taking into consideration the fact that it lies within the Council's power to redress the situation via the planning system.
- my client should not be penalised for being one of the first to voluntarily come forward and submit an application for planning permission in order to cooperate with the Council in achieving a more sustainable balance between short term let uses and residential uses when the vast majority of the short term let uses operating in the area are doing so without the benefit of planning permission.
- the fact that my client has operated the property for 2 years without any complaints from neighbours and the fact that there were no objections to the application, provide a strong material consideration in support of an assessment that the short-term let use will not have an impact on amenity and the character of the area, despite the Reporters findings at Merlin Court Birnam.
- the lack of complaints and objections has been used by the Council as the basis for assessment of an application at Parkview that the change of use from a flat to a short-term let use will not have any effect on amenity. Parkview is only a matter of meters away from my clients property.
- a further approval of planning permission for short term lets at Merrybank, which diagonally adjoins 2 Birnam Terrace, has recently been approved by the Council on the basis that there will be no effect on amenity or the character of the area.
- contrary to the Councils reference to Policy 17(d) of the Perth and Kinross Local Development Plan in support of refusal of the application, this policy provides direct support for approval of the application.
- contrary to the provisions of the second reason for refusal, the loss of the property for local housing supply purposes is not a result of the short term use. The property was purchased by my client in order to support the accommodation needs of his role as a senior commander within the Scottish Fire and Rescue Service.

- given the above, if the application is refused, the property will retain this principal purpose and there will be no benefit in terms of local housing supply, whereas the economic benefit that would otherwise be derived from the short-term use will be lost.
- given that the property was purchased by my client for the principal purpose of facilitating work, the provisions of the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 and Planning Circular 1/2023 – Short-term Lets and Planning state that the property is not providing a short-term let use for the purposes of the proposed Short-term Let Control Area covering Birnam and Dunkeld. Therefore, once the Birnam and Dunkeld Short-term Let Control area is established the property will be exempt from a requirement to obtain planning permission.
- given the Council's opinion that any change of use from a flat to a short-term let constitutes a material change, regardless of an assessment of fact and degree in each case, then notwithstanding the above exemption, it could be argued that planning permission is still required. However, the above exemption under the Regulations provides a strong material consideration in terms of an assessment of fact and degree in support of a conclusion that the use of the property for short-term use purposes does not constitute a material change in the nature of the use, thereby removing the need to obtain planning permission.
- the proposal accords with NPF4 Policy 13, Sustainable Transport and LDP2 policy 60B in that the application site is within convenient distance of public transport options in the form of bus stops on Perth Road and Birnam Railway Station. Approval of this application will therefore be directly consistent with the principles of promoting sustainable transportation.

4.2 In view of the above, it is considered that the approval of this application for planning permission in accordance with the provisions of Section 25 of the Town and Country Planning (Scotland) Act 1997 is merited. On this basis it is respectfully request that the Perth and Kinross Local Review Body approve this application for planning permission.

2 BIRNAM TERR BIRNAM

APPLICATION FOR CoU to STL



OS MasterMap 1250/2500/10000 scale
Tuesday, October 10, 2023, ID: M4P-01129699
www.nico sondigital.com
1:1250 scale print at A4, Centre: 303165 E, 741747 N
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LIST OF DOCUMENTS

1. Personal Statement by Applicant.
2. Short-term Let Licence.
3. Decision Notice 15th May 2024.
4. Delegated Report of Handling – 23/01707/FLL.
5. Delegated Report of Handling - 22/01826/FLL.
6. Delegated Report of Handling - 22/00143/FLL.
7. Perth and Kinross Council Non-statutory Guidance – Change of Use of Residential Property to Short-term Let.
8. Scottish Government Circular 1/2023 – Short-term Lets and Planning.
9. The Town and Country Planning (Short-term Let Control Areas)(Scotland) Regulations 2021.

Supporting Statement for Notice of Review

I have applied for planning permission for a change of use from domestic premises to Short Term Let accommodation. Unfortunately, this has been refused and I wish to respectfully submit a request for a review taking in to account the further information provided here.

In terms of back ground. My wife and I purchased the property in November 2021. The primary purpose in doing so was to support my role as a response Operational Commander for the Scottish Fire and Rescue Service in the north (we live in West Lothian so a home address was required to be in the North Service Delivery Area). Essentially, I had to live in an appropriate area to provide a level of operational fire cover. The short-term let use is purely a secondary consideration.

The property at 2 Birnam Terrace was once part of the Merryburn Hotel, although I'm not sure when it was changed to domestic use.

At the point of purchase, the property had been vacant for around 6 months by the previous rental tenant, and the owner decided to sell. The condition of the property was extremely poor, with no working heating, leaking shower, worn carpets, rotting wood, faulty electrics and the general décor was poor with peeling wall paper, missing doors and plasterwork failing. Dampness was also evident on the gable end and foliage was growing on the chimneys and from cracks in the pointing. All these issues have now been addressed. Externally, stone work has been repointed, sealed where required and gutters painted. Windows and woodwork have all been refreshed to maintain and improve the traditional look of the property. I have carried out maintenance on the roof and gutters, which aides the two domestic properties below at my own expense. The property benefits from its own entrance and stairway and it retains the original look and design with some nice original architectural touches. It has gone from a tired, damp and poorly maintained property to a restored property that now compliments the built environment around it. I have ensured appropriate maintenance affords sustainability for the property for years to come.

We have invested my wifes redundancy payment and more (upwards of £15k) to bring the property to a very high standard and make it habitable as a work and home location for myself.

We have applied and been successful in attaining our Short Term Let licence and would like to continue investing in the property fixing some outstanding issues regarding stone work, guttering, chimneys and insulation.

We started letting the property through Air BNB April 2022 and we have the highest possible reviews on Air BNB. Air BNB features a two way feedback system that prompts guests and host to rate each other. The result is (so far) guests have been respectful, look after the property and are courteous to neighbours. Guests tend to eat out locally bringing income to local businesses and we promote the local community offering on Air BNB and in the flat welcome pack. We haven't received a single complaint at any point during STL use for noise or any other issues.

We are fully compliant and insured with specialist insurance and liability in place. Our guests love the property and the area. We employ a local cleaner to ensure the highest quality is maintained and provide detailed information to encourage guests to explore the area and use the local businesses, contributing to the local economy. To date we have had no objections or concerns and the neighbours are supportive in every way.

Within the immediate area, there are some other STL properties, but these have reduced in number since the introduction of the STL process. In the courtyard where the property is located, there were four STL properties in 2022, now this is reduced to two - including ours.

In terms of retaining the property, it is my goal to retain the property and address for work purposes in the North Service Delivery Area. At the moment, my Command Cover has moved back to the East Service Delivery Area (due to a change in role to led service delivery in Edinburgh), but I need to retain the property given the nature of the Fire Service and the potential for change in fire cover location. By using the property

as a STL makes retaining the property viable over the medium term. Should my command cover change, I will use the property again for this purpose.

I trust this information is of use and ask that you consider my request to review the decision to support continued use as an STL. Many thanks



PERTH AND KINROSS COUNCIL

The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022

GRANT OF FULL LICENCE (SECONDARY LETTING) FOR SHORT-TERM LET

Licence holder(s): Alison Dourley, David Dourley

Day to Day Manager(s): Alison Dourley, David Dourley

has been granted a Short-Term Let Licence

to accommodate a maximum of

4 guest(s)

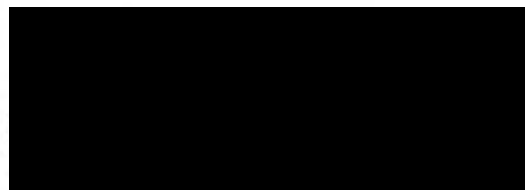
at

2 Birnam Terrace, Birnam ,Dunkeld, Perth And Kinross, PH8 0DR

Subject to the Council's approved conditions for Short-Term Lets.

Licence No: PK11185F

Valid Until: 13/09/2026



L. Simpson
Head of Legal & Governance Services

Mandatory Conditions

Mandatory conditions will be applied to all types of short-term let licences (as specified in schedule 3 of the Order) and Temporary Exemptions. The following are mandatory conditions and will apply to all licences issued:-

Agents

1. Only those named as a holder of the licence can carry out the day to day management of the short-term let of the premises.

Type of licence

2. The holder of the licence may only offer the type of short-term let for which the licence has been granted.

Fire safety

3. The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of -

- a. fire or suspected fire, and
- b. the presence of carbon monoxide in a concentration that is hazardous to health.

4. The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988(1).

Gas safety

5. Where the premises has a gas supply -

- a. the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,
- b. if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not allow a short-term let of the premises until the works necessary to bring the appliance to the required safety standard have been carried out.

Electrical safety

6. Where there are electrical fittings or items within the parts of the premises which are for guest use, or to which the guests are permitted to have access, the holder of the licence must -

- a. ensure that any electrical fittings and items are in -
 - i. a reasonable state of repair, and
 - ii. proper and safe working order,
- b. arrange for an electrical safety inspection to be carried out by a competent person at least

- every five years or more frequently if directed by the competent person,
- c. ensure that, following an electrical safety inspection, the competent
- d. person produces an Electrical Installation Condition Report on any fixed installations,
- e. arrange for a competent person to—
 - i. produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and
 - ii. date label and sign all moveable appliances which have been inspected.

7. In determining who is competent, the holder of the licence must have regard to guidance issued by the Scottish Ministers under section 19B(4) of the Housing (Scotland) Act 2006.

Water safety: private water supplies

8. Where the premises are served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.

Water safety: legionella

9. The holder of the licence must assess the risk from exposure to legionella within the premises, whether or not the premises are served by a private water supply.

Safety & repair standards

10. — (1) The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.

(2) Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, the holder of the licence must ensure that the premises meet the repairing standard.

Maximum Occupancy

11. The licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

Information to be displayed

12. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests -

- a. a certified copy of the licence and the licence conditions,
- b. fire, gas and electrical safety information,
- c. details of how to summon the assistance of emergency services,
- d. a copy of the gas safety report,
- e. a copy of the Electrical Installation Condition Report, and
- f. a copy of the Portable Appliance Testing Report.

Planning Permission

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997(4) (“the 1997 Act”), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either—

- a. an application has been made for planning permission under the 1997 Act and has not yet been determined, or
- b. planning permission under the 1997 Act is in force.

Listings

14. - (1) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises includes -

- a. the licence number, and
- b. a valid Energy Performance Certificate rating if an Energy Performance Certificate is required for the premises, in accordance with the Energy Performance of Buildings (Scotland) Regulations 2008(5).

(2) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises is consistent with the terms of the short-term let licence.

Insurance

15. The holder of the licence must ensure that there is in place for the premises -

- a. valid buildings insurance for the duration of the licence, and
- b. valid public liability insurance for the duration of each short-term let agreement.

Payment of fees

16. The holder of the licence must pay any fees due to the licensing authority in respect of the licence on demand.

False or misleading information

17. The holder of the licence must not provide any false or misleading information to the licensing authority.

Interpretation

18. In this schedule - “**Electrical Installation Condition Report**” means a report containing the following information –

- a. the date on which the inspection was carried out,



Mr David Dourley
c/o JJF Planning
Joe Fitzpatrick
35 Aytoun Crescent
Burntisland
KY3 9HS

Pullar House
35 Kinnoull Street
PERTH
PH1 5GD

Date of Notice: **15th May 2024**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT

Application Reference: **23/01707/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to refuse your application registered on 14th November 2023 for Planning Permission for **Change of use from flat to short-term let unit (in retrospect) 2 Birnam Terrace Birnam Dunkeld PH8 0DR**

David Littlejohn
Strategic Lead (Economy, Development and Planning)

Reasons for Refusal

1. The proposal is contrary to National Planning Framework 4 (2023) Policy 14(c): Design, Quality and Place and Perth and Kinross Local Development Plan 2 (2019), Policies 1A Placemaking and Policy 17 (d) Residential Areas as the short-term let accommodation would adversely impact on the amenity of neighbouring residents and the short-term let use would not be compatible with the amenity and character of the surrounding residential area.
2. The proposed retrospective change of use is contrary to Policy 30(e): Tourism of National Planning Framework 4 (2023) as the proposal would result in:
 - i) An unacceptable impact on local amenity and character of the area, and
 - ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

Justification

The proposal is not in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

- 1 The applicant is advised that the use of the property as a short-term let accommodation unit should cease immediately to avoid formal enforcement action being considered.

The plans and documents relating to this decision are listed below and are displayed on Perth and Kinross Council's website at www.pkc.gov.uk "Online Planning Applications" page

Plan Reference

01

REPORT OF HANDLING DELEGATED REPORT

Ref No	23/01707/FLL	
Ward No	P5- Strathtay	
Due Determination Date	13th January 2024 Extended until 31 st January 2024	
Draft Report Date	15th May 2024	
Report Issued by	Persephone Beer	Date 15 th May 2024

PROPOSAL: Change of use from flat to short-term let unit (in retrospect)

LOCATION: 2 Birnam Terrace Birnam Dunkeld PH8 0DR

SUMMARY:

This report recommends **refusal** of the application as the development is considered to be contrary to the relevant provisions of the Development Plan and there are no material considerations apparent which justify setting aside the Development Plan.

BACKGROUND AND DESCRIPTION OF PROPOSAL

Planning permission is sought for a change of use from a flat to a short-term let unit (in retrospect). The proposal relates to a first floor 3 bedded flat at 2 Birnam Terrace, Birnam.

The site is in a residential area to the east of Station Road, Birnam. The flat is accessed from Birnam Terrace where a front door leads directly from the street into a hallway that is served by stairs to the first floor flat. The stairwell is also accessible from the rear from a courtyard area shared by around 20 properties.

2 Birnam Terrace is a category C listed building within the Birnam Conservation Area.

Dunkeld and Birnam is in an area of housing pressure and identified for a possible short-term let control area if the Council is minded to pursue these.

SITE HISTORY

90/02120/FUL C/USE OF OFFICE & STORE TO FORM FLAT AT COTTAGE NO 2 4 March 1991 Application Approved

22/01607/LBC Change existing single glazed units to double glazed units 3
November 2022 Application returned.

PRE-APPLICATION CONSULTATION

Pre application Reference: None.

DEVELOPMENT PLAN

The Development Plan for the area comprises National Planning Framework 4 (NPF4) and the Perth and Kinross Local Development Plan 2 (2019) (LDP2).

National Planning Framework 4

The National Planning Framework 4 (NPF4) is the Scottish Government's long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people's lives by making sustainable, liveable and productive spaces.

NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan.

The Council's assessment of this application has considered the following policies of NPF4 :

Policy 7: Historic Assets and Places
Policy 14: Design, Quality and Place
Policy 30: Tourism

Perth and Kinross Local Development Plan 2 – Adopted November 2019

The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are:

Policy 1A: Placemaking
Policy 17: Residential Areas
Policy 28A: Conservation Areas: New Development
Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

Statutory Supplementary Guidance

-[Supplementary Guidance - Placemaking](#) (adopted in 2020)

OTHER POLICIES

Non Statutory Guidance

- [Conservation areas](#)
- [Non-Statutory Planning Guidance – Change of Use of Residential Property to Short-Term Let](#) (adopted in November 2023)

NATIONAL GUIDANCE

The Scottish Government expresses its planning policies through The National Planning Framework, Planning Advice Notes, Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

Planning Advice Notes

The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:

- PAN 40 Development Management

National Roads Development Guide 2014

This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

CONSULTATION RESPONSES

Environmental Health (Noise Odour)

Short term let licence informative note required.

Communities Housing Strategy

The Local Housing Strategy 2022-27 includes an action to develop planning policy through the Local Development Plan 3 where appropriate for STL Control Areas.

The property to which this application refers, falls within the area that has been consulted on as a potential short-term let control area, where the number of short-term lets may be impacting on the availability of appropriate housing for local residents.

REPRESENTATIONS

0 representations were received.

Additional Statements Received:

Screening Opinion	EIA Not Required
Environmental Impact Assessment (EIA): Environmental Report	Not applicable
Appropriate Assessment under Habitats Regulations	Habitats Regulations AA Not Required
Design Statement or Design and Access Statement	Not Required
Report on Impact or Potential Impact eg Flood Risk Assessment	Not Required

APPRAISAL

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises NPF4 and the Perth and Kinross Local Development Plan 2019. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, involving considerations of the Council's other approved policies and supplementary guidance, these are discussed below only where relevant.

In this instance, section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities in determining such an application as this to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is relevant and requires planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of the designated conservation area.

The determining issues in this case are whether; the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy.

Policy Appraisal

The primary policy in this instance is NPF4 Policy 30(e): Tourism, as there is no specific LDP2 policies relating to Short-Term Let accommodation, particularly where changes of use of existing properties are concerned. LDP2 Placemaking Policy 1A and 17 Residential Areas have relevance for a proposal of this nature, and seek to protect or improve residential amenity ensure that proposals respect the character and amenity of a place.

Specifically, NPF4 Policy 30 (e) states that Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- i. An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

Perth and Kinross Council non-statutory planning guidance on the Change of Use of Residential Property to Short-Term Let was adopted on 1st November 2023. The guidance seeks to address concerns over the impact of STLs on services, local business staffing and expansion as well as housing affordability. The guidance acknowledges that while short-term lets can bring economic benefits to the host and local areas, this must be balanced against the impact the loss of that residential property has on the availability of housing for local people, and in particular access to affordable housing.

Consideration 6 of the guidance is relevant as it pertains to the potential loss of residential accommodation and whether the change of use will be outweighed by the benefit to the local economy.

The Local Housing Strategy 2022-27 includes an action to develop planning policy through the Local Development Plan 3 where appropriate for STL Control Areas.

The property to which this application refers, falls within the area that has been consulted on as a potential short-term let control area, where the number of short-term lets may be impacting on the availability of appropriate housing for local residents.

In respect of criterion (i) of NPF4 Policy 30(e), the proposed use of the property as a short term let would not be significantly different from a flat in terms of its physical appearance, the extent of guest footfall or noise emanating from the property, so long as good management practices are in place.

However, the high turnover of guests would likely be higher than typical private rented or owner-occupied accommodation, and this could have an impact on noise and disturbance to neighbours and may contribute to a cumulative adverse impact on the residential character of the area.

In respect of criterion (ii) of NPF4 Policy 30(e), the proposal would result in the loss of a residential flat to short term let accommodation in an area where the number of short-term lets may be impacting on the availability of residential accommodation for local people. Whilst there will be some economic benefits associated with the proposal such as from the custom of guests to businesses in the area these do not outweigh the loss of residential accommodation in this instance.

The proposal conflicts with NPF4 Policy 30(e) Tourism, and the intent of LDP2 Policy 1A Placemaking and 17 Residential Areas as well as the Council's Short-term let planning guidance. The principle is therefore unacceptable.

Residential Amenity

NPF4 Policy 14 Design, Quality and Place and LDP2 Placemaking Policies 1A and Policy 17: Residential Areas support proposals which are compatible with the amenity and character of the surrounding area.

The site is part of a terrace of properties in a residential area where properties are located in close proximity to each other. The road to the front of the property is unadopted and is used for informal parking and bin storage. There is a rear courtyard area where similar uses are found. The flat has an entrance onto both of these areas. Through the use of the flat as a short term let there is the potential for noise from the users of the property to affect neighbouring residential properties. The introduction of Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 requires these to be licensed and noise conditions will form part of the licence.

Notwithstanding this, an appeal decision from the DPEA elsewhere in Birnam (ref: PPA-340-2155), indicated that management guidelines cannot be relied upon to restrict or control the adverse impacts on neighbouring properties and harm to amenity. Furthermore, harm to amenity could arise even if there is effective control, due to the frequent turnover of guests. The use of the property as a short-term let is therefore considered to be incompatible with the character of this residential area. The intensification of use and movements would adversely impact the amenity of neighbouring residents and would impact on the existing residential character of Birnam Terrace.

As such, the proposal fails to accord with the intent of NPF4 Policy 14(c) and LDP2 Policies 1A and 17 in respect of residential amenity, by virtue of its location in a predominantly residential area.

Roads and Access

The application form refers to there being one parking space associated with the property. This is not defined on the plans and parking in the area is generally informal as there is limited space and the nature of the area does

not easily lend itself to formation of dedicated parking areas. The road is in a poor state of maintenance and there are no footways.

The application site is however within convenient distance of public transport options in the form of bus stops on Perth Road and Birnam Railway Station. In these respects, the proposal accords with NPF4 Policy 13, Sustainable Transport and LDP2 policy 60B.

Drainage and Flooding

There are no drainage or flooding concerns associated with the proposal.

Conservation Considerations

The site is within the Birnam Conservation Area. The proposal is a change of use only and would not have any adverse impact on any built heritage assets.

Other Material Considerations

Planning Guidance on short-term lets (STLs) was formally approved by the Council on 1 November 2023 following consultation during Summer 2023.

The Guidance forms the most up-to-date indication of Council policy intent on the matter, and as such is a material consideration in addition to other policy factors and supplementary guidance in the assessment of the proposals.

The guidance states that the benefits offered from short term lets must be balanced against the impact the loss of that residential property has on the availability of housing for local people, and in particular access to affordable housing.

In this instance, the application site is within a predominantly residential area, and local amenity and character of that area should be considered, in addition to the loss of residential accommodation and local economic benefits which may accrue from the proposal.

As set out elsewhere in this report, the proposed formalisation of the use could lead to an intensification of use and movements which would adversely impact the amenity of neighbouring residents and would alter the existing residential character of Birnam Terrace. It would also result in the loss of residential accommodation that is considered to be detrimental to housing availability in an area subject to housing pressure, and the limited economic benefits associated with the proposal would not outweigh this loss.

As such, the proposal fails to accord with the policy intent of the adopted Planning Guidance, with particular emphasis on residential amenity, local character and housing availability. This aligns with the officer assessment of the proposal against Development Plan policies.

Developer Contributions

The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

Economic Impact

The economic impact of the proposal is likely to be minimal and limited to the construction phase of the development.

VARIATION OF APPLICATION UNDER SECTION 32A

This application was not varied prior to determination.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

CONCLUSION AND REASONS FOR DECISION

To conclude, the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to be contrary to the Development Plan. Account has been taken of the relevant material considerations and none has been found that would justify overriding the Development Plan.

Accordingly the proposal is refused on the grounds identified below.

Reasons

- 1 The proposal is contrary to National Planning Framework 4 (2023) Policy 14(c): Design, Quality and Place and Perth and Kinross Local Development Plan 2 (2019), Policies 1A Placemaking and Policy 17 (d) Residential Areas as the short-term let accommodation would adversely impact on the amenity of neighbouring residents and the short-term let use would not be compatible with the amenity and character of the surrounding residential area.
- 2 The proposed retrospective change of use is contrary to Policy 30(e): Tourism of National Planning Framework 4 (2023) as the proposal would result in:

i) An unacceptable impact on local amenity and character of the area,
and

ii) The loss of residential accommodation where such loss is not
outweighed by demonstrable local economic benefits.

Justification

The proposal is not in accordance with the Development Plan and there are
no material reasons which justify departing from the Development Plan.

Informatives

The applicant is advised that the use of the property as a short-term let
accommodation unit should cease immediately to avoid formal enforcement
action being considered.

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

01

REPORT OF HANDLING DELEGATED REPORT



Ref No	22/01826/FLL	
Ward No	P5- Strathtay	
Due Determination Date	30th March 2023	
Draft Report Date	15th March 2023	
Report Issued by	cm	Date 15/3/23

PROPOSAL: Change of use from flat to short term let accommodation

LOCATION: Flat 2 Parkview Station Road Birnam Dunkeld PH8 0DS

SUMMARY:

This report recommends **approval** of the application as the development is considered to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which outweigh the Development Plan.

BACKGROUND AND DESCRIPTION OF PROPOSAL

The application is for a change of use of a flat to short term let accommodation. The Supporting Statement notes the property has been operating as short term let accommodation for 2 years.

The flat is located on the first floor of a 3 storey C-Listed Building on the east side of Station Road, Birnam. The listed building has commercial uses on the ground floor and flats above.

The flat comprises 2 bedrooms, a living room, kitchen and a bathroom. Access to the flat is from the main front elevation of the building via a communal entrance and a flight of stairs. There is on street parking only and no designated parking for the flat. There is a shared garden to the rear.

The surrounding area is a mix of residential, commercial and community uses.

The site is in Birnam Conservation Area.

SITE HISTORY

12/00138/FLL Installation of flue 16 March 2012 Application Withdrawn

12/00139/LBC Installation of flue 4 April 2012 Application Approved

12/00515/FLL Installation of flue 7 May 2012 Application Approved

DEVELOPMENT PLAN

The Development Plan for the area comprises National Planning Framework 4 (NPF4) and the Perth and Kinross Local Development Plan 2 (2019) (LDP2).

National Planning Framework 4

The National Planning Framework 4 (NPF4) is the Scottish Government's long-term spatial strategy with a comprehensive set of national planning policies. This strategy sets out how to improve people's lives by making sustainable, liveable and productive spaces.

NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan.

The Council's assessment of this application has considered the following policies of NPF4:

Policy 7: Historic Assets and Places

Policy 14: Design, Quality and Place

Policy 30: Tourism

Perth and Kinross Local Development Plan 2 – Adopted November 2019

The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are:

Policy 1A: Placemaking

Policy 1B: Placemaking

Policy 17: Residential Areas

Policy 27A: Listed Buildings

Policy 28A: Conservation Areas: New Development

Policy 56: Noise Pollution

Policy 60B: Transport Standards and Accessibility Requirements: New Development Proposals

Statutory Supplementary Guidance

- [Supplementary Guidance - Placemaking](#) (adopted in 2020)

OTHER POLICIES

Non-Statutory Guidance

- [Conservation areas](#)

NATIONAL GUIDANCE

The Scottish Government expresses its planning policies through The National Planning Framework, Planning Advice Notes, Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

Planning Advice Notes

The following Scottish Government Planning Advice Notes (PANs) and Guidance Documents are of relevance to the proposal:

- PAN 40 Development Management

Creating Places 2013

Creating Places is the Scottish Government's policy statement on architecture and place. It sets out the comprehensive value good design can deliver. It notes that successful places can unlock opportunities, build vibrant communities and contribute to a flourishing economy and set out actions that can achieve positive changes in our places.

Designing Streets 2010

Designing Streets is the policy statement in Scotland for street design and changes the emphasis of guidance on street design towards place-making and away from a system focused upon the dominance of motor vehicles. It was created to support the Scottish Government's place-making agenda, alongside Creating Places.

National Roads Development Guide 2014

This document supports Designing Streets and expands on its principles and is considered to be the technical advice that should be followed in designing and approving of all streets including parking provision.

CONSULTATION RESPONSES

Internal

Environmental Health (Noise Odour) - No objection. Informative recommended to advise on licence requirements.

Transportation And Development - No objection.

REPRESENTATIONS

No representations were received.

Additional Statements Received:

Screening Opinion	EIA Not Required
Environmental Impact Assessment (EIA): Environmental Report	Not applicable
Appropriate Assessment under Habitats Regulations	Habitats Regulations / AA Not Required
Design Statement or Design and Access Statement	Not Required for change of use

APPRAISAL

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises NPF4 and the Perth and Kinross Local Development Plan 2019. The relevant policy considerations are outlined in the policy section above and are considered in more detail below. In terms of other material considerations, involving considerations of the Council's other approved policies and supplementary guidance, these are discussed below only where relevant.

In this instance, section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities in determining such an application as this to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is relevant and requires planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of the designated conservation area.

The determining issues in this case are whether; the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy.

Policy Appraisal

As noted previously in the report, NPF4 was adopted on 13 February 2023. NPF4 has an increased status over previous NPFs and comprises part of the statutory development plan. Whether an LDP has been adopted prior to or after the adoption and publication of NPF4, legislation states that in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"); section 24(3)).

In this instance, in the absence of any specific policy on short term lets in the Local Development Plan, NPF4 Policy 30e Tourism is relevant and states –

Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- i. An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

In respect of criterion (i), the proposed use of the property as a short term let would result in footfall associated with guests staying at the property. However, the footfall would not be significantly different from the footfall associated with use as a residential flat. The flat is accessed through a communal entrance and noise from the use of the property as a short term let is not considered to be significantly different from its use as a residential flat. The use of on street parking and communal garden would be in keeping with the residential use.

The supporting statement notes the property has been operating as short term let accommodation for 2 years with no complaints reported from neighbours to the property. It states that the rentals are professionally managed by an independent business.

Matters relating to behaviour related noise is considered under the Council's Short Term Lets Licensing Policy. There is a requirement to meet the criteria of the Council's Licensing Policy Statement to operate this type of accommodation. Monitoring and enforcement will be undertaken during the lifetime of the licence, typically 3 years.

The proposal will not have a significant impact on the amenity of existing residents. The proposal would retain the residential nature of the property and not result in a significant impact on the character and amenity of the area.

In respect of criterion (ii), the loss of a residential flat to a short term let flat would not have a significant impact on the availability of residential accommodation in the local area.

The LDP highlights that tourism is important in Birnam for employment and maintaining the viability of services. There are economic benefits to the provision of small-scale holiday let accommodation in locations such as Birnam which provide access to a range of tourist attractions and activities.

The proposal satisfies NPF4 Policy 30e Tourism.

As the proposal would be compatible with the amenity and character of the surrounding area, it also satisfies NPF4 Policy 14: Design, Quality and Place, Policy 1: Placemaking and Policy 17: Residential Areas of the Perth and Kinross Local Development Plan 2 (2019).

In respect of Transport Standards and Accessibility and Policy 60B: New Development Proposals, the application site is located close to a public transport route and walking and cycling routes. Local shops and services are all easily accessible.

The proposal satisfies Policy 60B: New Development Proposals of the Perth and Kinross Local Development Plan 2 (2019).

Conservation Considerations

The application site is in a Category C Listed Building in Birnam Conservation Area. No external alterations are proposed to the building. The proposal will have a neutral effect on the character of the conservation area.

The proposal satisfies NPF4 Policy 7 Historic Assets and Places and Policy 28A: Conservation Areas: New Development.

The proposal is in accordance with NPF4 and the Perth and Kinross Local Development Plan 2019.

Developer Contributions

The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

Economic Impact

The economic impact of the proposal is likely to be minimal.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

CONCLUSION AND REASONS FOR DECISION

To conclude, the application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to comply with NPF4, and the adopted Local Development Plan 2 (2019). Account has been taken of the relevant material considerations and none has been found that would justify overriding the Development Plan.

Accordingly, the proposal is approved.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

1 Records indicate that at least part of the proposed development site lies within a radon affected area where the measurement/monitoring of radon gas and the installation of mitigation measures may be required.

Further information on radon gas and the associated reports that can be obtained is available at www.ukradon.org and at <http://shop.bgs.ac.uk/georeports/>.

2 Part of the approved development includes holiday accommodation or Short-term Let accommodation (STL). The developer is advised that holiday accommodation and STLs require to be licensed under the terms of Article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-terms Lets) Order 2021 and therefore a licence application should be made to Perth and Kinross Council prior to operation commencing. Further information and application forms are available at <https://www.pkc.gov.uk/shorttermlets>.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

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REPORT OF HANDLING DELEGATED REPORT



Ref No	22/00143/FLL	
Ward No	P5- Strathtay	
Due Determination Date	21st April 2022	
Draft Report Date	4th April 2022	
Report issued by	MP	Date 04.04.2022

PROPOSAL: Change of use and alterations to hotel to form 3 holiday accommodation units, owner's accommodation and a dwellinghouse

LOCATION: The Merryburn Station Road Birnam Dunkeld PH8 0DS

SUMMARY:

This report recommends **approval** of the application as the development is considered to comply with the relevant provisions of the Development Plan and there are no material considerations apparent which outweigh the Development Plan.

SITE VISIT:

In line with established practices, the need to visit the application site has been carefully considered by the case officer. The application site and its context have been viewed by a variety of remote and electronic means, such as aerial imagery and Streetview, in addition to photographs submitted by interested parties.

This information has meant that, in this case, it is possible and appropriate to determine this application without a physical visit as it provides an acceptable basis on which to consider the potential impacts of this proposed development.

SITE PHOTOGRAPHS



BACKGROUND AND DESCRIPTION OF PROPOSAL

The Merryburn was built in the late 19th century and is Category C listed. It sits within the conservation area on the historic approach to Dunkeld and Birnam Station. The building is currently used as a guest house with owner's accommodation. This application seeks planning permission for change of use and alterations to hotel to form 3 holiday accommodation units, self contained owner's accommodation and a dwellinghouse. An application for listed building consent has also been submitted, ref. no. 22/00135/LBC.

SITE HISTORY

06/02640/LBC Erection of 6 external lights 6 September 2007 Application Approved

07/00015/LBC Conversion of rear part of hotel to form a residential dwelling (18 Birnam Terrace) 14 May 2007 Application Approved

07/00016/FUL Conversion of rear part of hotel to form a residential dwelling (18 Birnam Terrace) 14 May 2007 Application Approved

07/00031/FUL Conversion of rear of hotel to form a residential dwelling (17 Birnam Terrace) 14 May 2007 Application Approved

07/00032/LBC Conversion of rear of hotel to form a residential dwelling (17 Birnam Terrace) 14 May 2007 Application Approved

09/00588/FUL Formation of beer garden 2 June 2009 Application Withdrawn

09/01032/FUL Formation of a beer garden 17 July 2009 Application Approved

15/02058/FLL Change of use and alterations to hotel to form 4no flats 16 December 2015

15/02059/LBC Alterations 16 December 2015

16/00007/FLL Change of use and alterations to hotel to form 2no flats and guest house 11 July 2016 Application Approved

16/00008/LBC Alterations to building 7 July 2016 Application Approved

16/01283/FLL Change of use and alterations to hotel to form 3no flats and guest house 22 August 2016 Application Approved

16/01284/LBC Alterations to building 22 August 2016 Application Approved

17/00472/FLL Change of use and alterations to hotel and flat to form guest house, dwellinghouse and 3no. flats 8 June 2017 Application Approved

17/00473/LBC Alterations to building 2 June 2017 Application Approved

19/01205/LBC Alterations to building 23 September 2019 Application Withdrawn

19/01206/FLL Change of use and alterations to hotel and flat to form guest house with owner's accommodation, dwellinghouse and 2 flats, and erection of 2 sheds (in part retrospect) 17 September 2019

19/01607/LBC Alterations to building 21 November 2019 Application Approved

19/01608/FLL Erection of a storage building (in part retrospect) 21 November 2019 Application Approved

20/01806/LBC Alterations to building 16 February 2021 Application Approved

20/01808/FLL Change of use and alterations to hotel to form 3 holiday accommodation units, owner's accommodation and a dwellinghouse 16 February 2021 Application Approved

21/00808/LBC Internal alterations 29 June 2021 Application Approved

22/00135/LBC Alterations to building Pending consideration

PRE-APPLICATION CONSULTATION

Pre application Reference: N/A

NATIONAL POLICY AND GUIDANCE

The Scottish Government expresses its planning policies through The National Planning Framework, the Scottish Planning Policy (SPP), Planning Advice Notes (PAN), Creating Places, Designing Streets, National Roads Development Guide and a series of Circulars.

DEVELOPMENT PLAN

The Development Plan for the area comprises the TAYplan Strategic Development Plan 2016-2036 and the Perth and Kinross Local Development Plan 2 (2019).

TAYplan Strategic Development Plan 2016 – 2036 - Approved October 2017

Whilst there are no specific policies or strategies directly relevant to this proposal the overall vision of the TAYplan should be noted. The vision states *“By 2036 the TAYplan area will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice where more people choose to live, work, study and visit, and where businesses choose to invest and create jobs.”*

Perth and Kinross Local Development Plan 2 – Adopted November 2019

The Local Development Plan 2 (LDP2) is the most recent statement of Council policy and is augmented by Supplementary Guidance.

The principal policies are:

Policy 1A: Placemaking

Policy 1B: Placemaking

Policy 17: Residential Areas

Policy 27A: Listed Buildings

Policy 28A: Conservation Areas: New Development

OTHER POLICIES

Historic Environment Scotland Policy Statement 2019

This document replaces the 2016 Scottish Historic Environment Policy, and provides guidance to Planning Authorities on how to deal with planning applications which affect Listed Buildings and their settings.

CONSULTATION RESPONSES

Scottish Water

No objection

Transport Planning

No objection

Development Contributions Officer

No contributions required.

Commercial Waste Team

No objection

Conservation Team

Case officer is conservation officer so no formal response issued

REPRESENTATIONS

No representations received

ADDITIONAL STATEMENTS

Screening Opinion	EIA Not Required
Environmental Impact Assessment (EIA): Environmental Report	Not applicable

Appropriate Assessment	AA Not Required
Design Statement or Design and Access Statement	Not Required
Report on Impact or Potential Impact eg Flood Risk Assessment	Not Required

APPRAISAL

Sections 25 and 37 (2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the area comprises the approved TAYplan and the adopted LDP2.

In this instance, section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities in determining such an application as this to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 is relevant and requires planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of the designated conservation area.

The determining issues in this case are whether; the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy.

Policy Appraisal

The proposed development would be in keeping with the character and appearance of the existing building and the conservation area. As a result it would have a positive impact on the quality of the surrounding built and natural environment, residential amenity and the character and appearance of the conservation area. The relevant criteria within Policy 1B are also met. Therefore the proposal is considered to comply with Policies 1A, 1B, and 28A.

The proposed change of use of a small part of the hotel to residential would be compatible with the existing residential character of the area and the majority of the building would continue in use as tourist accommodation with

separate self-contained owners accommodation. The proposal is therefore considered to comply with Policy 17.

As the proposed alterations would be in keeping with the character and appearance of the listed building there would be no detrimental impact on its special interest and the development would therefore comply with policy 27A.

Design and Layout and Conservation Considerations

Externally the appearance of the building would be unchanged. Replacement windows, doors and roof slates, all to match the existing in materials and design, were previously approved and raise no concerns. The provision of a separate unit of owners accommodation can be accommodated within the building and does not raise any concerns. Overall the proposed design and layout is in keeping with the building and its surroundings.

Landscape and Visual Amenity

As external changes would be minor and in keeping with the character of the area there are no concerns regarding landscape or visual amenity arising from the proposed development.

Residential Amenity

The proposed residential unit would be provided with a separate access and garden ground and there are no concerns regarding the residential amenity of the proposed dwelling. The owners accommodation would also have a separate garden area and the continued use of the rest of the building as tourist accommodation would have no detrimental impact on residential amenity.

Roads and Access

There are no roads or access concerns arising from the proposed development.

Drainage and Flooding

There are no drainage or flooding concerns arising from the proposed development.

Natural Heritage and Biodiversity

There are no natural heritage or biodiversity concerns arising from the proposed development.

Developer Contributions

The Developer Contributions Guidance is not applicable to this application and therefore no contributions are required in this instance.

Economic Impact

The economic impact of the proposal is likely to be minimal and limited to the construction phase of the development.

VARIATION OF APPLICATION UNDER SECTION 32A

This application was not varied prior to determination, in accordance with the terms of section 32A of the Town and Country Planning (Scotland) Act 1997, as amended.

PLANNING OBLIGATIONS AND LEGAL AGREEMENTS

None required.

DIRECTION BY SCOTTISH MINISTERS

None applicable to this proposal.

CONCLUSION AND REASONS FOR DECISION

To conclude, the application must be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this respect, the proposal is considered to comply with the approved TAYplan 2016 and the adopted Perth and Kinross Local Development Plan 2 (2019). Account has been taken of the relevant material considerations and none has been found that would justify overriding the adopted Development Plan.

Accordingly the proposal is approved subject to the following conditions.

Conditions and Reasons

1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the approved drawings and documents.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

1 Records indicate that at least part of the proposed development site lies within a radon affected area where the measurement/monitoring of radon gas and the installation of mitigation measures may be required.

Further information on radon gas and the associated reports that can be obtained is available at www.ukradon.org and at <http://shop.bgs.ac.uk/georeports/>.

2 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period (see section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

4 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.

5 This is approval of your application Ref no 22/00143/FLL for planning permission only. It does not include any approval for your related Listed Building Consent Ref no 22/00135/LBC . You should therefore not commence work until you have received Listed Building Consent. Carrying out alterations without Listed Building Consent is an offence.

6 An application for Building Warrant may be required.

Procedural Notes

Not Applicable.

PLANS AND DOCUMENTS RELATING TO THIS DECISION

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Change of Use of Residential Property to Short-term Let

Non-statutory Planning Guidance
November 2023

Introduction

Tourism is a major economic driver in Perth & Kinross, and short-term lets are an important part of the visitor economy. The Council is, however, aware that some communities are becoming increasingly concerned that the increase in short-term lets over recent years is impacting on the availability and affordability of housing locally, and is having a secondary impact on jobs, services and business growth.

The short-term letting of a residential property can bring economic benefits both to the host and the local area. This must, however, be balanced against the impact the loss of that residential property has on the availability of housing for local people, affordable housing in particular, and the potential for adverse impacts on residential amenity where an increasing proportion of the housing stock becomes short-term lets.

The Council wishes to support a sustainable visitor economy and therefore recognises the importance of addressing the short-term let issue whilst also encouraging the development of appropriately located hotels, guest houses and bespoke self-catering units that do not erode local housing availability.

Definitions & Exclusions

The focus of this planning guidance is the material change of use of dwellings to short-term lets.

The material change of use of land or buildings is included within the definition of development even if there are no physical alterations to the land or building. Planning permission is always required for a material change of use. A change from a flat to a short-term let is always considered to be a material change of use requiring planning permission. For residential property, the significance of the change must be considered. There are several factors which may affect the Council's consideration of whether the proposed change is a material change of use. Factors include an impact on local amenity or the character of a neighbourhood or area, safety, and impact on immediate neighbours.

Short-term let is defined in the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 where all the following criteria are met:

- a) "sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration,
- b) no person to whom sleeping accommodation is provided is an immediate family member of the person by whom the accommodation is being provided,
- c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,

d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and

e) the accommodation is not excluded accommodation."

The Regulations make several exclusions from the definition of a short-term let including hotels, boarding houses, guest houses and hostels. These are therefore not included within the scope of this Guidance.

While B&Bs are not specifically mentioned, the Town and Country Planning (Use Classes) (Scotland) Order 1997 classifies these as 'houses':

"Use as a bed and breakfast establishment or guesthouse, where at any one time not more than 2 bedrooms are, or in the case of premises having less than 4 bedrooms 1 bedroom is, used for that purpose"

Any residential property being used as a B&B within the definition of 'Class 9: Houses' is therefore not included within the scope of this Planning Guidance.

For clarity other related definitions are:

Dwellinghouse or residential property is defined as an independent dwelling (with its own front door, kitchen and bathroom) being accommodation which ordinarily affords the facilities required for day-to-day private domestic existence such as a house, flat, cottage.

Secondary let - means the letting of a property where the host or operator does not normally live. The planning guidance cannot apply to Home-letting or Home-sharing (see opposite).

Home-letting - Defined in the short-term let licensing legislation means using all or part of your own home for short-term lets whilst you are absent, for example, whilst you are on holiday. Not included within the scope of this guidance.

Home-sharing - Using all or part of your own home for short-term lets, whilst you are there. Not included within the scope of this guidance.

Private Residential Tenancies are excluded under Section 26B(3) of the 1997 Act as they are not considered secondary accommodation because they are the principal home of the tenant.

Summary

The following are not within the scope of this planning guidance:

- Hotels, boarding houses, guest houses or hostels¹
- B&Bs
- Home-letting
- Home-sharing, e.g. renting out a room in your house
- Private Residential Tenancies
- Short-term lets which have already been granted planning permission

There may, however, be a need to obtain a short-term let licence. More guidance on this can be found on the Council's website: www.pkc.gov.uk/shorttermlets.

¹ Which are within the definition Class 7 Hotels and hostels of the Town and Country Planning (Use Classes) (Scotland) Order 1997

Guidance

There is no specific policy in the current Perth and Kinross Local Development Plan 2 (LDP2) for the control of short-term lets. In terms of the Development Plan, the policy framework for assessing planning applications is therefore set out in the National Planning Framework 4 (NPF4), Policy 30: Tourism.

This planning guidance has been prepared to assist in the application of the policy framework set out in NPF4 and in the assessment of planning applications for the change of use of a residential property to a short-term let. The guidance applies across Perth and Kinross.

As indicated above, not all changes of use will require planning permission. More guidance on this can be found on the Council's website: www.pkc.gov.uk/shorttermletsandplanning.

If the residential property has been operating continuously as a short-term let for more than 10 years owners are eligible to apply for a Certificate of Lawful Use or Development (CLUD) which, if granted, would mean the use would be exempt from planning enforcement action.

If the use is not eligible for a CLUD and planning permission is required, the proposal must comply with NPF 4 Policy 30 e):

Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

(i) An unacceptable impact on local amenity or the character of a neighbourhood or area (considerations 1-4)

OR

(ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits (considerations 5-6)

Considerations

1. Where is the proposal located? Is it:

- a) Within the city centre or a town centre (as identified in the LDP2) where there is no adverse impact on amenity or character of the area?
- b) Within a settlement boundary (as identified in the LDP2) and located in an area where there is a mix of other uses which could already affect residential amenity?
- c) Within a predominantly residential area and there could be adverse impact on amenity for existing residents, particularly in blocks with shared / communal entry?

2. Does the proposal relate to a residential property with four or more bedrooms, and will there be no adverse impact on local amenity from noise or disturbance if the let is occupied by a group or more than one family?

3. Is the proposal for the extensive refurbishment a long term empty property?

- 4 Will there be no unacceptable impact from the proposal on local amenity or the character of the area?
- 5 Is the proposal part of a diversification scheme to support an existing Perth & Kinross rural business in line with NPF4 Policy 29: Rural Development and Local Development Plan policy 8: Rural Business and Diversification?
- 6 Is there anything which demonstrates that the loss of the residential accommodation will be outweighed by the benefits of the proposal to the local economy?

Proposals must also comply with all relevant LDP2 policies, in particular Policy 1 Placemaking: Development must contribute positively to the quality of the surrounding built and natural environment.

Short-Term Let Control Area

If any part of the Perth & Kinross Council area is designated as a Short-Term Let Control Area at any point in the future, all new proposals for the change of use of a residential property to a short-term let submitted after designation of the said Control Area will require planning permission.

Any short-term let that was operating lawfully within a Control Area prior to its designation will not be required to apply for planning permission retrospectively. Lawfully means any short-term let which either has planning permission or was operating in a manner that was not a material change of use and therefore did not require planning permission.

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SHORT-TERM LETS AND PLANNING



Annex A - Meaning of short-term let in a control area

Section 26B of the 1997 Act, and the Control Area Regulations define a short term let for the purposes of the control areas.

Section 26B(3) excludes:

- private residential tenancies under section 1 of the Private Housing (Tenancies) Scotland Act 2016; and
- tenancies of a dwellinghouse or part of it where all or part of the dwelling house is the only or principal home of the landlord or occupier

Regulation 2 of the Control Area Regulations defines a short-term let as provided where all of the following criteria are met:

- a) sleeping accommodation is provided in the course of business to one or more persons for one or more nights for commercial consideration,
- b) no person to whom sleeping accommodation is provided in the course of business is **an immediate family member** of the person by whom the accommodation is being provided,
- ba) the accommodation is not provided under an **excluded tenancy** (see below)
- c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,
- d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and
- e) the accommodation is not **excluded accommodation** (see below)

An **immediate family member** includes parents, grandparents, children, grandchildren and siblings on both sides of a relationship of marriage, civil partnership or where the couple live together as if they were married. This definition also treats children with one parent in common as siblings and stepchildren as children.

Draft Regulations laid before the Scottish Parliament under section 275(7BA) of the Town and Country Planning (Scotland) Act 1997, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Short-term Let Control Areas)
(Scotland) Regulations 2021**

Made - - - - 2021
Coming into force - - - - 1st April 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 26B(5) and 275 of the Town and Country Planning (Scotland) Act 1997(a) and all other powers enabling them to do so.

In accordance with section 275(7BA) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

The Scottish Ministers before making these Regulations have consulted planning authorities and such other persons as they considered appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 and come into force on 1 April 2021.

(2) In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997,

“commercial consideration” includes—

(a) money,

(b) a benefit in kind (such as provision of a service, or reciprocal use of a property),

“community council” means a community council established in accordance with the provisions of Part 4 of the Local Government (Scotland) Act 1973(b),

“excluded accommodation” means accommodation described in the schedule,

“section 26B designation” means a designation under section 26B(1) of the Act of an area as a short-term let control area.

(a) 1997 c.8. Sections 26B and 275(7BA) are inserted by section 17 and paragraph 9 of schedule 2 of the Planning (Scotland) Act 2019 (asp 13). The functions conferred upon the Minister of the Crown under section 275, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1973 c.65.

Short-term let

2.—(1) For the purposes of section 26B of the Act, and subject to section 26B(3) of the Act, a short-term let is provided where all of the following criteria are met—

- (a) sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration,
- (b) no person to whom sleeping accommodation is provided is an immediate family member of the person by whom the accommodation is being provided,
- (c) the accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household,
- (d) the accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and
- (e) the accommodation is not excluded accommodation.

(2) For the purposes of this regulation, a person ("A") is an immediate family member of another person ("B") if A is—

- (a) in a qualifying relationship with B,
- (b) a qualifying relative of B,
- (c) a qualifying relative of a person who is in a qualifying relationship with B, or
- (d) in a qualifying relationship with a qualifying relative of B.

(3) For the purposes of paragraph (2)—

- (a) two people are in a qualifying relationship with one another if they are—
 - (i) married to each other,
 - (ii) in a civil partnership with each other, or
 - (iii) living together as though they were married,
- (b) "a qualifying relative" means a parent, grandparent, child, grandchild or sibling,
- (c) two people are to be regarded as siblings if they have at least one parent in common,
- (d) a person's stepchild is to be regarded as the person's child,
- (e) a person ("C") is to be regarded as the child of another person ("D"), if C is being or has been treated by D as D's child.

Designation of a short-term let control area

3. Before an area may be designated as a short-term let control area for the purposes of section 26B of the Act—

- (a) the planning authority must give notice of the proposed designation in accordance with regulation 4,
- (b) the proposed designation must be approved by the Scottish Ministers, and
- (c) the planning authority must give notice of the designation in accordance with regulation 9.

Notice of proposal to designate an area as a short-term let control area

4.—(1) The planning authority are to give notice of a proposal to designate an area as a short-term let control area by—

- (a) publishing notice of the proposal—
 - (i) in a newspaper circulating in that area, and
 - (ii) on a website maintained by the planning authority for that purpose,