

Agenda item	8.2
Report no	HLC/023/23

THE HIGHLAND COUNCIL

Committee: **THE HIGHLAND LICENSING COMMITTEE**

Date: **28 March 2023**

Report title: **Application for the grant of a short term let licence – Coire Cas, 23 Allt Mor, Aviemore, PH22 1QQ (Ward 20 - Badenoch & Strathspey)**

Report by: **The Principal Solicitor – Regulatory Services**

1. Purpose/Executive Summary

1.1 This report relates to an application for the grant of a short term let licence.

2. Recommendation

2.1 Members are asked to determine the application in accordance with the Council's hearings procedure.

3. Background

- 3.1 In terms of The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, a licence is required for residential accommodation for use as a short term let.
- 3.2 Short term let means the use of residential accommodation provided by a host in the course of business to a guest, where all of the following criteria are met:
- The guest does not use the accommodation as their only or principal home
 - The short term let is entered into for commercial consideration
 - The guest is not:
 1. An immediate family member of the host
 2. Sharing the accommodation with the host for the principal purpose of advancing the guest's education as part of an arrangement made or approved by a school, college, or further or higher educational institution, or
 3. an owner or part-owner of the accommodation
 - the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host's household
 - the accommodation is not excluded accommodation, and
 - the short-term let does not constitute an excluded tenancy

4. Application

- 4.1 On 24 October 2022 (date application was deemed valid) an application for the grant of a short term let licence was received from Christopher John Harrison.
- 4.2 The premises to which the application relates to is Coire Cas, 23 Allt Mor, Aviemore, PH22 1QQ ("the Premises").
- 4.3 The type of short term let which has been applied for is a 'secondary let'. A 'secondary let' involves the letting of a property where the applicant does not normally live.
- 4.4 The premises is described as a self-catering dwellinghouse which can accommodate a maximum of six guests. The premises comprises of 3 bedrooms, 2 bathrooms and 1 kitchen and 1 living area, a utility room and sauna room. The premises also offers an outdoor socialising area, namely a hot tub.

5. Process

- 5.1 The application was circulated to the following Agencies/Services for consultation:
- Police Scotland;
 - Scottish Fire & Rescue Service
 - Highland Council Environmental Health Service; and
 - Highland Council Building Standards Service;

- 5.2 All of the above Agencies/Services, other than Environmental Health, have confirmed that they have no objections to the licence being issued.

The Environmental Health report, together with the applicant's response, is attached as **Appendix 1**.

The investigating officer has advised that following a review of the application and inspection of the property that it is recommended the following additional condition be attached:-

- The licence holder must take reasonable steps to ensure that guests do not use the hot tub after 2300 hours.

This condition is one of a set of published additional conditions that the Committee approved could be applied following specific case investigations by the Council's Environmental Health team and if the use of the condition was deemed appropriate and proportionate for the specific case by enforcement officers following the Enforcement Policy for Environmental Health.

It has also been advised that the applicant should confirm in writing the management arrangements they have implemented with respect of the use of the hot tub at the property to prevent disturbance to neighbouring properties, including details of the steps that will be taken to monitor compliance or in the event of a complaint arising.

The applicant has provided this detail as part of their response attached as **Appendix 1**.

- 5.3 In addition, the applicant has provided a certificate of compliance confirming that a public notice of application for their short-term let licence was displayed at or near the premises for a period of 21 days.

6. Public objections/representations

- 6.1 It is open to any member of the public to submit an objection or representation in relation to an application for a licence for a short term let.

Following the notice of display period, the following timeous notices of objection/representation have been received and are attached as appendices to this report:

1. Representation dated 29 October 2022 received from Mr Dave Horrocks (**Appendix 2**)
2. Representation dated 8 November 2022 from Barry Middleton (**Appendix 3**)
3. Notice of objection dated 22 November 2022 received from Polly Middleton (**Appendix 4**)

7. Determining issues

- 7.1 Paragraph 5(3) of Schedule 1 of the Civic Government (Scotland) Act 1982 states that a licensing authority may refuse an application to grant or renew a licence where:

- (a) the applicant or anyone else detailed on the application is not a fit and proper person;
- (b) the activity would be carried out by a person other than the applicant who, if he had made the application himself, would have been refused;

- (c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to
- (i) the location, character or condition of premises or the character or condition of the vehicle or vessel,
 - (ii) the nature and extent of the proposed activity,
 - (iii) the kind of persons likely to be in the premises, vehicle or vessel,
 - (iv) the possibility of undue public nuisance, or
 - (v) public order or public safety; or
- (d) there is other good reason for refusing the application.

If required the Principal Solicitor – Regulatory Services will offer particular advice on the criteria relating to this particular application.

- 7.2 A copy of this report has been sent to the applicant and the above mentioned parties who have been invited to attend and will all be provided with an opportunity to be heard by the Committee.

All parties have also been advised of the procedure which will be followed at the meeting which may also be viewed via the following link:

[Licensing hearings procedures | Licensing hearings procedure \(Licensing Committee\) \(highland.gov.uk\)](#)

8. Policies

The following policy is relevant to this application:

- Short-term let licensing policy statement (which includes the mandatory and additional licence conditions attached to all Short Term Let Licences):-

A copy of this can accessed at

https://www.highland.gov.uk/downloads/file/25349/short-term_lets_-_policy_statement

or a hard copy can be supplied where requested.

9. Implications

- 9.1 Not applicable.

Date: 7 March 2023

Author: Julie Traynor

Reference: [FS460706583](#)

Background Papers:

Civic Government (Scotland) Act 1982

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

Appendix 1: Report from Environmental Health and applicant's response dated 24 February 2023

Appendix 2: Representation dated 29 October 2022 received from Mr Dave Horrocks

Appendix 3: Representation dated 8 November 2022 from Barry Middleton

Appendix 4 : Notice of objection dated 22 November 2022 received from Polly Middleton

ENVIRONMENTAL HEALTH SCHEDULE OF RECOMMENDED CONDITIONS		
No	Licence Condition	Description
1		<p>The applicant should be requested to confirm in writing the management arrangements they have implemented with respect to the use of the hot tub at the licensed property to prevent disturbance to neighbouring properties, including details of the steps that will be taken to monitor compliance or in the event of a complaint arising.</p> <p>The implementation and effectiveness of such management arrangements could then be assessed and considered in the event of future complaints arising as part of any noise investigation.</p>
2	STLAC4	The licence holder must take reasonable steps to ensure that guests do not use the hot tub after 2300hrs

From: [REDACTED]
Sent: 24 February 2023 17:56
To: STL Licensing
Subject: RE: Short term let licence application - FS-Case-460721129 /460706583 - Further information required

CAUTION: This email was sent from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

REPORT ON USE OF HOT TUB AND COMPLIANCE AT CLUNNIE MOR AND COIRE CAS, 20/23 ALLT MOR AVIEMORE PH221QQ

At the outset it is relevant to mention that I have had no notice or details of the current complaint arising as to the nature or timing of the event nor have I been notified as to who or where the complaint emanates from.

The property was acquired in 2008 and a hot tub was installed at that time and has been in constant use since then,(a total of 14 1/2 years.)

During that time I have only ever received 1 complaint (this by email) in April 2017 (6 years ago)

The complaint referred to noise in the hot tub and this was approx 9.00pm.

I immediately travelled to the property but found the hot tub closed and no one in the garden. The complainant was informed and no further complaints arose.

The tub is sited in the garden and is surrounded by an inner fence. The garden is protected by a further 6ft fence surrounded by trees shrubs and a Russian vine and cannot be seen from outside the garden.

The closest outside area is a road and on the other side is a further 6ft fence with trees and shrubs, then a garden, then a property.

The immediate neighbours on either side of the property (nos 22 and 24) have never complained about the hot tub or any other matter.

The tub is regularly maintained and serviced and replaced when necessary. The present tub was installed in mid 2020.

There are notices in the utility room.(leading to the garden) and also in the visitors manual.

These specify:

Instructions for the operation and use of the hot tub.

Various warning notices regarding

Small children must not use the hot tub.

Children over 4 must be supervised at all times by a responsible adult.

Elderly should be extra careful

.not to use if you have:

A serious illness

Heart condition

High or low blood pressure

Taking medication

Contagious disease or skin condition

Have had a heavy meal

Under the influence of alcohol or drugs

Have recently exercised

Pregnancy

There are notices on the inner fence which can be read from the hot tub requesting that as there are families with children in the area to refrain from using the hot tub after 11.00pm.

The procedure for dealing with any complaints or requests by visitors or others is to contact us or the caretaker who will relay the message to me..The visitors manual has the names phone numbers and email address for this

purpose. Any outsider can easily visit the website by Googling the property name which will show owners name Tel no and email address. If the complaint or request is urgent I can be at the property within 20 mins to deal with any matter arising

C J HARRISON

From: Dave Horrocks [REDACTED]
Sent: 29 October 2022 11:28
To: STL Licensing
Cc: Barry Middleton
Subject: Representation

Follow Up Flag: FS-Case-460706583
Due By: 22 November 2022 16:00
Flag Status: Flagged

[REDACTED] [REDACTED]

CAUTION: This email was sent from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good morning

I wish to make representation regarding an application by Mr John Hamilton of [REDACTED] for short term let licenses on two properties, those being:-

- 20 Allt Mor, Aviemore, PH22 1QQ and
- 23 Allt Mor, Aviemore, PH22 1QQ

Both of the above properties are directly across the road from my own property at [REDACTED]

Whilst I have no objection in principle to these properties being licensed for holiday lets, I strongly object to the continuing presence of hot tubs sited in the gardens directly adjacent to Old Meall Rd. Since their installation we have been frequently disturbed by anti-social noise created by guests using these hot tubs, often into the early hours.

I know that this has caused extreme distress to my neighbours at [REDACTED] bedroom directly overlooks these properties. We are more fortunate at [REDACTED] as our bedroom is sited on the opposite side of the house meaning that disturbance is reduced. However it remains clear to us that the noise often created is entirely unacceptable in a residential neighbourhood where permanent residents have to get up for their days work in the morning.

I know that Mr Middleton has made frequent representations to the property owner which, despite promises to try to curb the disturbance has resulted in no improvement. I know that Mr Middleton has also complained to the police who seem powerless to act unless they can pin the problem down to a persistent offender. (Not possible with short term lets and frequently changing guests).

It has clearly proven too difficult and perhaps unrealistic to curb the exuberance of holidaying guests to an acceptable level and therefore I would wish to strongly suggest that a condition of the granting of a licence should be a requirement to either:-

1. Remove the hot tubs from the gardens altogether or
2. Erect a sound-proof barrier at the property that will significantly reduce noise levels.

It seems clear that the gardens of the properties are of insufficient size to make re-siting the hot tubs a viable solution.

I would be interested in your response to the points I make here and I look forward to a satisfactory and pragmatic solution to what has been a long term unresolved problem.

Best regards



Sent from my iPad

Dave Horrocks

Mob: [REDACTED]

Good Afternoon

I wish to make representation regarding an application by Mr John Hamilton of [REDACTED] for short term let licenses on two properties, those being:-

- 20 Allt Mor, Aviemore, PH22 1QQ and
- 23 Allt Mor, Aviemore, PH22 1QQ

Both of the above properties are directly across the road from my own property at [REDACTED]

I have lived at [REDACTED] for ten years now and these holiday lets above have been honestly, a living hell for me. Im 48 with a PHD and an MBA, a flourishing career, a world class musician and serious athlete, before you wonder if im just someone with nothing better to complain about. Lots of people living here have these issues but don't wish to speak up. Some in other neighbourhoods in the strath have been threatened, not by Mr Hamilton it must be said. I discussed this with him once in person, he seemed sympathetic and he said he would put signs up. Would that stop you if it was a Friday night in your hot tub with friends, first night of the holiday?

To begin with I thought some folks who lived elsewhere came now and again to have huge parties, and I put up with it. Then it became regular, and the situation became unbearable, earplugs weren't enough, so much that I now am rendered badly traumatised by the situation- [REDACTED]

[REDACTED]. My health, physically and mentally has suffered greatly despite being young and very active in all areas of my life, and I am still in the process of dealing with the stress and anxiety caused. It has literally driven me mad. I thought it was just me but turns out this goes on around the strath. Over reacting? Try living next door to these houses.

But lets get to specifics. How often is there a problem, I would say almost every time there is a tenant. What is it like? Sometimes, blaring music, drinking often till 3am outside. Sometimes 4 people having a beer and talking loudly all night. Its hard to talk quietly when it is on im sure. But it's a quiet neighbourhood. It is always associated with the hot tubs which are right next to the pavement. Is 10pm too late when you have an early start with work? It doesn't even have to be that loud, just audible beer conversations when im trying to sleep. I have no gauge to how bad it will get. If it gets too noisy then I have to get out of bed, sleep in a spare bed, apologising to my wife. This happens most weeks. I sometimes get up and phone the police as I have been advised (by them) but who likes to get out of bed and do that regularly for something like this. Either way, if you live here and have work the next morning, or just want to relax, its not right. The main problem is the hot tubs. Come and see where they are for yourself. Its not appropriate for a residential area. There is a house next to number 20 with small kids and god, they have to listen to all kinds of drunk talk too.

The council have done nothing about this in all this time stating that they cannot do anything about it since it is a different tenant each week.

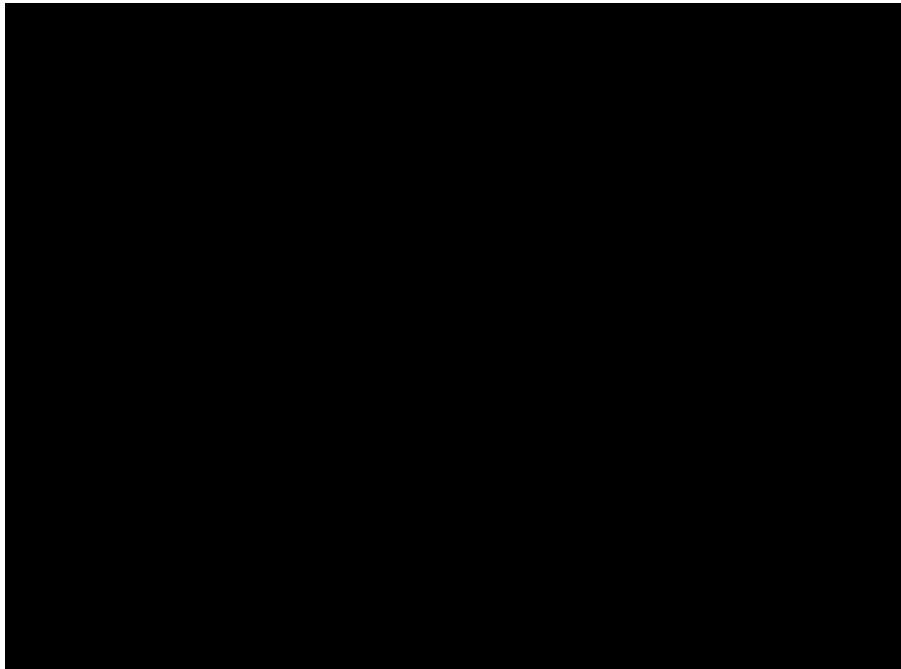
I hope now we have a means of objecting that a fair balance to the needs of the community can be met rather than what has become a grave problem for many neighbourhoods the highlands.

I have no objection to Mr Hamilton trying to have a business. But at what cost to residents. My only fallback option is to move from my home, is that a satisfactory outcome, surely not for me and my wife.

Holiday lets should be restricted to certain areas, not scattered amongst residents. Hot tubs should be banned, they are a major problem. It is worth saying that nearly 50% of the local houses here are holiday lets. IMHO, we risk a second highland clearances should the eventual sprawl of holiday lets in the highlands continue unchecked. Meanwhile I have my health to sort out while this continues.

Barry Middleton

8/11/22





22 November 2022

The Highland Council
Town House
Inverness
IV1 1JJ

Dear Madam, Sir,

Re Application for Short Term Lets Licence for 23 Allt Mor, Aviemore 1QQ

My permanent residence is directly across from 23 Allt Mor, on the opposite side of Old Meall Road. The property has been let as a holiday home for many years and has caused us (myself and my husband) a good deal of nuisance on many occasions, due to late night noise, particularly music and shouting by the guests staying at the property. This is exacerbated by the presence of a Hot Tub in the garden of the property.

The primary impact of the noise on us, is disturbed sleep, with the associated knock-on impacts on ability to function the next day and overall health impacts.

A good number of times we have phoned the police to attend and on many other occasions have either confronted the guests ourselves over the noise (with varying degrees of success), or just chosen to put up with it in the hope that it doesn't go on too late 9with the associated misery this causes us).

On this primary basis I would like to register my objection to the licence application. If the Highland Council do choose to grant the application, I request that it is with the stipulation that the Hot Tub be removed.

More generally, I am also concerned that Aviemore lacks available residential letting (as evidenced by the frequent requests on social media from people looking for such rental lets). Therefore I feel the property would better serve the community need were it changed to a residential let.

Yours Faithfully

A black rectangular redaction box covering the signature of Polly Middleton.

Polly Middleton