

	Agenda item	7.2
	Report no	HLC/020/24

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 26 March 2024

Report title: Application for the grant of a short term let licence – Cherry Tree Pod, 2 The Cottages, Littlemill, Nairn, IV12 5QL (Ward 18 – Nairn and Cawdor)

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	<p>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:</p> <ul style="list-style-type: none"> • 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: <ol style="list-style-type: none"> 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 18 December 2023 (date application was deemed valid) an application for the grant of a short term let licence was received from Mr Lee Michael Molloy on behalf of Highland Lollee Limited (Company number: SC727704) and having their registered office at 2 The Cottage, Littlemill, Nairn, IV12 5QL.
4.2	The Premises to which the application relates to is Cherry Tree Pod, 2 The Cottages, Littlemill, Nairn, IV12 5QL ("the Premises"). A site plan was provided by the applicant as part of the application process and this is attached as an appendix to this report (Appendix 1). The Premises are those edged in yellow on the site plan found on page 1 of Appendix 1.
4.3	The application for the short term let licence has been made on the basis that the said Highland Lollee Limited will be the host/operator of the Premises. The application states that this company has applied for the short term let licence as an 'existing host' on the basis that, in their capacity as the host/operator, they operated the Premises as a short term let property prior to 1 October 2022. In addition, Highland Lollee Limited is named on the application as the owner of the Premises.
4.4	The person named on the application as being responsible for the day-to-day management of the Premises is Mr Molloy.
4.5	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.

4.6	The Premises is described in the application as a self-catering, garage conversion which can accommodate a maximum of 6 guests. The ground floor of the Premises comprises of an open plan living/kitchen/dining area and bathroom. In addition, the upper level of the Premises has 2 separate open mezzanine bedrooms. A floor plan of the premises was provided by the applicant as part of the application process and this can be found on page 2 of Appendix 1. In addition, the premises offers an external socialising area which comprises of a private decking area with garden seating, a wood fuelled hot tub and a hammock.
5.	Process
5.1	<p>The application was circulated to the following Agencies/Services for consultation:</p> <ul style="list-style-type: none"> • Police Scotland; • Scottish Fire & Rescue Service; and • Highland Council Environmental Health Service.
5.2	Police Scotland and the Scottish Fire & Rescue Service have both confirmed that they have no objections to the licence being issued.
5.3	<p>During the consultation process, the Highland Council Environmental Health Service provided a Memorandum, dated 12 January 2024, in connection with this application. This Memorandum is attached to this report (Appendix 2).</p> <p>In this Memorandum, The Highland Council Environmental Health Service have detailed the relevant complaint history, as found on their Environmental Health database, within 12 months prior to the date of this Memorandum, together with details of the steps taken by the Applicant to address these complaints.</p> <p>The Highland Council Environmental Health Service have confirmed that, taking into account the steps taken by the Applicant in response to the complaints made and noting that there have been no reported issues since 24th July 2023, they would confirm that their service would have no objections to the issuing of a short term let licence in respect of this application.</p> <p>They also note, however, that consideration could be given to an additional licence condition specifying that the licence holder must take reasonable steps to ensure that guests do not use the hot tub or play amplified music after 2200hrs.</p>
5.4	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
6.1	<p>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.</p> <p>During the notice of display period, the following timeous notices of objection were received and are attached as Appendices to this report:</p> <ul style="list-style-type: none"> • Objection received by email on 10 January 2024 from Dr Keri Langridge (Appendix 3); • Objection received by email on 10 January 2024 from John and Gillian Challis (Appendix 4); • Objection received on 10 January 2024 from James Hickey (Appendix 5); • Objection received by email on 11 January 2024 from Maggie Newlands (Appendix 6); • Objection received by email on 12 January 2024 from Angus J Maclellan and Lewis J Watson (Appendix 7).

7.	Determining issues
7.1	<p>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:</p> <ul style="list-style-type: none"> (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 <ul style="list-style-type: none"> (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. <p>If required, the Principal Solicitor – Regulatory Services will offer particular advice on the criteria relating to this particular application.</p>

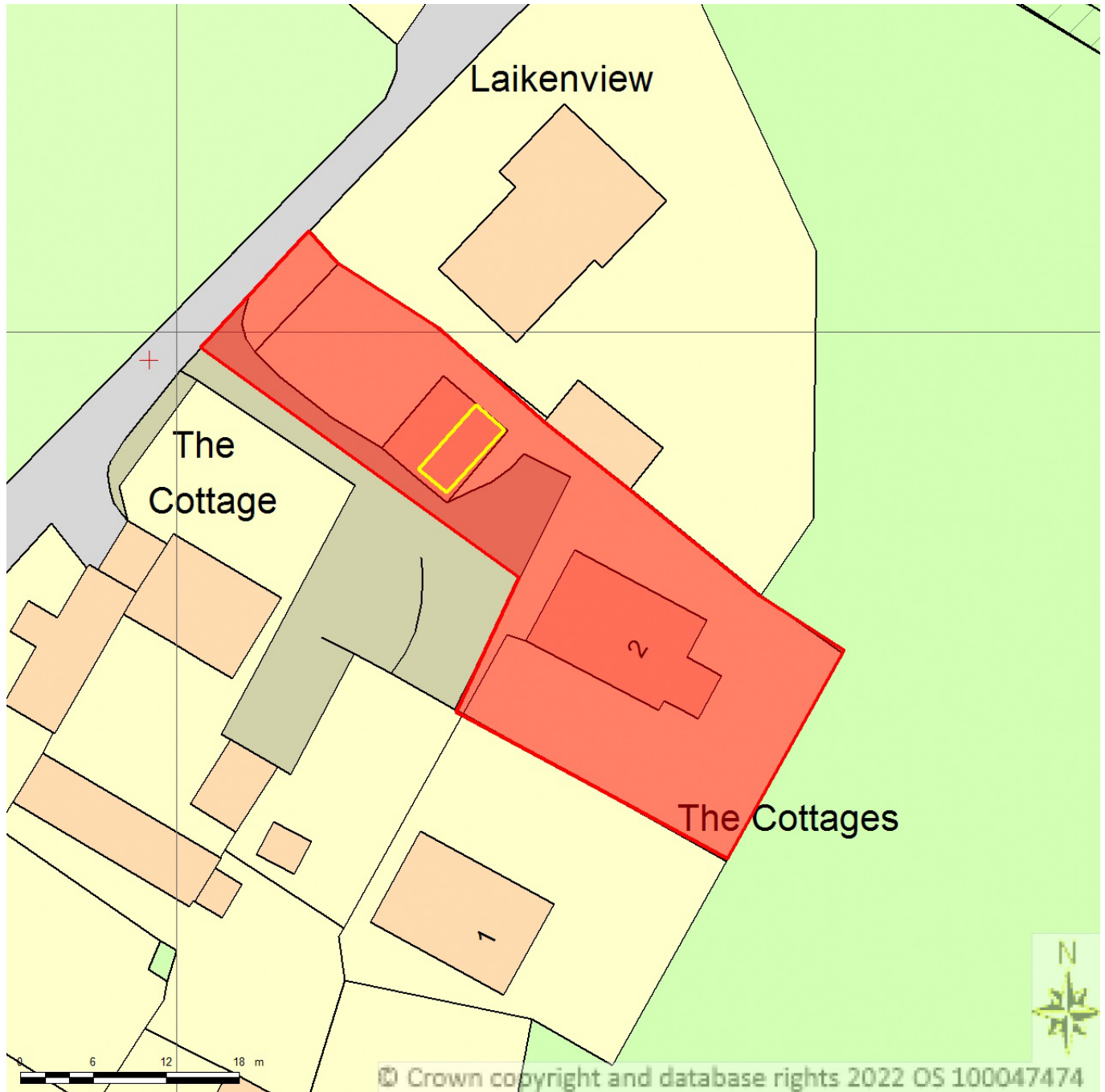
7.2	<p>A copy of this report has been sent to the applicant and the objectors who, in the terms of paragraph 4(2) of the Civic Government (Scotland) Act 1982, have been invited to attend and will be provided with an opportunity to be heard by the Committee.</p> <p>All parties have also been advised of the procedure which will be followed at the meeting which may also be viewed via the following link:</p> <p>Licensing hearings procedures Licensing hearings procedure (Licensing Committee) (highland.gov.uk)</p>
8.	<p>Policies</p> <p>The following policy is relevant to this application:</p> <ul style="list-style-type: none"> • Short-term let licensing policy statement (which includes the mandatory and additional licence conditions attached to all Short Term Let Licences):- <p>A copy of this policy can accessed here or a hard copy can be supplied where requested.</p>

9. Further additional condition

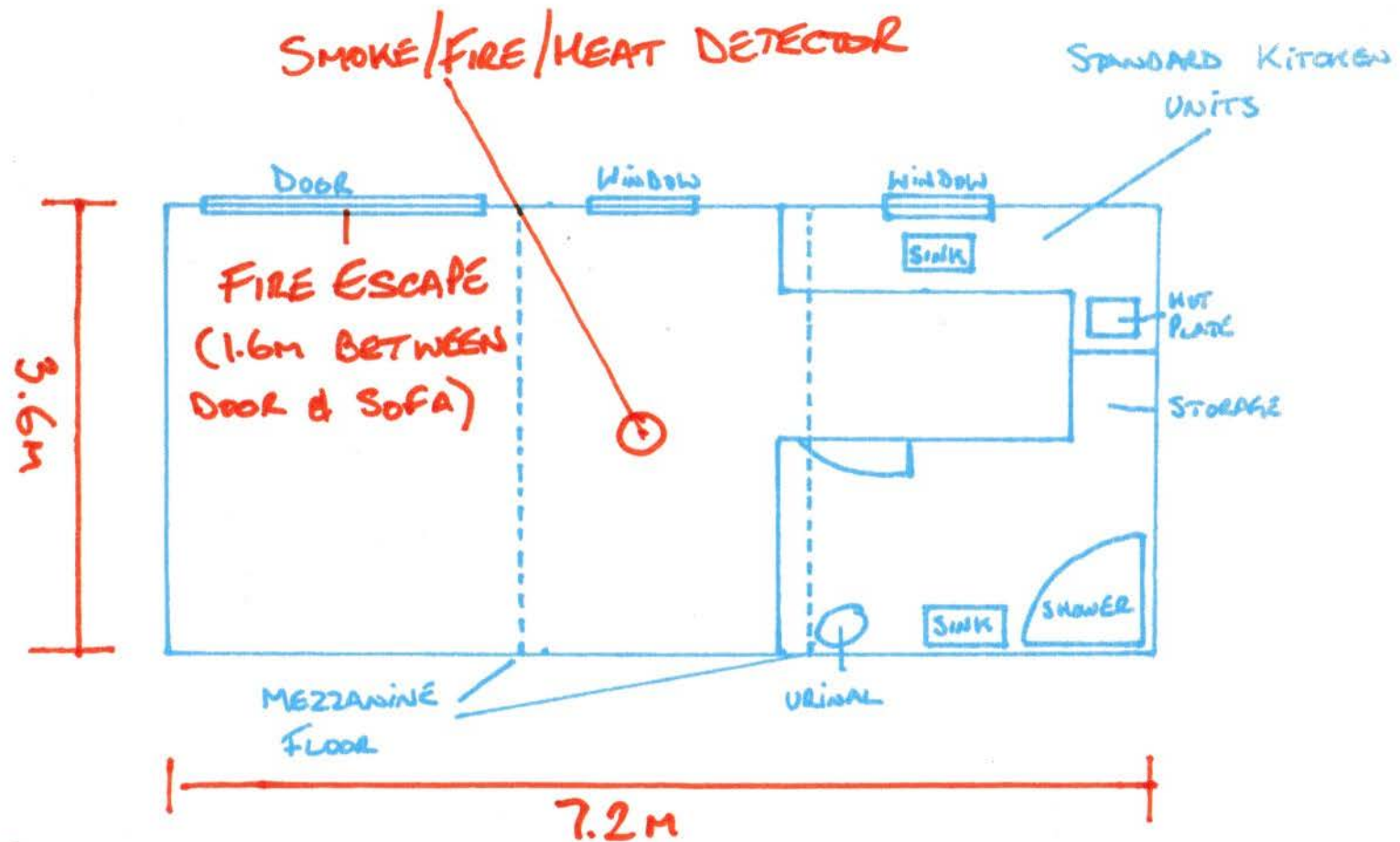
- 9.1 If the Highland Licensing Committee are minded to grant the application, the Committee are invited to consider whether they wish to include the following further additional licence condition, as referred to within the memorandum received from Highland Council Environmental Health Service (paragraph 5.3 of this Report and Appendix 2 refers):
- The licence-holder must take all reasonable steps to ensure that guests do not use the hot tub or play amplified music after 2200hrs.

10.	Implications
10.1	Not applicable.
<p>Date: 6 March 2024</p> <p>Author: Julie Traynor</p> <p>Reference: FS540494430</p> <p>Background Papers:</p> <ul style="list-style-type: none"> • Civic Government (Scotland) Act 1982 • The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 <p>APPENDICES:</p> <p>Appendix 1: Site plan, detailing the extent of the Premises and floor plan;</p> <p>Appendix 2: Memorandum from Highland Council Environmental Health Service dated 12 January 2024;</p> <p>Appendix 3: Objection received by email on 10 January 2024 from Dr Keri Langridge;</p> <p>Appendix 4: Objection received by email on 10 January 2024 from John and Gillian Challis;</p> <p>Appendix 5: Objection received on 10 January 2024 from James Hickey;</p> <p>Appendix 6: Objection received by email on 11 January 2024 from Maggie Newlands;</p> <p>Appendix 7: Objection received by email on 12 January 2024 from Angus J Maclellan and Lewis J Watson.</p>	

BLOCK/SITE PLAN
AREA 90m x 90m
SCALE 1:500 on A4
CENTRE COORDINATES: 291431, 850182



⑦ — STREET LIGHT PROVIDES ADEQUATE LIGHT FOR ESCAPE



NB: MAX OCCUPANCY
IS 6 PERSONS
WITH MAX 6 ADULTS.

SCALE 1cm = 0.5m
PROPOSAL REF: 100539000

NB: NO ACCESS FOR
PERSONS WITH
MOBILITY ISSUES.

DATE: 22/3/22

Memorandum

To: Principal Solicitor – Corporate Governance
From: Senior Environmental Health Officer
Subject: The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022

Date:
12.01.2024

Your ref: FS-Case-540494430
Our ref: SR 195552

Please ask for: Ms Eleanor Hood
Phone: 01463 644570

Email: eleanor.hood@highland.gov.uk

CASE REF: FS-Case-540494430, 2 The Cottages, Littlemill, Nairn, IV12 5QL
SUBJECT: Short Term Let Application

I refer to the recent consultation in connection with the above-mentioned Short Term Lets (STL) licence application.

The applicant specified that the **maximum number** of persons to be accommodated in the premises at any one time would be **6 (six) persons**.

In making an assessment of this application our Service has undertaken the following verification checks:-

- i. Checked accuracy of layout plans
- ii. Checked supporting documentation & safety related certification (i.e electrical & gas inspection records)
- iii. Checked relevant complaint history on Env Health database within previous 12months*
- iv. Completed a desktop assessment of application
- v. Conducted a property inspection on 30th June 2023.

*Complaint History

Our Service received noise complaints from neighbouring properties regarding this STL property on 21st June 2023. The complaints related to guests using the outdoor entertainment area, which includes a hot tub, seating area and fire pit on the decking area directly outside the pod entrance. A visit was conducted to the property on the 30th June 2023. From discussions with the operator, our officer was satisfied that the operator had put in place reasonable measures to manage the pod and external entertainment area, in a manner to reduce any future noise disturbance to neighbours. The operators had existing procedures in place to inform guests of the residential area

where the pod is located (at the point of property advertisement and booking) and advising guests not to use the hot tub after 2200hrs. However, following our visit, the operator also subscribed to a noise monitoring app which notifies guests and operators if noise exceeds a reasonable level between the hours of 2200hrs – 0700hrs.

Since our site meeting on the 30th June, I would confirm that our Service has had one further noise complaint. This was pro-actively brought to our Services attention by the site operator themselves on the 24th July 2023, before we received notification from a complainant. Following investigation, our Services considered that the operator took reasonable steps to ensure that the behaviour of these guests did not recur.

I would confirm that since the 24th July, no further noise complaints have been reported to our Service. The management procedures put in place by the operators would therefore appear to have been successful in reducing noise disturbance during late evening and early hours of morning.

Environmental Health will investigate any future complaints or allegations of breach of licence conditions, should the licence application be successful. The Noise App, which can be used members of the public to submit recordings of anti-social noise disturbances and noise monitoring log sheets directly to our Service, has been made available for use to the complainants.

Recommendation

Taking into account the steps taken by the operator in response to the complaints made and noting that there have been no reported issues since 24th July 2023, I would confirm that our service would have no objections to the issuing of a STL licence in respect of this application. However, consideration could be given to an additional licence condition specifying that the licence holder must take reasonable steps to ensure that guests do not use the hot tub or play amplified music after 2200hrs.

Eleanor Hood

Environmental Health Officer

[REDACTED]

From: Keri Langridge <[REDACTED]>
Sent: 10 January 2024 17:41
To: STL Licensing
Subject: Objection to short-term let licence application 'Cherry Tree pod, 2 The Cottages, Littlemill, IV12 5QL'

Follow Up Flag: Follow up
Flag Status: Completed

Categories: [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.

Dear Sir/Madam,

I would like to raise an objection to the short-term let licence application for 'Cherry Tree Pod, 2 The Cottages, Littlemill, IV12 5QL' (provisional licence number listed as HI-60077-P)

The objection is raised on the grounds that the location and nature of the let are unsuitable because:

- It is far too close to neighbouring properties (it is located on a shared driveway, on the immediate boundary of four other properties)
- The property is designed and used as a full time holiday let (AirBnB), with the facilities designed to maximise outdoor socialising (e.g. a hot tub, a fire pit, outdoor lighting (which is left on overnight) and outdoor seating), and therefore the level of noise for neighbouring properties is excessive, both in terms of it taking place every day throughout the year (because it is not akin to neighbours occasionally socialising in their garden: new holidaymakers arrive on a constant basis) and because it is persistent throughout the day and night.
- This is a quiet residential village, predominantly of retired people. The people that stay in this short-term let are here on holiday: to drink, play music, talk and laugh and socialise and sit in a hot tub all day and late into the evening. There are potential issues with public nuisance and public order (people are drinking and making a lot of noise), and with public safety when the neighbouring residents are forced to ask them to keep the noise down, or modify other inappropriate or disruptive behaviour.

From:

Dr Keri Langridge
[REDACTED]

Regards,

Dr Keri Langridge, 10th January 2024

Mr. J & Mrs G Challis

**Re: Licence Application
Cherry Tree Pod
Littlemill, IV12 5QL**

Note: letter received by email
on 10.1.24.

Dear Sir/Madame

The sighting of this notice was place in position you had difficulty getting too, let along seeing it from the road (without being informed where and what it was).

Although we live approximately 70 yds from the property, on a summers evening while sitting in our garden we can hear the music from the outside hot tub parties at the pod, this was a small quite village of 15 properties that exists mainly of retired people, now it looks like Blackpool illuminations during the summer months with his outside lights around the pod (which is in his front garden next to the road).

Ourselves are first responders to his next door neighbour Mr Hickey, the properties must have a bell area for emergency vehicle's, because Cherry Tree has parking for only one car if more than one comes with the holiday makers they park in the pull in for emergency vehicles, in doing so it makes it extremely dangerous when trying to drive in or out of Mr Hickey's driveway at night (normal time for his alarm to go off as he has fallen off the settee where he has taken to sleeping and cannot get up).

We have asked the owner to stop this parking in the emergency area, but just told where to go.

I'm afraid this holiday Pod is upsetting a number of closer neighbours than us, as the parties do go on until early hours of the morning, as holiday makers will do.

Regards

John & Gillian Challis

Mr James Hickey

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10/01/2024

Re: Licence Application

Cherry Tree Pod

Littlemill

IV12 5QL

Dear Sir/Madame

I have been informed by neighbours that I need to put this letter in as I was not informed of the original planning for the Pod and having lived here for 25 yrs. and as a direct neighbour I should have been.

This Pod has caused me, my social worker and first responder several problems. I hate to name them all as it sounds like I'm just moaning.

First there is a window from the pod that looks directly into my property.

Because of the noise from the bar b Q and hot tub parties I have had to move from my bedroom to sleeping in the furthest room from the noise, the lounge (the social working wishes me to move back to the bedroom which has an on suite, but the late-night noise keeps me awake), it helps but I can still hear the partying.

The social worker, pharmacy and first responder have trouble reversing out of my driveway with cars parking in the bell mouth area which blocks their vision to oncoming traffic, when asked to stop this we just get a load of verbal abuse.

Regards

James Hickey

[REDACTED]

From: Maggie Newlands <[REDACTED]>
Sent: 11 January 2024 12:02
To: STL Licensing
Subject: Licence No HI - 60077 - P

Categories: Gary, Julie, Lynn

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To Whom It May Concern

Ref: Cherry Tree Pod, 2 The Cottages, Littlemill, Nairn IV12 5QL
Licence No: HI - 60077 - P

I wish to make an objection regarding this short term let application. Although I did not raise an objection to the initial planning permission for running this business, at that time I was unaware of the considerable impact it would have on the neighbourhood and my property in particular.

Cherry Tree Pod is located inappropriately close to several residential properties in what is an extremely quiet rural village. It is approximately 12 metres from my house. There is a sizeable outdoor area outside the pod containing a hot tub and fire pit which encourages outdoor socialising by holiday makers. Since its installation there have been recurring problems with noise disturbance at night, and although this has lessened recently there is obviously no way of eliminating it entirely. My bedroom window overlooks this patio area and even with closed windows pump noise and talking can be clearly heard from my bedroom.

Maggie Newlands
[REDACTED]

[REDACTED]

From: Angus Maclellan <[REDACTED]>
Sent: 12 January 2024 15:05
To: STL Licensing
Subject: Cherry Tree Pod IV12 5QL - STL Application Objection

Categories: Objection, Lynn, Gary

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.

To whom it may concern,

We would like to make an objection to the licence application for this holiday let.

We realise that it is not required for us to say this but we would prefer not to have to object to any applications. Unfortunately, this one has impacted the enjoyment of both our home and garden.

We are sure all of the various guidelines have been strived for to try to make it work. However the frequent noise disturbances from the outdoor socialising area and hot tub regularly disrupt all of the close neighbours and our property which is considerably further away. Yet we can still hear it- loud music and loud chatter often followed by loud conversations below our windows.

We feel that the site plan and orientation of the development is partly to blame for this. However, ultimately creating an outside entertaining space encourages these loud prolonged gatherings. Which give the location in a quiet residential area seems wholly inappropriate.

With such close proximity to the other neighbouring properties it is always going to be a problem.

Yours faithfully,

Angus John Maclellan & Lewis James Watson

[REDACTED]