

	Agenda item	3.5
	Report no	HLC/145/24

THE HIGHLAND COUNCIL

Committee: **THE HIGHLAND LICENSING COMMITTEE**

Date: **3 December 2024**

Report title: **Application for the grant of a short term let licence – Middle Flat, Kirk House, 33 Miller Avenue, Wick, KW1 4DF (Ward 3 – Wick and East Caithness)**

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 20 September 2024 a validated application for the grant of a short term let licence was received from Mr Desmond Fuller.
- 4.2 The property to which the application relates is Middle Flat, Kirk House, 33 Miller Avenue, Wick, KW1 4DF (the "Premises"). A site plan was provided by the applicant as part of the application process and is attached as an appendix to this report (**Appendix 1**). The extent of the Premises are shown edged red on the plan 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 Mr Fuller will be the host/operator(s) of the Premises. The host/operator has applied for a short term let licence as an 'existing host' on the basis that the Premises were operated as a short term let property prior to 1 October 2022.
- 4.4 Mr Fuller and a Miss Catriona Metcalf are named on the application as the owners of the Premises.
- 4.5 The person named on the application as being responsible for the day-to-day management of the Premises is the said Mr Fuller.
- 4.6 The type of letting which has been applied for is 'secondary letting', which means the host/operator is letting a property where they do not normally live.

- 4.7 The Premises is described as a dwellinghouse which can accommodate a maximum capacity of 10 guests. The first floor of the premises comprises of a kitchen, bathroom, and three bedrooms. The second floor of the premises comprises of a kitchen dining room, bathroom and two bedrooms. Floor plans of the Premises were provided by the applicant as part of the application process, and these can be found on pages 2 and 3 of Appendix 1.

5. Process

- 5.1 The application was circulated to the following Agencies/Services for consultation:

- Police Scotland;
- Scottish Fire & Rescue Service; and
- Highland Council Environmental Health Service.

- 5.2 Police Scotland and Highland Council's Environmental Health Service have both confirmed that they have no objections to the application.

- 5.3 The Scottish Fire & Rescue Service have been consulted on the application and, at the time of writing, a response is awaited. If available, a verbal update can be provided to the Committee by the Principal Solicitor – Regulatory Services.

6. Certificate of Compliance

- 6.1 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.

7. Public objection

- 7.1 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 licence.

During the notice of display period, the following timeous objection was received and is attached as an Appendix to this report:

- Objection received by email on 12 October 2024 from Robert Sutherland (**Appendix 2**).

8. Determining issues

- 8.1 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, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either:
 - i. for the time being disqualified under section 7(6) of the Civic Government (Scotland) Act 1982, or;
 - ii. is not a fit and proper person to be the holder of the licence.

- b) The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such licence if he made the application himself;
- c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—
 - (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
 - (ii) the nature and extent of the proposed activity;
 - (iii) the kind of persons likely to be in the premises, vehicle or vessel;
 - (iv) the possibility of undue public nuisance; or
 - (iv) 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.

- 8.2 A copy of this report has been sent to the applicant and the objector 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.
- 8.3 Both 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 \(Licensing Committee\) \(highland.gov.uk\)](https://www.highland.gov.uk/licensing-hearings-procedures)

9. Observations on objection

- 9.1 In the email of objection found at Appendix 2, points have been made which should not be taken into account by the Committee when determining this licence application, as they are outwith the scope of the grounds that a licensing authority can consider in terms of the refusal of an application to grant or renew a licence, as detailed at point 8.1 of this Report.
- 9.2 If required, the Principal Solicitor – Regulatory Services will offer further advice or clarification on these points.

10. 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 policy can accessed [here](#) or a hard copy can be supplied where requested.

11. Implications

11.1 Not applicable.

Date: 14 November 2024

Author: Julie Traynor

Reference: [FS548345165](#)




Background Papers:

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

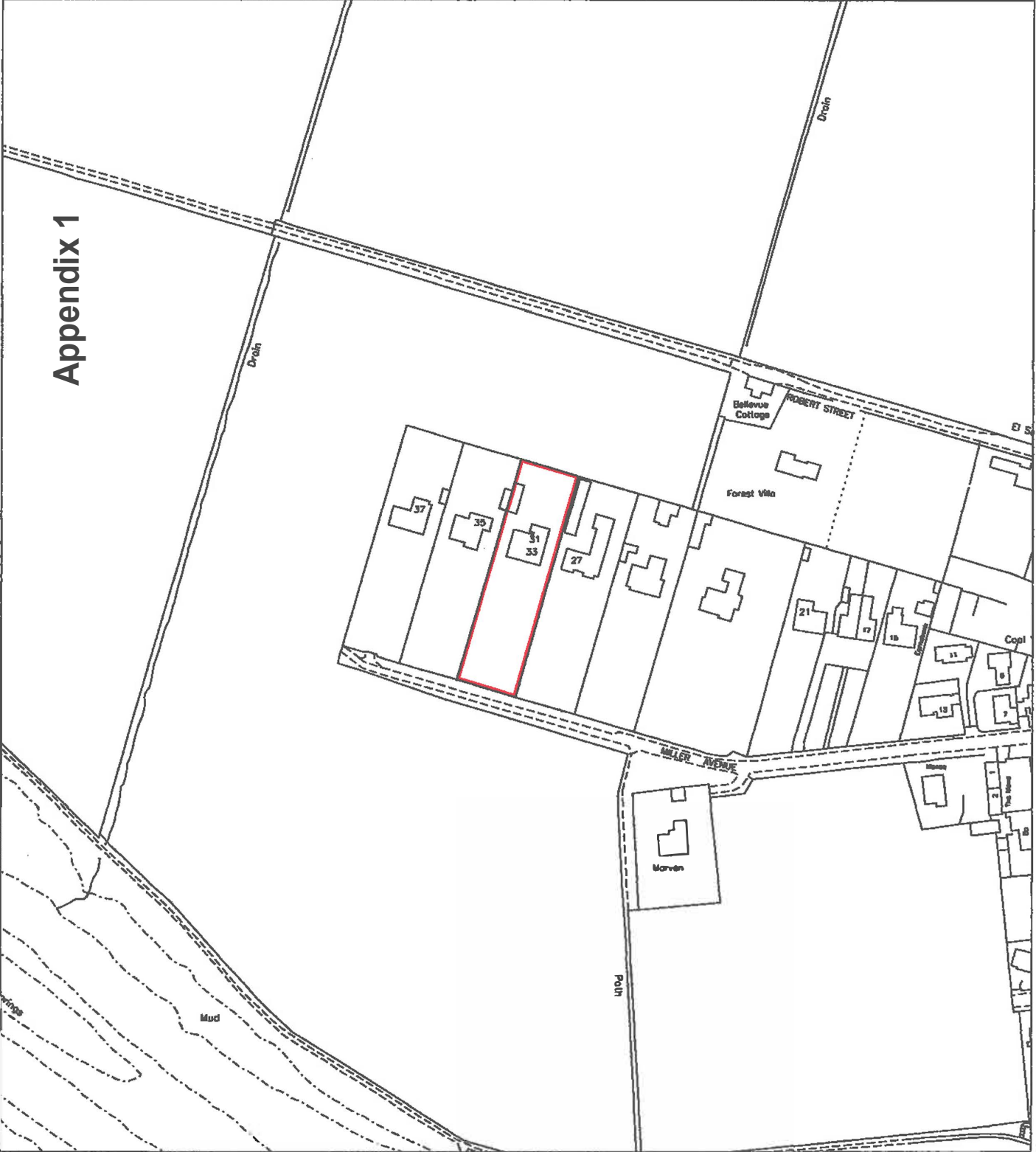
Appendices:

Appendix 1: Site plan detailing the extent of the Premises and floor plans for the Premises;

Appendix 2: Objection received by email on 12 October 2024 from Robert Sutherland.

 LAND REGISTER OF SCOTLAND	Officer's ID / Date	TITLE NUMBER
	6696 16/3/2017	CTH6752
	ORDNANCE SURVEY NATIONAL GRID REFERENCE	140m 
ND3551 ND3651		Survey Scale
		1/2500

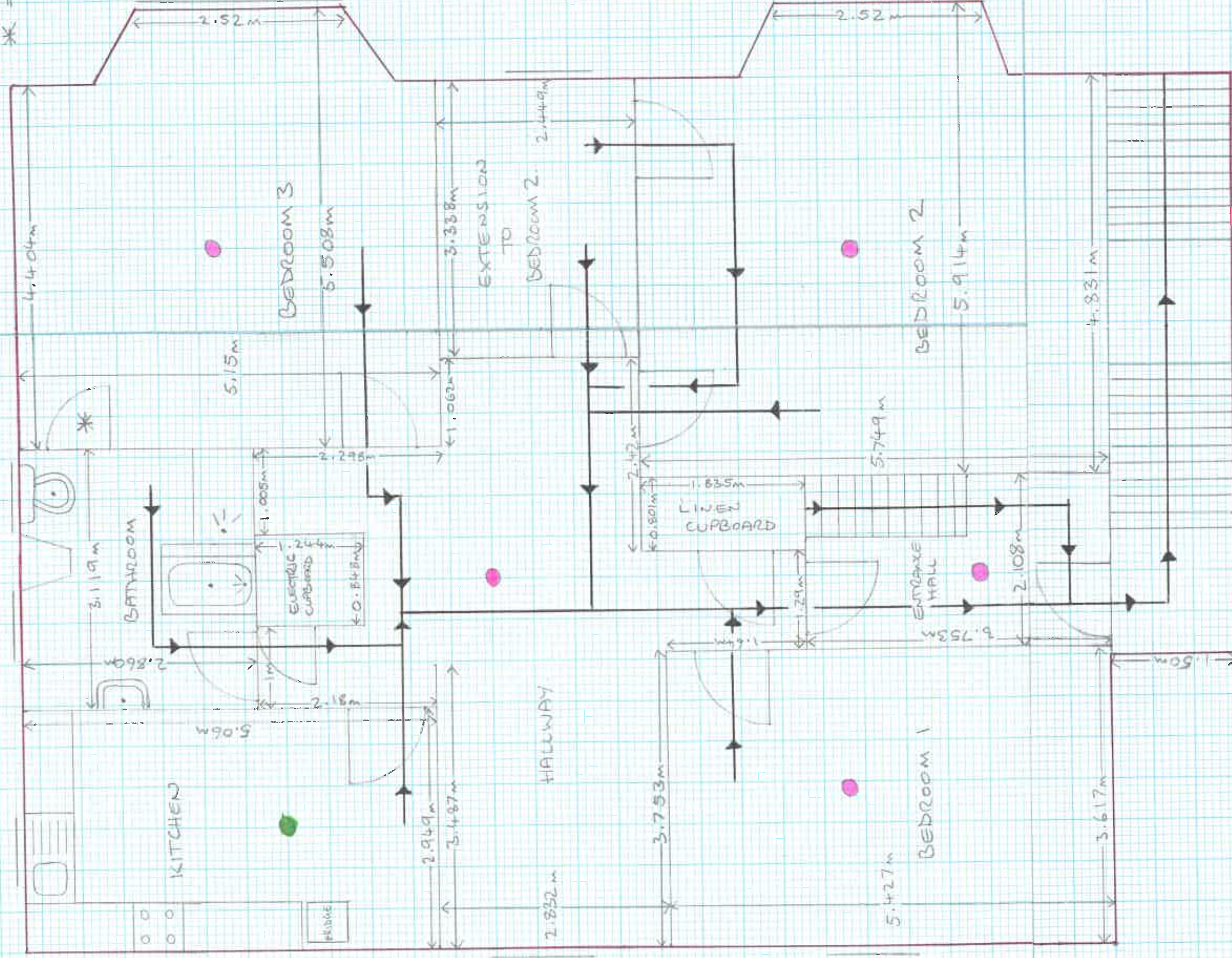
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FIRST FLOOR PLAN OF 33 MILLER AVENUE, KILK HOUSE, WICK, KWI 4DF.

MAXIMUM OCCUPANCY OF PROPERTY - 10 PEOPLE (INCLUDING ACCOMMODATION ON SECOND FLOOR).
 PLAN DRAWN TO A SCALE OF 1cm:50cm.

- = SMOKE ALARM
- = HEAT ALARM
- * = THIS DOOR IS KEPT LOCKED (THE GUESTS CANNOT OPEN IT)

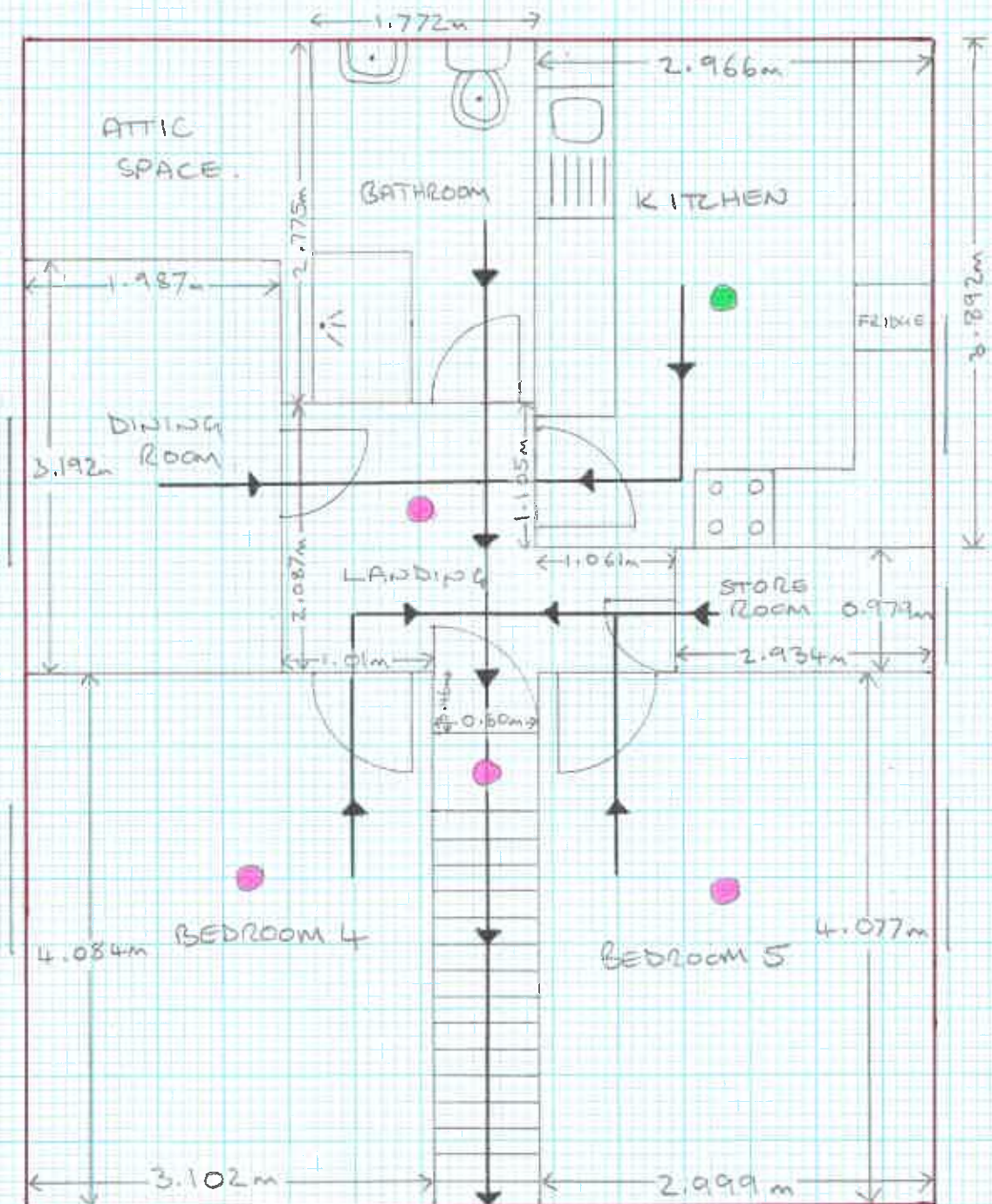


→ = FIRE ESCAPE ROUTE FROM FIRST FLOOR OUT FRONT DOOR AND DOWN STAIRS TO GROUND LEVEL.

SECOND FLOOR PLAN OF 33 MILLER AVENUE, KIRK HOUSE,
WICK, KWI 4DF.

MAXIMUM OCCUPANCY OF PROPERTY - 10 PEOPLE (INCLUDING
ACCOMMODATION ON FIRST FLOOR).

PLAN DRAWN TO A SCALE OF 1cm:50cm.



● = SMOKE ALARM

● = HEAT ALARM

→ = FIRE ESCAPE ROUTE DOWN TO
FIRST FLOOR ENTRANCE HALL.

(Received 12/10/24 by email)

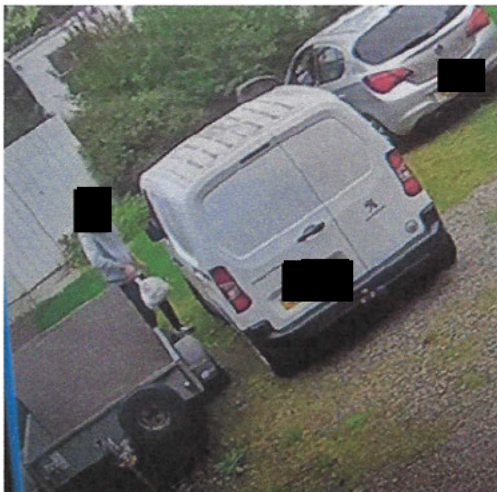
Objection to Short Term Let - 33 Miller Avenue, Wick, KW1 4DF

Littering & waste disposal

Although our own waste bins are suitably labelled with our house number, this has not prevented guests from using them. We have now moved them to our back door and placed a large sign above them "NOT FOR RENTAL USE". The waste bins for upstairs are clearly marked but they are positioned across the garden and not near the entrance to the flats therefore guests may not notice them easily and tend to use ours. *(photo indicating location of bins for No.33)*



We had on one occasion guests dump a bag of rubbish from their car into our trailer parked at the rear of the property. This was captured on CCTV.



Discarded cigarette butts litter the area under the staircase from guests smoking at the flat entrance.



With the potential for 70 guests per week we struggle to understand how one garbage bin and one recycle bin can cope with the waste generated.

Security & privacy

We feel our privacy and security of our family home has been greatly compromised since the upstairs flats are being used as STLs. With the potential of 70 persons coming and going per week we have installed CCTV for our security / safety and that of our vehicles parked at the house.

Guests will regularly come to our door for checking-in upstairs. Although we appreciate that the check-in details that are sent to guests have been updated due to our complaints, this has not prevented the unnecessary disturbances. When we do not answer the door to guests, they will peer into our windows with cupped hands gesturing to let them in or answer the door.

The disturbances are not only limited to guests checking-in, we have also had guests come to our door when they were locked out, asking for help to carry their luggage up the stairs and asking for directions to Tesco.

The hosts do not live at the property, occasionally they may stay there for a night or two, but they are rarely available to greet guests on arrival. This is also evident in many of the reviews online.

(extract of some of the reviews posted on booking.com)

A Armin
Switzerland

Thu, 23 Jun 2022

Pleasant

😊 Had a whole big apartment

😞 There was no staff, we were all alone! You came in with a text code. Was not as described.

Translated by **Booking.com** - [Show original](#)

6.0

R Robin
France

Fri, 8 Sept 2023

It's a good BNB

😊 Our stay at this self-check-in BNB was hassle-free and comfortable. While there was no host on-site, the process was smooth, and communication was prompt. The location was convenient, and we had a pleasant stay overall.

8.0

28th July – an elderly Canadian gentleman rings the doorbell at 2245hrs to gain access upstairs and to ask for help with his luggage. He returns after 2300hrs requesting to leave his luggage in our vestibule as he could not carry it upstairs. We politely refused his request, so he left his luggage at our front door instead. *(This was the review this gentleman left on booking.com)*



Edward

Canada

3.0

Thu, 3 Aug 2023

Poor

😊 Well appointed

😞 Improperly Advertised... Should include Manny stairs...no hand railings on our side staircase.... older patrons with large or heavy luggage should be warned of this and the fact that no fulltime are not on Duty nor is there any other Back Up!!! This facility is well appointed But it would be great on a ground!!! The facility needs to be inspected and approved!!!! Reevaluated. Lower prices would it fully booked all the time. That would mean More Revenue!!!! Stop asking people to pay for the slow empty times.

On 3 occasions in 2023, guests walked into our house without ringing the doorbell, knocking or shouting hello. My partner approached one of the owners who did apologise but suggested we keep our doors locked in future.

9th of Sept 2023 an Asian couple walked into our living room whilst my partner was nursing our newborn son, this caused great upset, alarm and distress. She should be able to nurse our son in the comfort and privacy of our own home without feeling violated from complete strangers encroaching on them.

17th Sept 2023 – a couple of bikers arrived at the property at 1345 looking in our windows after we refused to answer the doorbell.

We do not feel that we should be sitting in the comfort of our own home, during the day with the blinds shut and all doors locked just to maintain some privacy. We would understand if our house was situated on a busy street in town but this house is set back from the street with high walled gardens of which we have enjoyed a high level of privacy until the flat upstairs were being used as short term lets. *(location of property on google maps)*

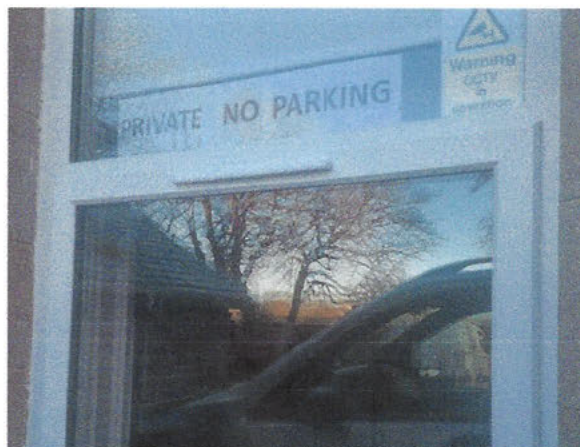


We have also posted signs around the house, which we were hesitant to do, but necessary due to the high level of disturbance we've encountered. We feel this degrades the house and still seems to have little effect on arriving guests. *(signage on our front door)*



My partner encountered a conformation with one couple last summer after she politely asked them to repark their car. They had parked their car at our back door blocking entry and also right in front of our children's bedroom window. (We have 2 young children and our double pram would not fit past their car) The gentleman was quite rude and suggested if he were not to park there, then there should be a suitable sign to say so. We posted a sign to which the owners upstairs greatly protested stating there was no need for all the signs around the property.

(parking sign posted on our children's bedroom window)



When all the rooms are booked out upstairs, parking around the property becomes an issue. On many an occasion the back garden is completely full of vehicles, some of which park inconsiderately blocking the driveway around the house or right in front of our bedroom window.

(4 cars and 2 motorbikes taking up the entire back garden)



Noise

Due to the large volume of traffic arriving and departing at the house daily, we are concerned about the noise especially early morning and late evenings, particularly with motorbikes. Whilst most guests appear to arrive or depart at a reasonable time, there are on several occasions those who depart very early or arrive late.

Safety & Repairs / Maintenance of premises

We have encountered many issues with the state of repairs on and around the property. This has included roof slates, outbuildings, guttering, deterioration of fascia boards allowing bird access, water ingress, garden maintenance and state of driveway (pot holes). There is also a couple of comments in their guest reviews which also mention maintenance and and unsafe stairway.



Kapasi

United Kingdom

Fri, 12 May 2023

Good and clean room for stop over



Quiet and out of the way place. Kitchen well equipped and bathroom good. Plenty of parking and informed by staff prior to arrival. But did not meet any one.



Stairs to entrance a little worn and potentially dangerous . Bathroom shared but still excellent. A little cold as old house and high roof.

8.0



Wynne

Isle of Man

1.0

Thu, 14 Jul 2022

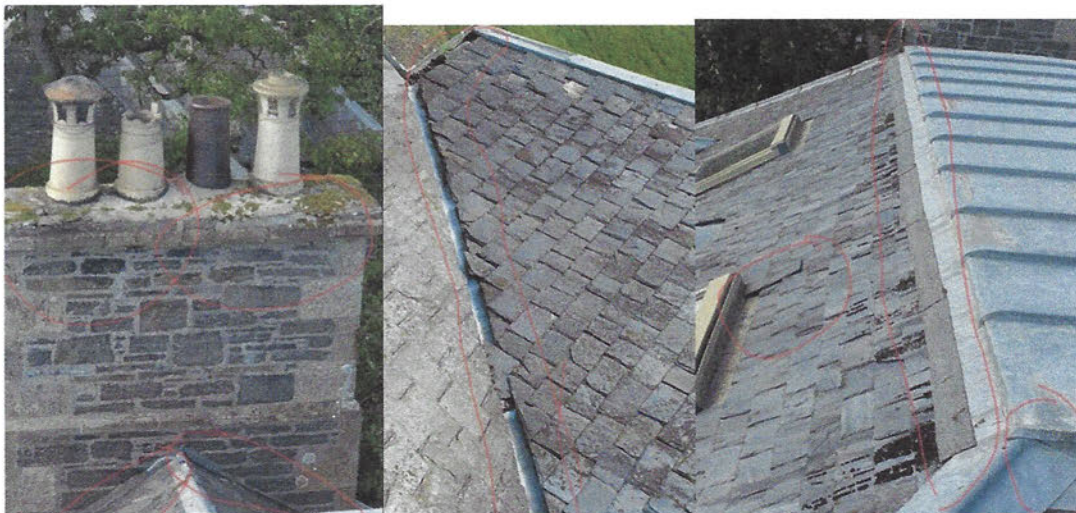
From the sight of the property I'm surprised it's advertised as a lodging place.



We didn't stay here as no-one was there to meet us. When we arrived, the place looked dark and run-down. After ringing at the front door, with no answer, I went up some damaged stone steps up to what appeared to be a flat/annexe and tried to ring that bell which didn't work. The rear of the property seemed to be in need of repair.

We had contacted the council in Sep 2021 to William Brass about our concerns and again in Aug 2022 to Phil Dent. Some of the issues raised were rectified but not all of them. Concerns regarding maintenance and state of repairs are still ongoing.

(photos taken Oct 2023 indicating loose render, broken chimney and dislodged roof slates)



Due to the high volume of traffic (potential for 35+ vehicles per week), we feel it is not safe for our children and dog to play in the garden. There are blind spots whilst driving round the house and whilst most visiting vehicles are considerate with their speed it is not always the case.

Miscellaneous

It was also noted on their booking.com page that a traveller had asked about staying with an assistance dog to which the owner replied they do not allow animals. It should be pointed out to the owners that under the Equality Act 2010, it is illegal to refuse an assistance dog even though they do not allow animals. *(Extract from booking.com)*

Travellers are asking

Hi I have a medical condition and require the use of an assistance dog - do you allow assistance dogs? Thanks Martin

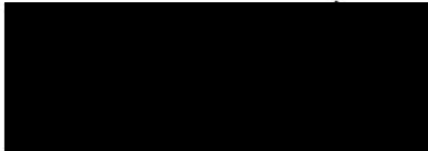
12 Aug 2022

Hiya, thank you for your question. I do apologise but unfortunately we don't allow animals. Best regards Des

 **Helpful**  **Not helpful**

There does not appear to be any other properties operating as a STL in our postcode area. This is a quiet, residential street and we feel it is inappropriate for a STL to be operating in the street for the reasons stated above. We suggest the property is better suited as a long term let or a residential property.

Regards,



Robert Sutherland

