

Agenda item	<b>10.4</b>
Report no	<b>HLC/043/24</b>

**THE HIGHLAND COUNCIL**

**Committee: THE HIGHLAND LICENSING COMMITTEE**

**Date: 7 May 2024**

**Report title: Application for the grant of a short term let licence – An Cabar, 38 Corbett Place, Aviemore, PH22 1NZ (Ward 20 Badenoch and 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 (“2022 Order”), a licence is required for residential accommodation for use as a short term let.
- 3.2 In terms of the abovementioned Act, the Licensing Authority have nine months from receipt of the application to determine the same, therefore this application must be determined by 27 May 2024. Failure to determine the application by this time would result in the application being subject of a ‘deemed grant’ which means that a licence would require to be issued on 27 May 2024 for a period of 12 months. The application is before this Committee as this is the last meeting before the determination date expires.
- 3.3 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 28 August 2023 (date application was deemed valid) an application for the grant of a short term let licence was received from Mr Peter Grant on behalf of him and Mrs Victoria Grant.
- 4.2 The Premises to which the application relates is An Cabar, 38 Corbett Place, Aviemore, PH22 1NZ (the Premises”). A site plan and floor plan were provided by the applicant as part of the application process which are attached as an appendix to this report (**Appendix 1**). The Premises are those outlined in blue on the site plan found on page 1 of Appendix 1.
- 4.3 The application has been made on the basis that the said Mr Grant and Mrs Grant will be the host/operators of the Premises. They have applied for the licence as a ‘new host’ on the basis that the Premises were not operated by them as a short term let property prior to 1 October 2022. In addition, Mr Grant and Mrs Grant are both named on the application as being the owners of the Premises and as being responsible for the day-to-day management of the Premises.
- 4.4 The type of short term let which has been applied for is secondary letting, which involves the letting of a property where the applicant does not normally live.

4.5 The Premises is described as a small studio cabin which can accommodate a maximum of two guests. The Premises comprises of an open-plan living area and a shower/toilet. 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.

## **5. Process**

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

- Police Scotland;
- Highland Council Environmental Health Service; and
- Highland Council Building Standards.

5.2 All of the above Agencies/Services have confirmed that they have no objections to the licence being issued.

5.3 The Scottish Fire & Rescue Service was not further consulted on the application as the fire safety checklist, which was completed by the applicant, pertaining to the application was deemed satisfactory.

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. No public objections have been received in respect of the application.

## **6. Planning Permission**

6.1 On 4 March 2024, Ward 20 of The Highland Council, Badenoch and Strathspey, was designated as a short term let control area. The mandatory licence conditions, as laid out in the 2022 Order, provide that where a property is in a short term let control area then, for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”), the holder of the licence must, where the use of the property for a short term let requires planning permission under the 1997 Act, ensure that either:

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

6.2 In terms of the licensing requirements; to demonstrate that an applicant is complying with this mandatory licence condition, for each application for a short term let licence for secondary letting in Ward 20, an applicant is required to provide us with the following:

1. evidence that an application for planning permission for the use of the property as a short term let has been made and has not yet been determined; or
2. evidence that planning permission has been granted for the operation of the property as a short term let; or

3. evidence that the property does not require planning permission for use as a short term let – by way of either:
  - a Certificate of Lawful Use, which confirms that the premises do not require planning permission; or
  - a Certificate of Lawful Development, where the property has operated as a short term let for over 10 years and cannot, therefore, be subject to any enforcement action for a lack of planning permission for this use.

6.3 On the application form, the applicant stated that no planning permission has been applied for in respect of the use of this property for short term let purposes. The applicant was contacted by the licensing team on 2 April 2024 and 17 April 2024 and he was invited to provide the evidence requested, as outlined at paragraph 6.2 above, however at the time of writing, this evidence has not yet been provided. The Principal Solicitor is therefore unable to grant the licence using delegated powers as compliance with the mandatory licensing condition detailed at paragraph 6.1 above cannot be confirmed and, as indicated in paragraph 3.2 of the report, this is the last meeting of the Licensing Committee before the nine month determination period expires.

## 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 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.

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)

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

## 9. Implications

9.1 Not applicable.

Date: 15 April 2024

Author: Julie Traynor

Reference: FS540966822

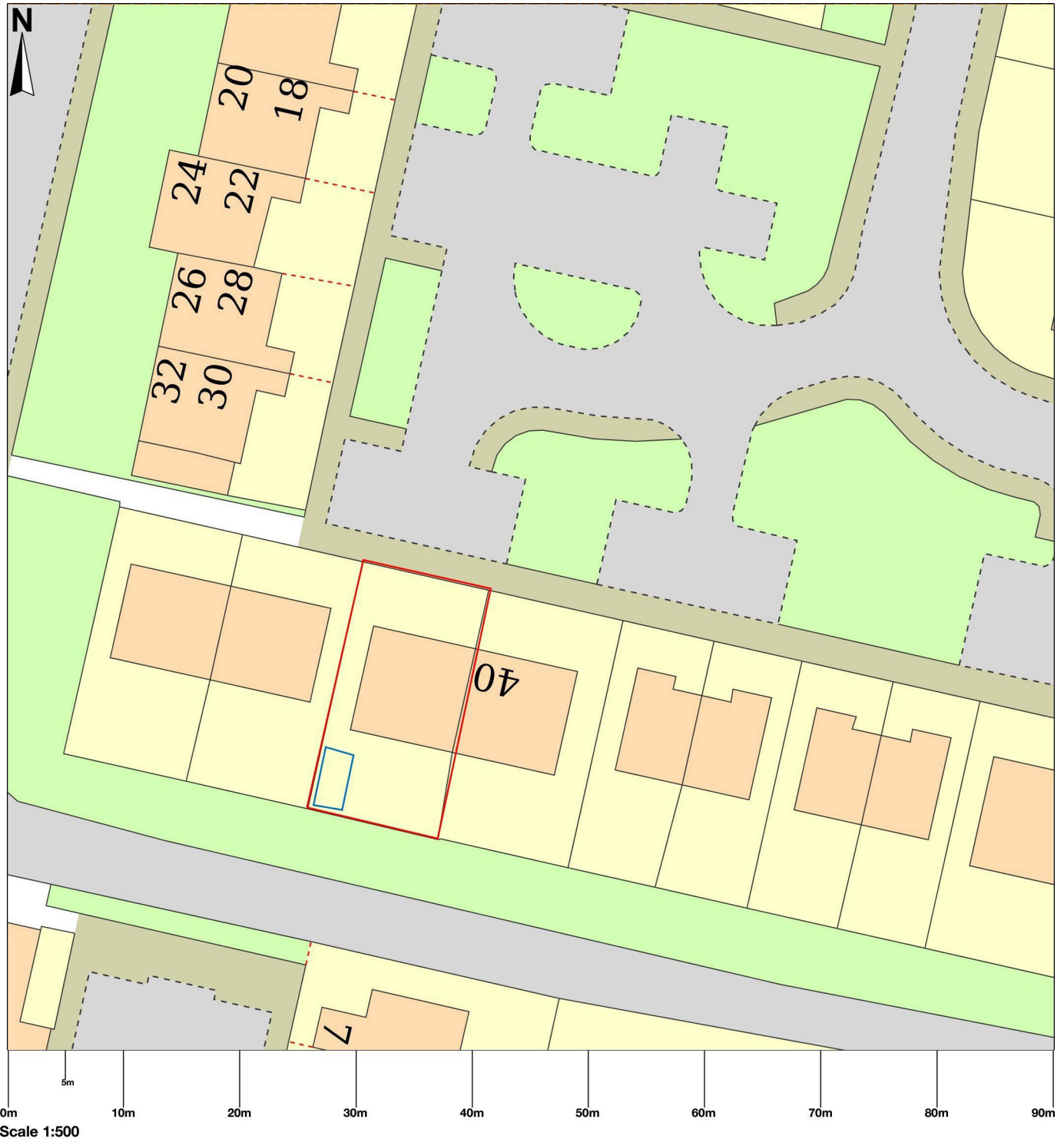
Background Papers:

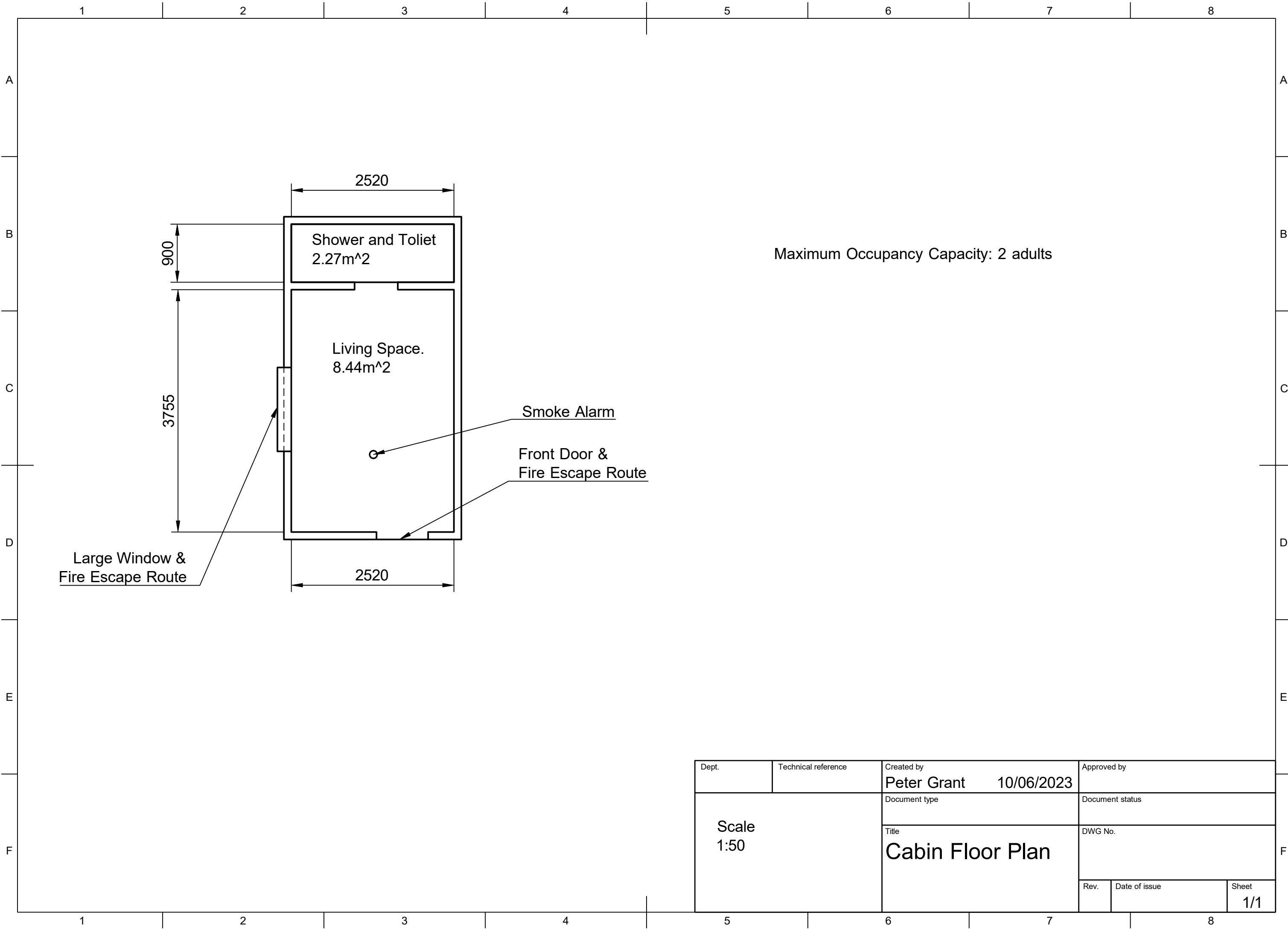
- Civic Government (Scotland) Act 1982
- The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022

## APPENDIX:

Appendix 1: Site plan detailing extent of premises, together with floor plan

## 38 Corbett Place, Aviemore, PH22 1NZ





Maximum Occupancy Capacity: 2 adults

Large Window &  
Fire Escape Route

Shower and Toilet  
2.27m<sup>2</sup>

Living Space.  
8.44m<sup>2</sup>

Smoke Alarm

Front Door &  
Fire Escape Route

Dept.	Technical reference	Created by <b>Peter Grant</b>	10/06/2023	Approved by
Scale 1:50		Document type	Document status	
		Title <b>Cabin Floor Plan</b>	DWG No.	
Rev.	Date of issue	Sheet	1/1	