

Agenda item	9.4
Report no	HLC/78/24

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 6 August 2024

Report title: Application for the grant of a short term let licence Tom's Lodge, Balvattan Beag, Boat of Garten, PH24 3BX (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, 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 14 December 2023 (date application was deemed valid) an application for the grant of a short term let licence was received from Mrs Annabel Mary Findlay on behalf of Lets Do Scotland Limited (Company number SC630821) and having their registered office at Barns Knowe Old Sauchie, Sauchieburn, Stirling, FK7 9QF.
- 4.2 The property to which the application relates to is Tom's Lodge, Balvattan Beag, Boat of Garten, PH24 3BX ("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 Premises are those edged in red 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 Mrs Annabel Mary Findlay and Mrs Colleen Scott will be the host/operators 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 a short term let property prior to 1 October 2022.
- 4.4 Lets Do Scotland Limited are named on the application as the owners of the Premises.
- 4.5 The persons named on the application as being responsible for the day-to-day management of the Premises are the said Mrs Annabel Mary Findlay and Mrs Colleen Scott.
- 4.6 The type of letting which has been applied for is 'secondary letting', which involves the letting of a property where the applicant does not normally live.
- 4.7 The Premises is described as a detached dwellinghouse which can accommodate a maximum of 10 guests. The ground floor of the Premises comprises of an open plan kitchen/dining area, lounge, 2 bedrooms, utility room, bathroom and a shower-room. The upper floor of the premises comprises of 2 bedrooms and a shower-room. Floor plans of the premises were provided by the applicant as part of the application process and these can be found on page 2 of Appendix 1. In addition, the premises also offers an external socialising area which comprises of a hot tub, decking and BBQ area.

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

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

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.

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

- Objection received by email on 1 February 2024 from Mr Martin Johnson and Mrs P Johnson (**Appendix 2**)

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 Police Scotland 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 \(Licensing Committee\) \(highland.gov.uk\)](#)

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: 16 July 2024

Author: Julie Traynor

Reference: FS533748168



Background Papers:

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

APPENDICES:

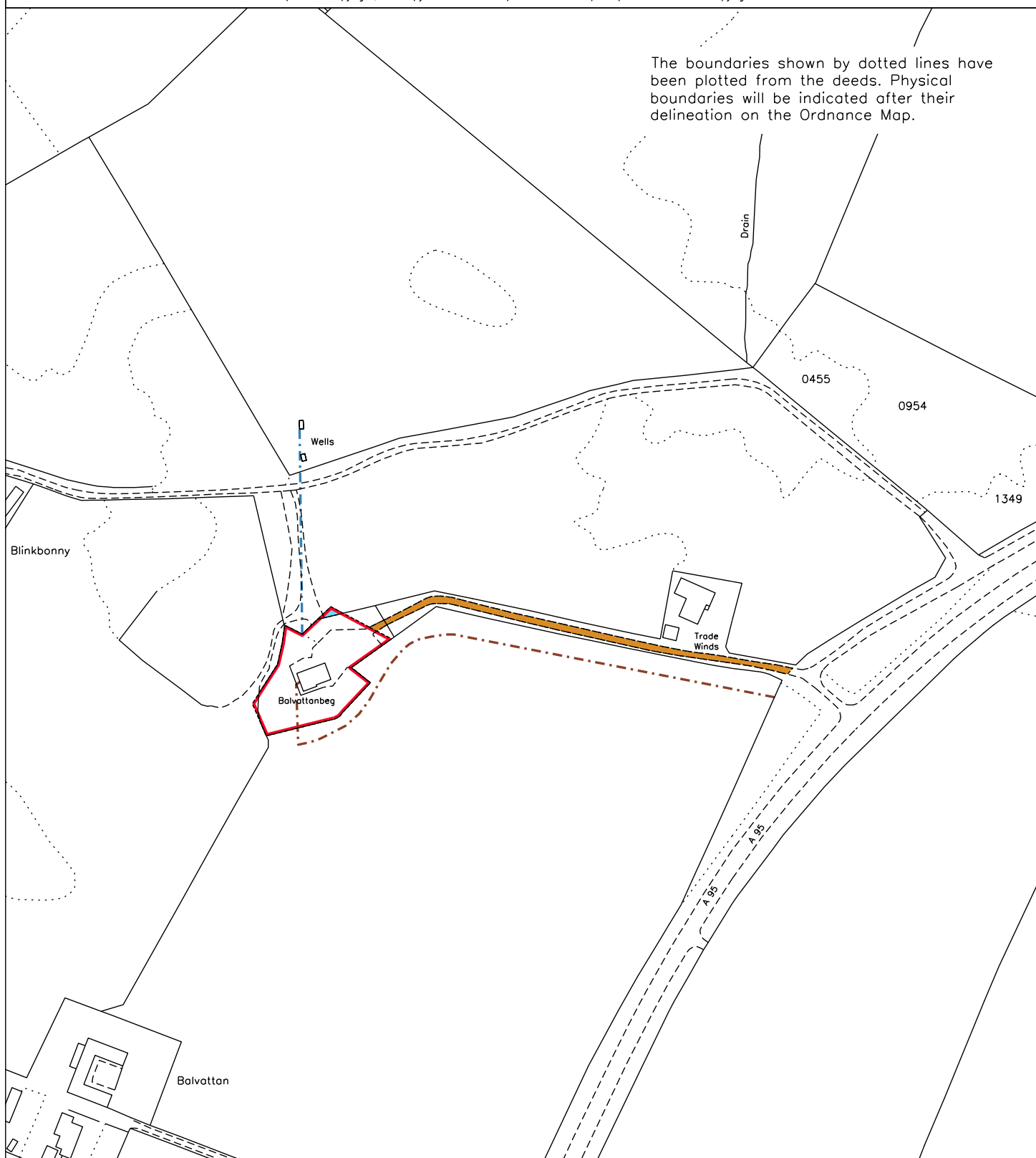
Appendix 1: Site plans, detailing the site boundary and extent of the Premises and floor plans;
Appendix 2 : Objection received by email on 1 February 2024 from Mr Martin Johnson and Mrs P Johnson.


Balvatten Beag, Boat Of Garten, PH24 3BX

 LAND REGISTER OF SCOTLAND	Officer's ID / Date	TITLE NUMBER
	6546 7/6/2019	INV28860
	ORDNANCE SURVEY NATIONAL GRID REFERENCE	140m
	NH9622 NH9722 NH92SE	Survey Scale 1/2500

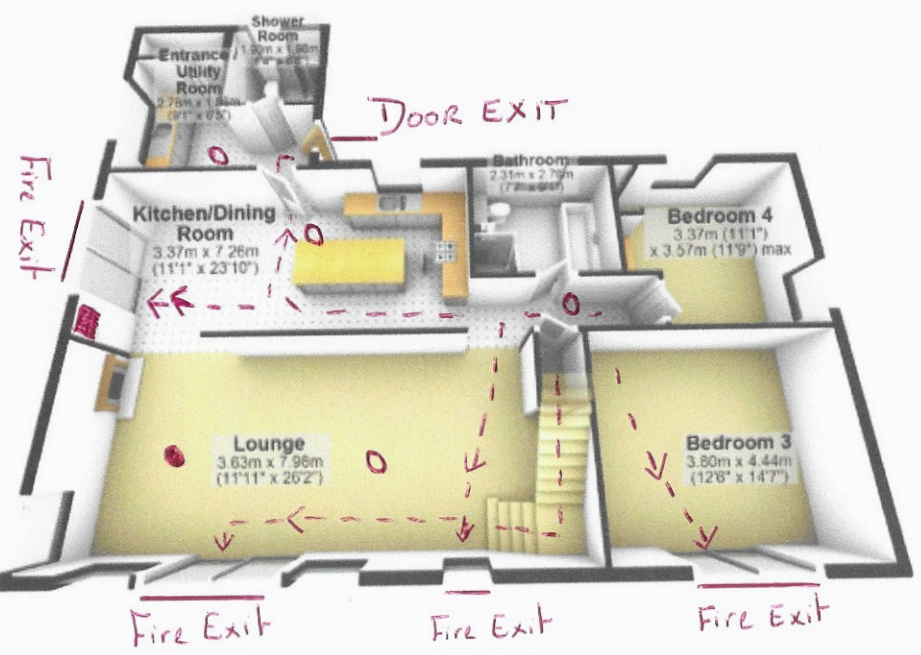
CROWN COPYRIGHT © – This copy has been produced from the ROS Digital Mapping System on 08/06/2019 with the authority of Ordnance Survey under Section 47 of the Copyright, Designs and Patents Act 1988. Unless there is a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner. OS Licence no 100041182.

The boundaries shown by dotted lines have been plotted from the deeds. Physical boundaries will be indicated after their delineation on the Ordnance Map.

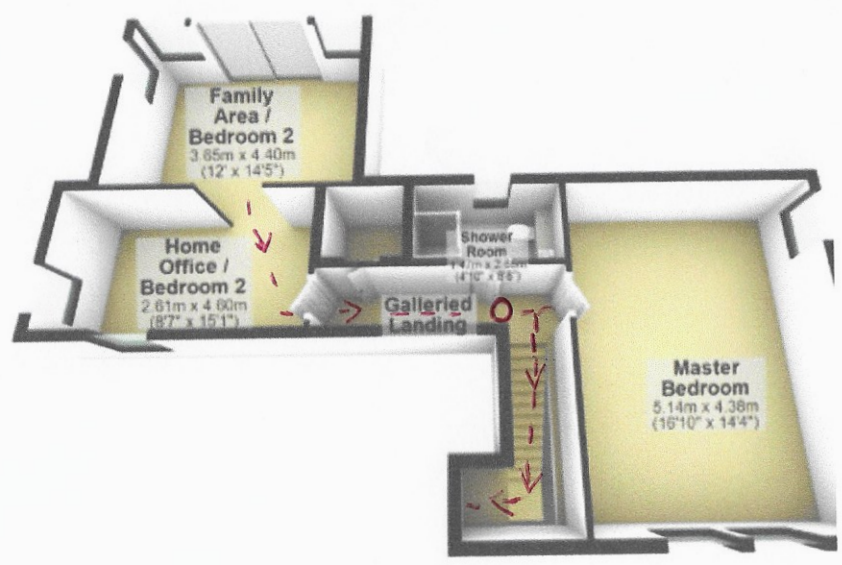


KEY -  - Carbon Monoxide detector
 ○ - Smoke alarm
 ● - heat detector
 - - - - - Escape route

Ground Floor



First Floor



Maximum Occupancy 8/10

[Redacted]

From: Martin Johnson <[Redacted]>
Sent: 01 February 2024 11:45
To: STL Licensing
Subject: Objection to STL License Application UPRN 130188038
Attachments: bb license objection.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Alex

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 or Madam,
Please find attached our objection to the STL License application for Balvattan Beag, Boat of Garten, PH24 3BX UPRN 130188038.

Would you please acknowledge receipt of this objection.

Yours faithfully,

Mr. M & Mrs. P Johnson

[Redacted]

We object to Balvattan Beag, Boat of Garten, PH24 3BX UPRN 130188038 being operated as a Short Term Let because:

the applicant has not fulfilled their legal and contractual obligations;

access to the premises from the A95 Trunk Road is not of a sufficient standard to handle the amount of traffic created by operating Balvattan Beag as an STL;

there is significant nuisance from dog intrusion, anti social behaviour of customers, excess speed of traffic on shared access track, unsuitable rubbish storage arrangements;

the STL has been significantly detrimental to the amenity and privacy that we used to experience;

we have incurred substantial costs due to the operation of Balvattan Beag as an STL and are likely to incur further costs.

The evidence for these reasons is set out on the following pages.

Lord Braid in his 2023 judicial review of the City of Edinburgh Council Short Term Lets Licensing Policy established the purpose of the Scottish legislation to be as follows:

"The Licensing Order establishes a licensing scheme to ensure short-term lets are safe and **address issues faced by neighbours**" Therefore, If a license is granted, we request that the following conditions be imposed:

the junction with the A95 must be altered as a matter of urgency and before any further bookings are taken, to be more suitable for the amount of traffic it now handles,

action must be taken by the applicant to more effectively control the speed of vehicles on the shared access track,

the applicant must carry out their proportionate share of maintenance on the shared access track where potholes are starting to form on the part of the track between our property and the A95,

the applicant must implement an agreed plan to clear snow regularly and grit the shared access track in order to prevent black ice from forming - this must be done irrespective of whether they have customers due as their contractors require access several times each week throughout the year,

the applicant's commercial waste bins must be moved to within the curtilage of Balvattan Beag in order to remove the problems with untidiness around the bins and stop our domestic bins being used by Balvattan Beag customers,

dogs must not be allowed or at least restricted to one or two at the short term let as they and their owners are a significant cause of nuisance,

Highland Council guidance states that STL owners must "manage the property in such a way as to seek to prevent and deal effectively with any noise nuisance or antisocial

behaviour by guests", therefore the applicant must be prepared to engage with us regarding problems, which they have previously refused to do. In addition, the applicant would need to withdraw their solicitor's letter of 7/5/21 which instructed us "If you have any concerns regarding the behaviour of any guests.....these should be reported to the police", not to the applicant,

the applicant must take action when problems caused by their customers are reported to them, particularly over anti-social behaviour,

the applicant must make it clear to their customers that they and their dogs have no right of way over our property, whether on foot or in a vehicle,

the external lighting at Balvattan Beag must be turned off when it is not required for the safety of customers and contractors when they are outside the property during the hours of darkness.

the applicant must ensure that we do not incur further costs due to their operation of Balvattan Beag as an STL;

the license should be of 1 year duration so that the effect of such conditions and measures can be verified,

our objection to an STL license for Balvattan Beag demonstrates that there are significant material matters relating to planning including traffic flow, loss of privacy, highway safety and noise. Therefore the applicant's license must be conditional on receipt of planning consent for change of use from domestic class 9 to STL use as set out in Section 4.4 of <https://www.gov.scot/publications/short-term-lets-planning/pages/4/>

Mr M & Mrs P Johnson

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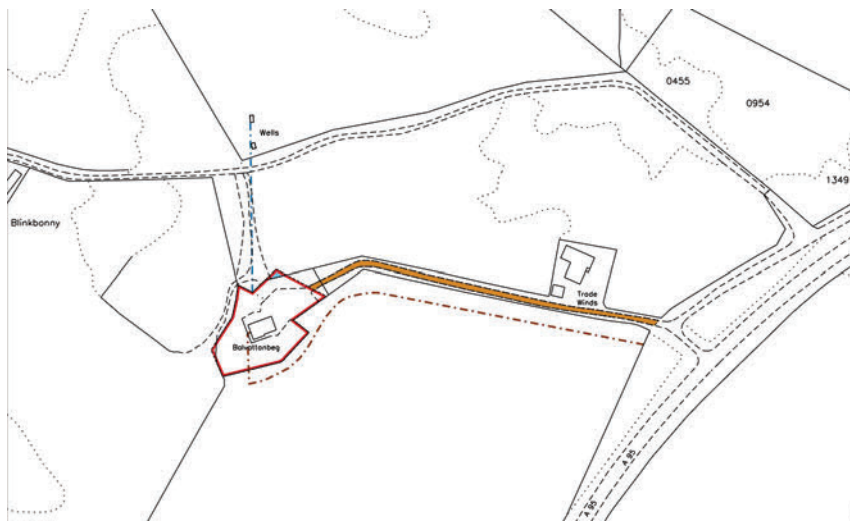
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1 BACKGROUND

The applicant purchased Balvattan Beag in 2019 to run as a Short Term Let.

Balvattan Beag is some 223 m from the old route of A95 and has "A servitude right of access to the Feu by and over the proposed access road leading from the road from Aviemore to Dulnain Bridge, as shown tinted brown on the Title Plan.....and shall maintain the same at her sole expense in all coming". Our property deeds contain a similar servitude right of access pertaining to the first 63.7 m of track and an obligation that "...the Feuars shall, along with the other users thereof maintain the said mutual access roadway in good order and repair to its present standard and shall bear a proportionate share of the cost thereof according to use".

The title plan for Balvattan Beag is shown below. Note that Tradewinds is now officially called The Freewheel.



Seafield Estate has confirmed that neither party has a right of way on the shared access track.

There are no passing places for vehicles along the shared access track.

Our property has not been fenced off from the track since being built in 1989, which was not a problem until Balvattan Beag was used for a Short Term Let.

Both the above deeds pre-date a change of course of the A95 and there is now a further 33 m of track which must be traversed to gain access to either property. Neither property appears to have rights or obligations in connection with that stretch, apart from those deriving from use over an extended period.

2 THE APPLICANT

Short term let licensees are required to be "Fit and Proper Persons" as defined in Section 85 of the Antisocial Behaviour etc. (Scotland) Act 2004. This includes reference to whether the applicant has contravened any provision of the law relating to housing and also any "other material relevant to the question of whether the person is fit and proper." We ask that the following material is considered:

2.1 Health and Safety Performance

The Health and Safety at Work etc. Act 1974 places a duty on employers and the self-employed to ensure "as far as is reasonably practicable, that their work does not affect the health and safety of others". The applicant has shown that they have no regard for public health and safety in the following respects:

2.1.1 Speed of traffic on shared track

We have a restricted view when reversing from our garage onto the track. Hence the speed of passing traffic has a serious impact upon our safety and that of any visitors, particularly for any children visiting our property.

Prior to the purchase of Balvattan Beag by the applicant, we installed a 5mph speed ramp near upper end of our property with the agreement of our then neighbours.

We agreed with the applicant's co-director to revise this to a 10mph speed ramp which they would provide and we undertook to fund its installation. The applicant then tried to re-negotiate this with us in person and persuade us that signs asking drivers to slow down would be sufficient. We declined to change the original agreement and a replacement ramp was provided to us, which we fitted.

The applicant subsequently entered discussion directly with Seafield Estates, owner of the shared access track, to try and force us to remove the speed ramp. A Seafield Estate representative visited the site and recommended that we install a second 10mph speed ramp near the lower end of our property, which we did. The fitting of these ramps has required considerable expenditure to maintain our own safety. Despite this, photographic and video evidence shows frequent vehicle speeds of more than 15mph and some well over 20mph, which is the current speed limit on Highland Council residential streets. The speeding vehicles include those owned by customers and contractors. When we pointed out the excessive speeds to the applicant they denied that this could happen due to the poor track surface between our property and Balvattan Beag.

This demonstrates the applicant's disregard of their obligations under The Health and Safety at Work etc. Act 1974.

2.1.2 Snow and ice and associated slip and fall hazards

Due to the aspect, tree cover, gradient and the much increased traffic on the track there is a tendency to cause extensive black ice. This is exacerbated by not clearing snow soon after it has fallen and before too much traffic has used the track. Once black ice has formed it is extremely difficult to clear and can linger for weeks in shadow areas during mid winter periods. This causes significant danger of slips and falls to ourselves and anybody else using the track.

During extended periods of lock down when contractors required access to their property the applicant made no provision for clearing snow and ice from the track. During this time their contractors continued to visit the premises to carry out maintenance. We cleared the snow and ice on many occasions during lock downs.

Since the lock downs the applicant has sometimes arranged for snow and ice to be cleared when they have customers due to arrive. This has not always been done and a number of customers and contractors have been unable to negotiate the track in their vehicles. Some of the dates on which we have witnessed this and the condition of the track are shown in the table below.

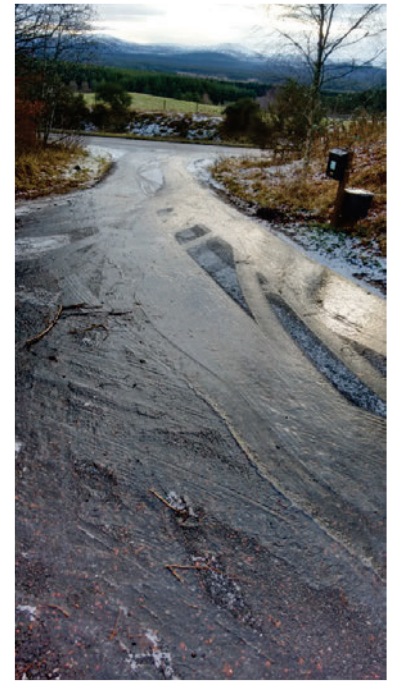
We have advised the applicant of the potential for black ice but they have made no attempt to engage with us to agree a mutually acceptable approach to snow clearing, gritting, track maintenance etc.

The following table shows events relating to snow and ice on the track:

Date	Description
04/01/22	Car stuck on ice at bottom of track due to track not being cleared of snow
18/02/22	Snow on track (<100mm) cleared by tractor, no grit put down
24/02/22	Snow on track (<50mm) cleared by tractor, grit put down
09/12/22	Car stuck on ice at bottom of track due to track not being cleared of snow
09/12/22	Snow on track (<50mm) cleared by tractor no grit put down
15/12/22	Snow on track (50mm) cleared by tractor no grit put down
15/12/22	Car had problems in several places due to ice on track
16/12/22	Small van had problems on ice at bottom of track
26/12/22	Most of track covered in ice
27/12/22	Most of track covered in ice
28/12/22	Most of track covered in ice
29/12/22	Most of track covered in ice
30/12/22	Bottom of track covered in ice
30/12/22	Car had problems at bottom of track
31/12/22	Lower part of track covered in ice
01/01/23	Snow overnight 25 mm on top of ice
02/01/23	Most of track covered in ice
03/01/23	Most of track covered in ice
04/01/23	Lower part of track covered in ice
05/01/23	Lower part of track covered in ice
17/01/23	Snow on track 30 mm
18/01/23	Snow on track 75 mm
19/01/23	Snow on track 100 mm
19/01/23	Bin lorry could not access bin area due to ice and snow
29/11/23	Snow on track 50 mm
30/11/23	Van had problems at bottom of track due to ice and snow
01/12/23	Car had problems in several places due to ice on track

Date	Description
02/12/23	Most of track covered in ice
03/12/23	Most of track covered in ice
04/12/23	Most of track covered in ice
04/12/23	Commercial bin lorry slid on ice at bottom of track
05/12/23	Most of track covered in ice
06/12/23	Most of track covered in ice
06/12/23	Council bin lorry slid on ice at bottom of track
14/01/24	Snow on track 10 mm
15/11/24	Snow on track 25 mm
15/01/24	We cleared snow from proportionate length of track
16/01/24	Snow on track 50 mm
16/01/24	Contractor's vehicle had trouble negotiating track due to snow
17/01/24	Snow on track 75 mm
17/01/24	We cleared snow from proportionate length of track
17/01/24	Customer's car took 1.5 hours negotiating track, which made track much worse for other users
18/01/24	Snow on track (750mm) cleared by tractor no grit put down
19/01/24	Snow on track (100mm) cleared by tractor no grit put down

The following photographs show the typical state of the shared access track covered in black ice after snow was not cleared and subsequent vehicle movements:





The following photograph shows the result of a vehicle having trouble negotiating the track in snow and ice conditions:



The applicant's failure to clear the track when required demonstrates the applicant's disregard of their obligations under The Health and Safety at Work etc. Act 1974.

2.2 Complaints Handling

Shortly after Balvattan Beag started operating as a short term let, we contacted the owners to explain the problems that customers at their STL were causing us. These included excessive speed on the shared access track, noise nuisance and their customers using our domestic waste bins. After our complaints were denied by the applicant we insisted that all future correspondence must be in writing and signed by both directors of Let's Do Scotland Ltd.

We received a letter dated 7/5/21 from the applicant's solicitor in which the applicant told us to report any problems to the police, not the applicant. This shows that the applicant seeks to avoid their obligation to "manage the property in such a way as to seek to prevent and deal effectively with any noise nuisance or antisocial behaviour by guests to....the locality of the short-term let." as stated at:

https://www.highland.gov.uk/info/20021/short_term_lets/1021/short_term_lets_licensing/5

After we were subject to a number of incidents of verbal abuse and threats of physical violence, the Police advised us not to speak to any customers or contractors associated with Balvattan Beag. We have followed this advice. This in no way means that we accept the problems that the STL has caused and continues to cause us.

In the time the applicant has owned the property, they have made no attempt to control the extent of the nuisance. Indeed in their solicitor's letter of 7/5/21 they make it clear that they accept no responsibility for the behaviour of their customers and have no intention of acting to reduce the nuisance to us caused by their customers and contractors.

2.3 Maintenance Obligations

The applicant has made no attempt to maintain the track during the time they have owned the property. In their solicitor's letter of 7/5/21 the applicant told us not to carry out any activity that might block the track. This effectively prevents us from fulfilling our own obligations to maintain the track.

The applicant's failure to make any arrangements to maintain the track demonstrates their unwillingness to discharge their obligations to the owners of the track.

2.4 Compliance with planning law

In early 2020, the applicant offered for short term rent a static caravan sited in the grounds of Balvattan Beag. This was done without the required planning permission. A retrospective planning application was subsequently made (19/00041/FUL) and the application was returned. https://wam.highland.gov.uk/wam/files/3DD49AC967C63C84509D2AE166FFA167/pdf/22_00433_FUL-Committee_Report_of_Handling-2951579.pdf . The caravan was later removed.

A similar pattern of behaviour is observed in planning application 22/00243/FUL relating to the siting of a modular holiday cabin on other land owned by the applicant. Some key dates are shown in the following table:

Date	Description	Source
20/01/22	Planning application submitted.	Planning portal
29/04/22	Forestry report requests changes to proposal.	Planning portal
26/06/22	Cabin arrives at site	Applicant's Facebook page
21/11/22	"Landscaping" around cabin commences	Applicant's Facebook page

04/01/23	Applicant submits revised location plan addressing forestry concerns	Planning portal
29/03/23	Planning permission granted	Planning portal

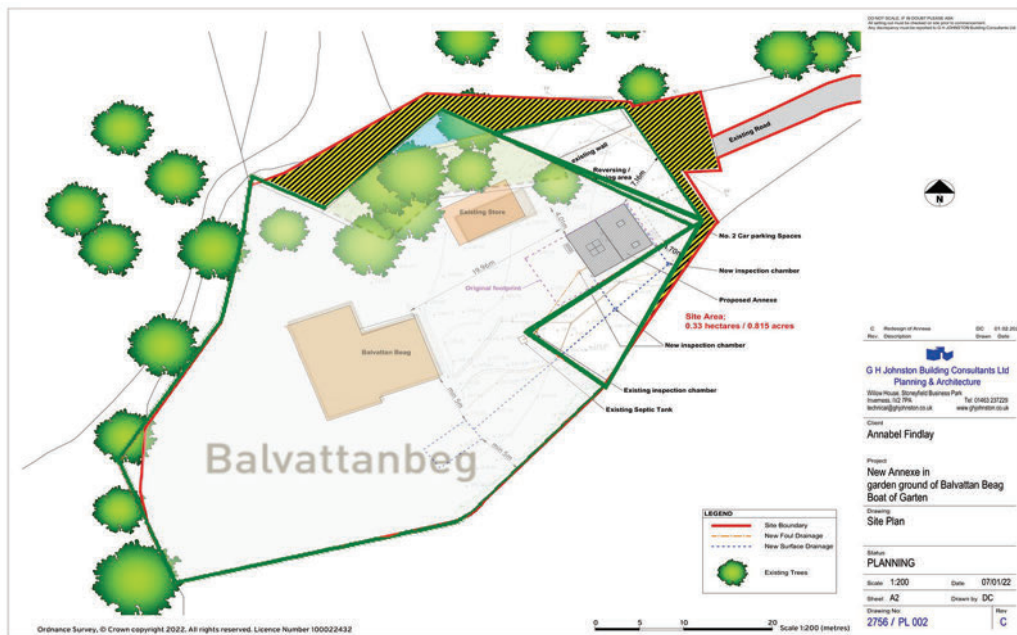
This demonstrates the applicant's disregard for planning procedure.

2.5 Responsibility to neighbouring properties

There is a disparity between the borders of the property shown on the Land Register of Scotland and that shown in documents the applicant submitted in support of planning application 22/00433/FUL (Erection of holiday accommodation annex at Balvattan Beag).

The diagram below shows the Site Layout Plan submitted by the applicant. The diagram is overlaid with the land owned by the applicant according to the Land Register of Scotland in green. This shows areas of land (hatched in yellow and black) to the north and east of the plot that are not owned by the applicant.

This demonstrates the applicant's disregard for the rights of neighbouring property owners.



3 THE PREMISES

3.1 Shared access track

3.1.1 Amount of traffic on shared access track

After conducting traffic surveys on the shared access track, we estimate that roughly 90% of all vehicle movements are associated with the applicant's business. The following table shows the typical number of vehicle movements in a day, of which two would typically be ours:

Date	Vehicle movements
06/05/22	24
09/05/22	20
14/05/22	11
19/09/22	16
20/09/22	24
21/09/22	18
30/09/22	17
07/10/22	24
14/10/22	22
15/10/22	8
16/10/22	10
17/10/22	16
18/10/22	10
28/10/22	33
04/11/22	24
14/07/23	29
16/07/23	16
04/08/23	25
24/11/23	26

This represents a four fold increase in the amount of traffic on the shared access track since the applicant's purchase of Balvattan Beag and its operation as a short term let. This has caused a number of problems which are detailed in subsequent sections.

3.1.2 Junction with A95 Trunk Road

The track joins the A95 in a formation which is not suitable for the increased traffic it now experiences. The junction throat is only suitable for single way traffic and since Balvattan Beag has been operated as an STL traffic is held up more frequently waiting to turn off the A95 while vehicles leave the junction. This is extremely dangerous on a road which has a traffic speed of approximately 60mph according to https://wam.highland.gov.uk/wam/files/07A760975E2CCB385C1851BE083579AB/pdf/22_00509_FUL-TRANSPORT_SCOTLAND_ACCESS_REPORT-2863690.pdf . The junction is just after a left hand bend when travelling from Grantown to Aviemore and drivers have little time to react to a vehicle waiting to turn right onto the shared access track.

In addition to the vehicle movements shown in the above table, the operation of Balvattan Beag as an STL has increased the bin lorries using the junction from one per week to three, sometimes four.

The extant planning permission to build a second holiday let unit at Balvattan Beag requires that the applicant upgrades the junction prior to any building work commencing, therefore recognising that the current junction is inadequate. This demonstrates that there are significant material matters relating to planning including traffic flow, loss of privacy, highway safety and noise. Therefore the applicant's license must be conditional on receipt of planning consent for change of use from domestic class 9 to STL use as set out in Section 4.4 of <https://www.gov.scot/publications/short-term-lets-planning/pages/4/>

3.1.3 Maintenance

The surface of the shared track is deteriorating which is exacerbated by the amount and speed of traffic on it.

The track is now needing maintenance to prevent further rapid deterioration. However, in their solicitor's letter of 7/5/21 the applicant told us not to carry out any activity that might block the track. This makes any substantial repairs impossible. We have carried out some minor maintenance of the track surface at our own cost since the applicant's purchase of Balvattan Beag. The applicant has carried out no track maintenance at any time.

Sometimes when the applicant has arranged for snow to be cleared from the track, the contractor has used a front loader digger with steel tines instead of a proper snow plough. This has damaged the track and is likely to cause more rapid deterioration of the track in future.

The wear on the track has reduced the value of our property, since the condition of the shared section is now significantly worse than when the applicant purchased their property.

3.1.4 Passing places on shared access track

The shared access track has no passing places. On occasions, the applicant's customers have attempted to use our property as a passing place. On 03/06/22 we indicated by holding up a hand to a driver from Balvattan Beag that they may not drive onto our property to allow another car to pass. We were then subjected to verbal abuse from several customers in both cars. In accordance with advice from the police we said nothing to any of the customers.

It is unreasonable to expect us to accept being subjected to verbal abuse, which makes our lives very unpleasant. As stated before, we received a letter dated 7/5/21 from the applicant's solicitor in which the applicant told us to report any problems to the police, not the applicant. This shows that the applicant seeks to avoid their obligation to "manage the property in such a way as to seek to prevent and deal effectively with any noise nuisance or antisocial behaviour by guests to....the locality of the short-term let." as stated at:

https://www.highland.gov.uk/info/20021/short_term_lets/1021/short_term_lets_licensing/5 .

3.1.5 Other nearby premises

Balvattan Beag is one of three similar businesses comprising Balvattan Farmhouse, Balvattan Steading and Balvattan Beag. All three properties are within some 350m of our own property, separated by open field or open birch woodland. A further two person annexe to Balvattan Beag already has planning permission. The effect of all three (potentially 4) properties must be considered on our amenity.

The three STL properties comprise three of the four properties nearest to our own property. The present advertised combined capacity of the three premises is 41 persons. This has dramatically changed the nature of the settlement. We have lost the community that used to exist here. There is no on-site supervision of these three premises, so none of the owners have any first hand knowledge of the behaviour of customers and their dogs and the adverse impact they have on local residents.

3.2 Extent of activity

3.2.1 Increase in traffic on access track.

As mentioned before there has been a four fold increase in traffic on the shared access track since Balvattan Beag has been operated as an STL.

National Planning Framework 4 focuses on protecting natural assets to allow carbon reduction. The fourfold increase in traffic on the shared access track has increased emissions due to the dependence on private and commercial (contractors') vehicles, contradicting the aims of Policy 13 - Sustainable Transport. Minimising and reducing emissions are an important component of the qualities of successful places as per Policy 14.

3.3 Nuisance

3.3.1 Anti-social behaviour

As shown elsewhere in this document we are regularly subjected to anti-social behaviour including:

- noise nuisance,
- customers and their dogs on our property,
- verbal abuse,
- threats of physical violence,
- customers using our domestic waste bins.

In one incident at 11am on 23 October 2023 a contractor driving a car verbally abused us when we were walking on the track and were unable to move out of their way quickly enough, causing them to slow down. We were called a "rude pair of f***ing bitches". We said nothing, in accordance with Police advice. According to the owner of the track nobody has priority on the track. We reported the incident to the Highland Council (FS case 556507916) and the Police (Incident number 2827231023).

3.3.2 Dog nuisance

The Control of Dogs (Scotland) Act 2010 states that:

For the purposes of this Act, a dog is out of control if—

(a) it is not being kept under control effectively and consistently (by whatever means) by the proper person,

(b) its behaviour gives rise to—

(i) alarm, or

(ii) apprehensiveness, on the part of any individual, and

(c) the individual's alarm or apprehensiveness is, in all the circumstances, reasonable.

The applicant encourages dog owners to rent their property and there seems to be no limit to the number of dogs. There are often multiple dogs staying at any one time. We have seen up to five dogs at a time.



There have been incidents when we have been in our garden and uncontrolled dogs staying at Balvattan Beag have rushed toward us, causing us alarm.

There has never been a fence between our property and the track. There were no problems with previous owners of Balvattan Beag and their dogs, which were regularly walked past our property.

There is a legal requirement under the Control of Dogs Order 1992 for a dog to wear a collar with the owner's name and address on it. We have seen a number of dogs staying at Balvattan Beag that have not worn a collar.

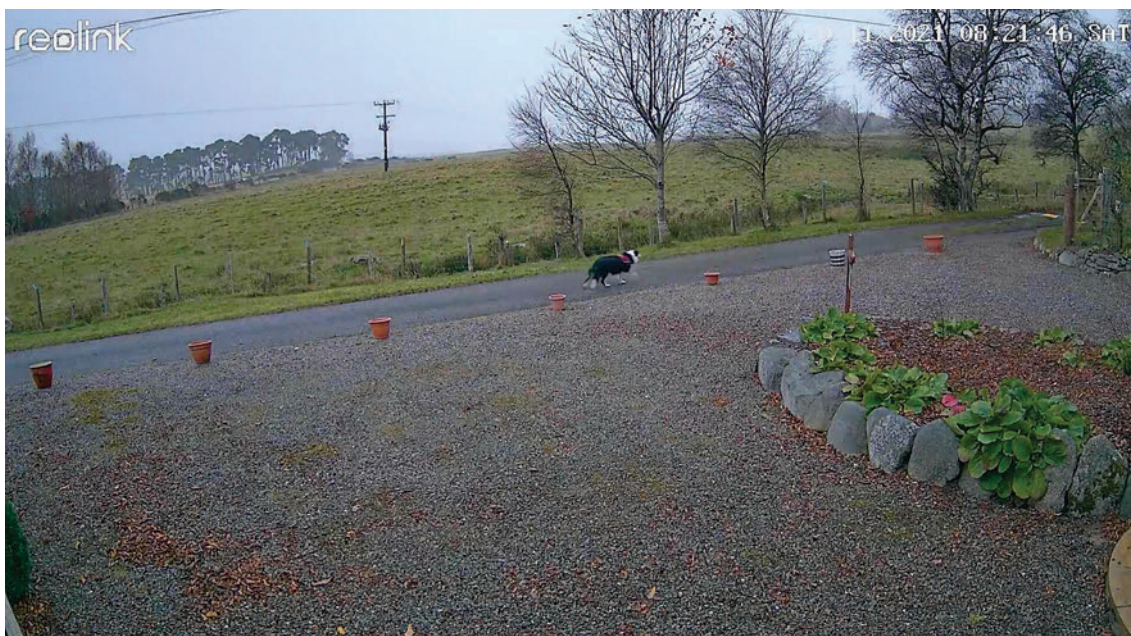
Dogs have entered onto our property due to being on long leads or no leads at all. Dog owners have also come onto our property with their dogs. We have lost some plants from our garden due to dogs urinating on them. We have erected signage to indicate that dog owners should keep dogs on a lead and clear up any excrement. However, this is rarely complied with. The following table sets out the extent of the dog related nuisance. The dogs were all owned by customers at Balvattan Beag. The description of loose dogs means a dog not on a lead and the owner either not there or too far away to control the dog.

Date	Time	Description
13/08/20	afternoon	Dog excrement not picked up from beside track
04/10/20		Dog excrement not picked up from beside track
08/10/20		Dog excrement not picked up from beside track
29/05/21	19:45	2 loose dogs on our property
06/06/21	12:20	Dog on long lead
06/06/21	14:00	2 loose dogs on our property
11/06/21	09:20	Loose dog on our property & loose dogs on track
24/06/21	07:50	Shouting on track outside our property - loose dog on our property
06/08/21	07:15	Dog on long lead on our property - pot knocked over, but not put right
02/10/21	07:00	2 loose dogs on our property
03/10/21	07:25	2 loose dogs on our property
05/10/21	07:50	2 loose dogs on our property
05/10/21	morning	Dog excrement not picked up from beside track
06/10/21	07:50	Loose dog on our property
07/10/21	08:00	2 loose dogs on track which rushed towards us We were threatened with physical violence - reported to police incident #0667
16/10/21	07:00	Dog on long lead on our property, no attempt made to control dog
24/12/21	13:30	Dog on long lead on our property, no attempt made to control dog
25/12/21	12:00	Dog on long lead on our property, no attempt made to control dog
29/12/21	08:40	Dog on long lead on our property, no attempt made to control dog
30/12/21		Bag of dog excrement hung in trees on old A95
31/12/21		2 bags of dog excrement found behind our bins
18/01/22	10:40	Dog on long lead on our property, no attempt made to control dog
11/02/22	afternoon	Prolonged dog barking at Balvattan Beag
16/02/22	morning	Prolonged dog barking at Balvattan Beag
17/02/22	11:20	Dog on long lead on our property, no attempt made to control dog
26/03/22	10:30	Loose dog on track
26/03/22	morning	Loose dog worrying sheep in field
25/05/22	11:30	Loose dog on track
27/06/22	evening	Dog on track on very long lead
28/06/22	morning	Dog on track on very long lead
02/07/22	08:00	Loose dog on track
13/07/22	afternoon	Prolonged dog barking at Balvattan Beag
17/07/22	afternoon	Prolonged dog barking at Balvattan Beag

Date	Time	Description
22/07/22	22:00	Loose dogs on track
23/07/22	09:30	Loose dogs on track
23/07/22	20:10	Loose dogs on track
23/07/22	20:50	Loose dogs on track
24/07/22	15:15	Loose dogs on track
24/07/22	15:25	Loose dogs on track
24/07/22	21:40	Loose dog on our property & loose dogs on track
25/07/22	21:20	Loose dogs on track
25/07/22	21:40	Loose dogs on track
25/07/22		Dog warden Nicola to advise owners about stray dogs
26/07/22	10:40	Loose dogs on track
26/07/22	20:30	Loose dogs on track
27/07/22	18:45	Loose dogs on track
27/07/22	19:25	Loose dogs on track
28/07/22	08:45	Loose dogs on track
28/07/22	20:30	Loose dogs on track
28/07/22		Dog warden Nicola to advise owners about stray dogs again
15/08/22	afternoon	Prolonged dog barking at Balvattan Beag
22/08/22	evening	Prolonged dog barking at Balvattan Beag
22/12/22	10:15	Dog and dog walker on our property
22/12/22	11:25	Dog and dog walker on our property
22/12/22		Phoned environmental health at council who undertook to inform dog warden
16/02/23	late am	Prolonged dog barking at Balvattan Beag
20/02/23	11:00	Dog and dog walker on our property
24/05/23	afternoon	Prolonged dog barking at Balvattan Beag
25/05/23	afternoon	Prolonged dog barking at Balvattan Beag
20/07/23	14:00	Loose dog on track
31/07/23	09:00	Loose dog on track - no collar
08/08/23	morning	Prolonged dog barking
02/09/23	afternoon	Prolonged dog barking
05/09/23	morning	Prolonged dog barking
18/09/23		5 dogs staying at Balvattan Beag

The following photographs show typical disregard for our private property and safety. The boundary between the track and our property is quite clear. The shared access track is metalled and our property is gravelled. Note the dog in the bottom left hand corner of the first

photograph.





We have contacted the dog warden on many occasions, but the problem persists.

If Balvattan Beag customers or their dogs are injured on our property, we would be liable for this. Public Liability Insurance is mandatory for STL owners. It is unreasonable to expect us to hold extra insurance cover due to Balvattan Beag being operated as an STL.

3.3.3 Provision for waste disposal

The applicant has four commercial waste bins that are located outwith their curtilage. The bins are situated next to our domestic waste bins near the A95.

There have been a number of occasions when the applicant's commercial bins have been full and their customers have put commercial waste from Balvattan Beag into our domestic waste bins, sometimes completely filling our bin and leaving no space for our waste. Waste has included unwrapped food waste and unwashed food packaging placed in our recyclable bin. Customers have also left waste beside the applicant's bins. The applicant's bin area is not regularly checked for stray litter, which then drifts onto our bin area.



We note that the Non-statutory Short Term Secondary Letting Planning Policy states that:

"When assessing the 'impact on local amenity or the character' & 'adverse impacts upon neighbouring uses', the Council will include consideration of ...Commercial waste storage space and collection point".

The Balvattan Beag bins are directly in front of our property and we have had to spend money screening their unsightly bins, including a large red commercial bin.

We have spent money to supply and install a division wall in the shared bin area to make it clear that our domestic waste bins are separate to the commercial waste bins of the applicant. We have also had to spend money labelling our bins to make it clear that they should not be used by Balvattan Beag customers and contractors. Despite this, our bins continue to be used by Balvattan Beag customers and contractors.

3.3.4 Health and safety

Most of this is covered elsewhere in this document. See Sections 2.1.1 (Speed of traffic on shared track), 2.1.2 (Snow and ice and associated slip and fall hazards) and 3.1.2 (Junction with A95 Trunk Road).

In addition, on 15/02/23 and 16/02/23 we witnessed a car being driven up the track with a small child sat on the driver's lap. This represented a danger to anyone else using the track at the time as the driver was not in full control of the vehicle. Although the shared access track is a private road, the public have access to it and it is still covered by the Road Traffic Act 1988. According to law "Children must normally use a child car seat until they're 12 years old or 135cm tall".

3.3.5 Noise nuisance

When we initially complained to the applicant about noise, they refused to engage in any discussion. They routinely disputed the facts of our complaints despite the fact that they live outwith the area and therefore have no idea what actually happens at their property.

In their solicitor's letter of 7/5/21, we were told to report any problems with their customers or contractors to the police, not the applicant.

We have subsequently addressed complaints to Highland Council or Police Scotland as appropriate.

Some of the incidents of noise nuisance are documented in the following table.

Date	Time	Description
31/07/20	afternoon & evening	Loud voices, shrieking
01/08/20	evening	Loud voices, shrieking
17/08/20	afternoon	Arriving customers sounded horn repeatedly driving up track
24/06/21	07:50	Shouting on track outside our property - loose dog on our property
25/09/21	afternoon	Arriving customers sounded horn repeatedly driving up track
11/02/22	afternoon	Dog continually barking at Balvattan Beag for extended period
16/02/22	morning	Dog continually barking at Balvattan Beag for extended period
13/07/22	afternoon	Prolonged dog barking at Balvattan Beag
17/07/22	afternoon	Prolonged dog barking at Balvattan Beag
25/07/22	17:50	Customers sounded horn driving up track
15/08/22	afternoon	Prolonged dog barking at Balvattan Beag
22/08/22	evening	Prolonged dog barking at Balvattan Beag
18/09/22	afternoon	Loud voices, shouting - we could not sit in our own garden
03/01/23	14:25	Very noisy snowball fight on track outside our property
16/02/23	late am	Prolonged dog barking at Balvattan Beag
24/05/23	afternoon	Prolonged dog barking at Balvattan Beag
25/05/23	afternoon	Prolonged dog barking at Balvattan Beag
08/08/23	morning	Prolonged dog barking at Balvattan Beag

3.3.6 Loss of privacy

The four fold increase in the amount of traffic on the shared access track has caused a loss of our privacy which is well beyond that which would be associated with domestic Class 9 use.

The advertised capacity of the applicant's property means that there could be up to 500 customers per year staying at the property. This together with the volume of contractor's vehicles (which far exceeds those normally attending a residential property) means that our privacy has been severely diminished. This will be exacerbated when the second holiday let dwelling is built on land at Balvattan Beag, for which planning permission has been granted. One of the main reasons that we bought our home 24 years ago was the private nature of the location.

In addition to loose dogs on our property which are listed elsewhere, there have been occasions when customers from Balvattan Beag came onto our property without our permission. Some of the occasions are listed in the following table.

Date	Time	Description
22/12/22	10:15	Balvattan Beag dog and customer on our property
22/12/22	11:25	Balvattan Beag dog and customer on our property
20/02/23	11:00	Balvattan Beag dog and customer on our property
29/06/23	18:40	Balvattan Beag customer on our property by the gate - they stayed for a few minutes staring at us
13/07/23	10:00	Balvattan Beag customer on our property
07/07/23	18:00	Balvattan Beag customer on our property

There have been occasions when the applicant, their customers and contractors have taken photographs or video of our property. Dates that we are aware of this taking place include 07/05/21, 13/03/23 and 20/06/23.

3.3.7 Light pollution

External lighting at Balvattan Beag is often left on overnight during the hours of darkness, including nights when there are no customers. This causes light pollution which has ruined the dark skies - an amenity which we used to enjoy.

4 OTHER REASONS

4.1 Financial cost to us

The conduct of the applicant's business has required us to spend significant time and money to protect our own safety and amenity in respect of the following items:

1. Purchase of 1 speed ramp.
2. Installation of 3 speed ramps.
3. Supply and installation of signage for 2 speed ramps.
4. Supply and installation of signage for dog fouling / dogs on leads.
5. Replacement of plants on which dogs from Balvattan Beag have urinated.
6. Supply and installation of signage for our bins.
7. Supply and installation of division wall in shared bin area to make it clear that our domestic waste bins are separate to the commercial waste bins of the applicant.
8. Supply and installation of visual screen for applicant's large bright red commercial bin located in front of our house.

9. Supply and installation of CCTV equipment at the recommendation of the police.

10. Supply and installation of CCTV signage.

The applicant's failure to address issues in the past four years demonstrates that approval of this application is likely to require ongoing expenditure by us to protect our safety, amenity and privacy. This is completely unacceptable.

4.2 Loss of property value

The value of our home has been reduced due to the operation of Balvattan Beag as an STL due to:

the deteriorating condition of the shared track. Note that the traffic is 90% due to the applicant's business and the excessive speeds further accelerate wear and tear.

the reduction in privacy that we have experienced. One of the main reasons that we bought our home 24 years ago was the private nature of the location.

5 CONCLUSIONS

We have demonstrated that:

the applicant has not fulfilled their legal and contractual obligations;

access to the premises from the A95 Trunk Road is not of a sufficient standard to handle the amount of traffic created by operating Balvattan Beag as an STL;

that the STL has been significantly detrimental to the amenity and privacy that we used to experience;

that we have incurred substantial costs due to the operation of Balvattan Beag as an STL and are likely to incur further costs.

We conclude that Balvattan Beag is not suitable to be used as a short term let property. It is only suitable as a residential property lived in by the owners or long term tenants.

Our objection to an STL license for Balvattan Beag has demonstrated that there are significant material matters relating to planning including traffic flow, loss of privacy, highway safety and noise. Therefore the applicant's license must be conditional on receipt of planning consent for change of use from domestic class 9 to STL use as set out in Section 4.4 of <https://www.gov.scot/publications/short-term-lets-planning/pages/4/>

If a short term let licence is granted the conditions listed in our covering letter must be applied.