

Agenda item	<b>9.5</b>
Report no	<b>HLC/79/24</b>

## **THE HIGHLAND COUNCIL**

**Committee:** THE HIGHLAND LICENSING COMMITTEE

**Date:** 6 August 2024

**Report title:** Application for the grant of a short term let licence – Balvattan Farmhouse, 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 21 September 2023 (date application was deemed valid) an application for the grant of a short term let licence was received from Mrs Jacqui Baggaley.
- 4.2 The property to which the application relates to is Balvattan Farmhouse, 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 pages 1 and 2 of Appendix 1.
- 4.3 The application for the short term let licence has been made on the basis that the said Mrs Baggaley and a Mr Jason Baggaley will be the host/operators of the Premises. The host/operator 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.
- 4.4 Mr and Mrs Baggaley 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 is the said Mrs Baggaley.
- 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, sitting room, 1 ensuite bedroom, utility room, vestibule and a cloakroom toilet. The upper floor of the Premises comprises of 4 bedrooms, a bathroom and shower-room. In addition, the Premises also offers an external socialising area which comprises of a hot tub/summer house, BBQ area and a patio. Floor plans of the Premises were provided by the applicant as part of the application process and these can be found on pages 3, 4 and 5 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 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 November 2023 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 \(Licensing Committee\) \(highland.gov.uk\)](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 be 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: FS499596678

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 extent of the Premises, and floor plans;

Appendix 2 : Objection received by email on 1 November 2023 from Mr Martin Johnson and Mrs P Johnson.

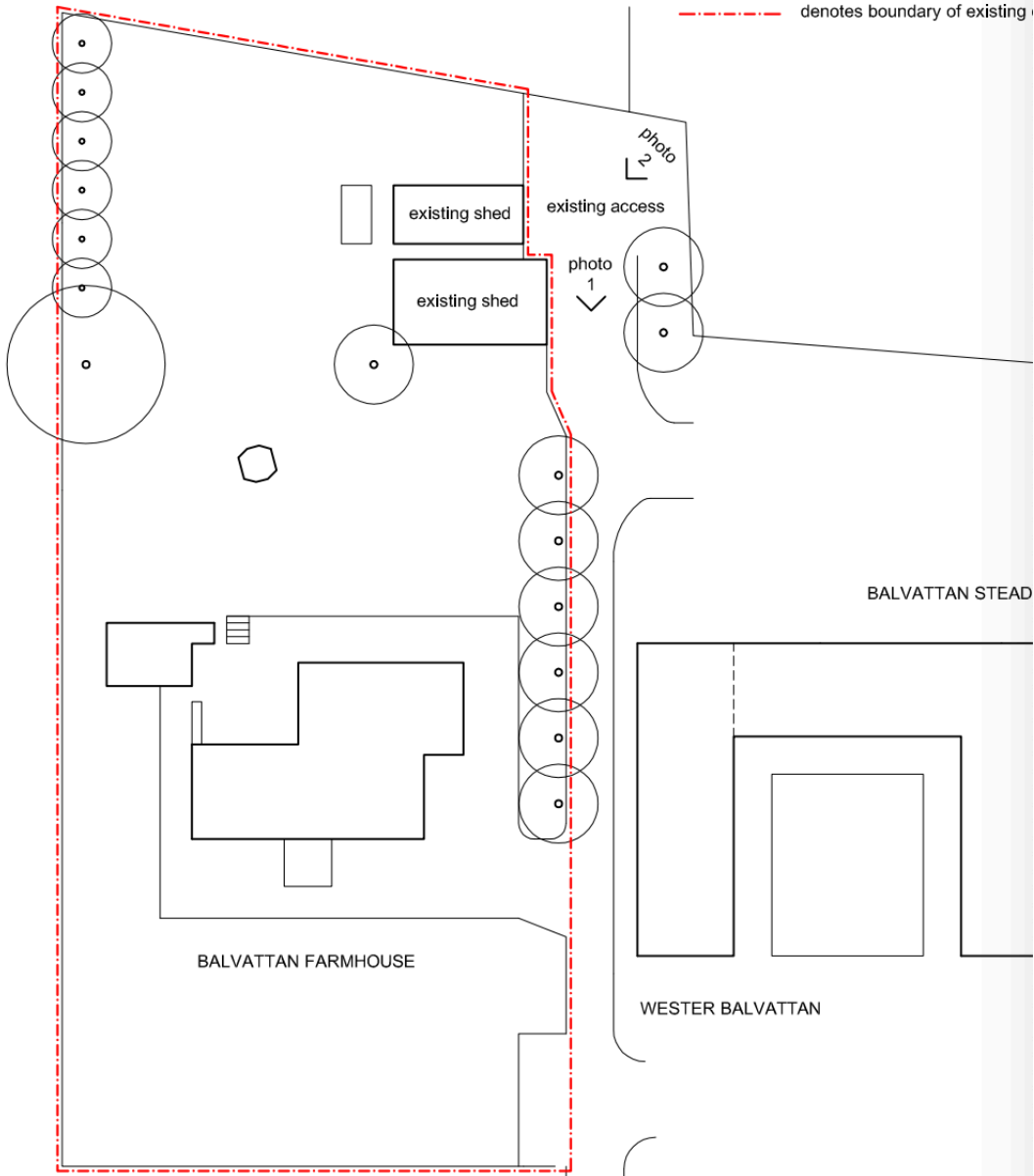
Balvattan Farmhouse, A95t B9153 Junction - Skye Of Curr Junction, Boat Of Garten, Highland,  
PH24 3BX



Location Plan shows area bounded by: 296570.5, 821949.76 296970.5, 822349.76 (at a scale of 1:2500), OSGridRef: NH96772214. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

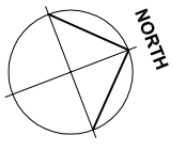
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**SITE PLAN** (existing)

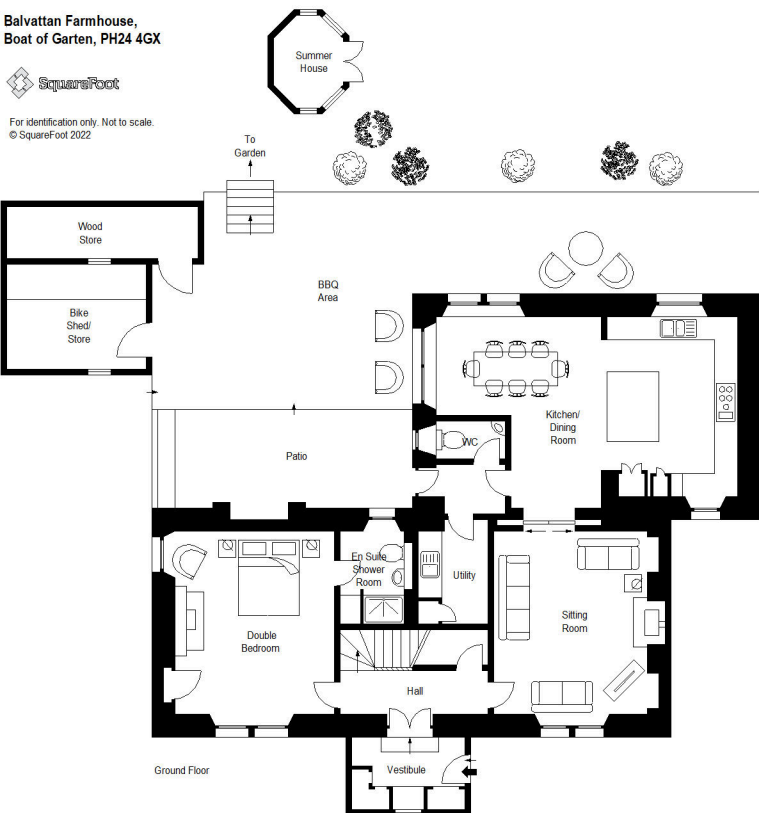
existing access track to A95 approx 200yds



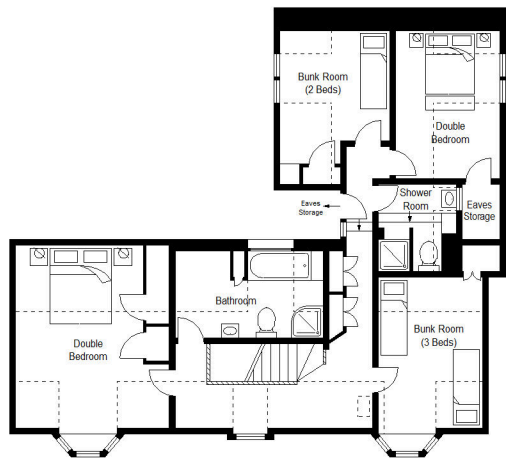
Balvattan Farmhouse,  
Boat of Garten, PH24 4GX



For identification only. Not to scale.  
© SquareFoot 2022



Ground Floor



First Floor



BBQ  
Area

Patio

Kitchen/  
Dining  
Room  
26' x 16'6"  
7.92 x 5.03m

WC

En Suite  
Shower  
Room

Utility

Sitting  
Room  
15'9" x 13'4"  
4.80 x 4.06m

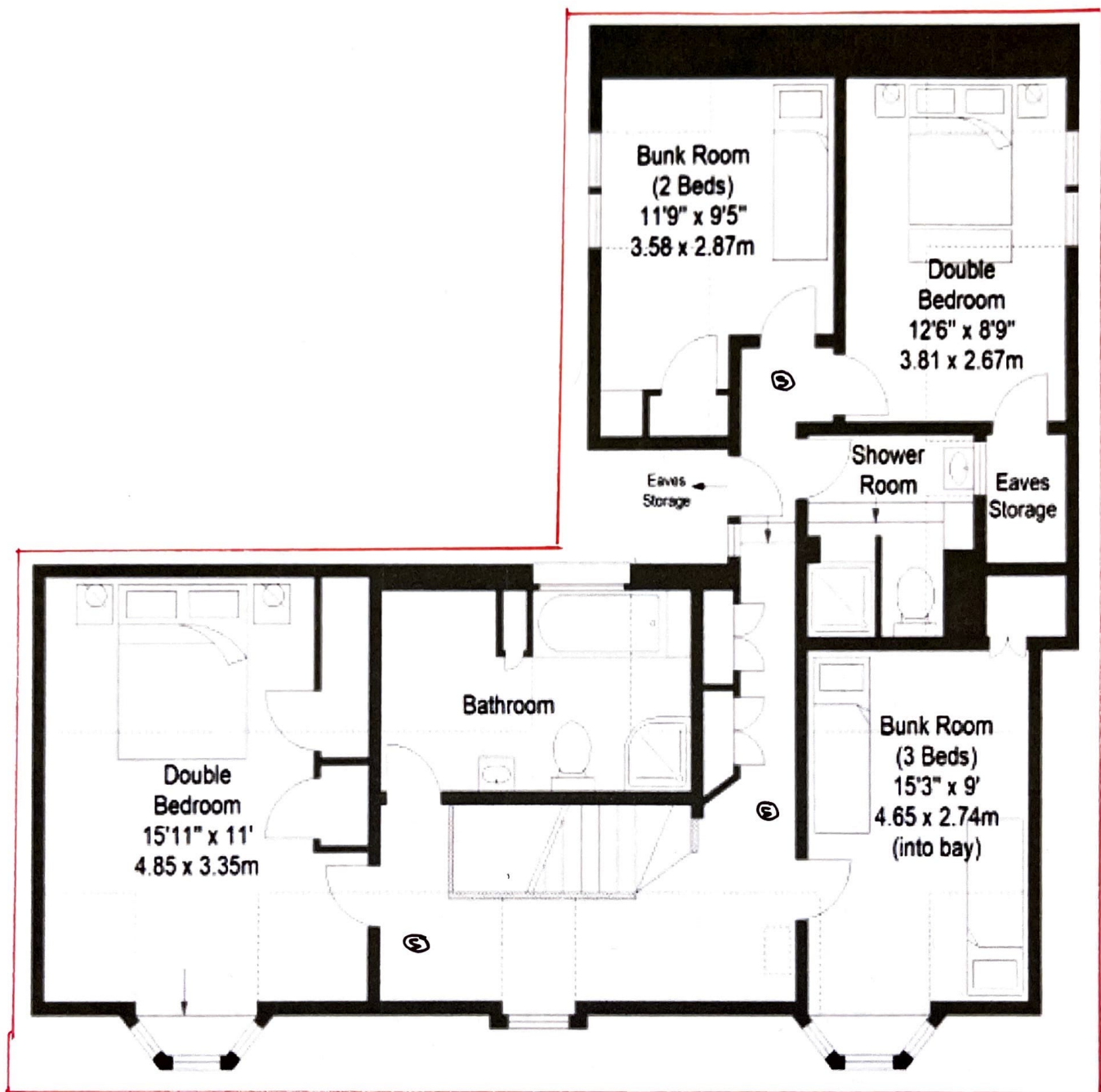
Double  
Bedroom  
15'8" x 13'8"  
4.78 x 4.17m

Hall

Ground Floor

Vestibule





First Floor

Ⓢ - Smoke alarm (heat alarm in kitchen)

Maximum occupancy 10

— - Emergency exit

— - Area guests have access to

⊗ - Carbon monoxide detector

[REDACTED]

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**From:** Martin Johnson <[REDACTED]>  
**Sent:** 01 November 2023 11:33  
**To:** STL Licensing  
**Subject:** Objection to application UPRN 130076251  
**Attachments:** balvattan farmhouse stl objection.pdf

**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 or Madam,  
Please find attached our objection to the above license application.  
Yours faithfully,

Mr M & Mrs P Johnson

[REDACTED]

We object to Balvattan Farmhouse, Boat of Garten, PH24 3BX, UPRN 130076251 being used as a short term let for the following reasons:

1. The notice of STL licence application has been displayed on the outside of a gate to the property. The gate is habitually open, so the notice could not be read. The property is reached by a private track leading only to two STL properties and is approximately 200 metres from the A95. Therefore the notice was not available to members of the public.

Photo taken on 17/10/23:



Photo taken on 22/10/23:



Photo taken on 24/10/23:



2. The waste bins are not within the curtilage of the property. The Non-statutory Short-Term Secondary Letting Planning Policy requires that "Sufficient commercial waste storage space is provided within the curtilage of the" STL. The photo below shows the bins in the foreground and Balvattan Farmhouse in the background to the left of the access track.



3. External lighting is frequently left on for long periods, sometimes for days or weeks. This has contributed to the loss of dark skies that we used to enjoy in this area. This contravenes the Nuisance provisions of the Public Health etc (Scotland) Act 2008.

4. We have seen tents being used in the garden of the property on a number of occasions, therefore increasing the capacity of the accommodation.
5. The house name sign at the junction of the access track and the A95 is larger than 0.3 square meters, which requires planning permission according to <https://www.planningportal.co.uk/permission/common-projects/adverts-and-signs/planning-permission>. There is no planning application listed for this on the Highland Council Planning Portal.



Mr M & Mrs P Johnson

