

LRB-2024-03

23/01423/FLL - Change of use of flat to form short-term let accommodation unit (in retrospect), Upper South Flat, Annesley Cottage, Burnside, Aberfeldy, PH15 2AU

**PAPERS SUBMITTED
BY THE
APPLICANT**

NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

Use **BLOCK CAPITALS** if completing in manuscript

Applicant(s)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Mark this box to confirm all contact should be through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail? Yes No

Planning authority

Planning authority's application reference number

Site address

Description of proposed development

Date of application Date of decision (if any)

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

UNTIL I RECEIVE YOUR RESPONSE THIS IS IMPOSSIBLE TO ANSWER .

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE SEE ATTACHED SEPARATE DOCUMENT - 4 PAGES

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made? Yes No

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

1. IMPACT ON INCOME - 60% OF MY INCOME
2. QUESTIONING IN-RETROSPECT GIVEN UNFAIRNESS + LATEST COURT CASE
3. SIZE OF KITCHENETTE 2x1.5 - FINE FOR HOLIDAY LET NOT AS HOME
4. CHALLENGING NOISE + DISRUPTION COMMENTS + OBJECTION.
5. QUESTIONING CONTENT OF REPORT OF HANDLING.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

PLEASE SEE ATTACHED SEPARATE DOCUMENT. - 4 PAGES.

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

Date

16/1/24

P& KC IDMI7/1/202414:10:18

While I fully understand the problem facing the Scottish Government with the lack of affordable housing generally and more specifically in desirable areas I have a number of questions and concerns relating to the refusal to grant planning permission (**in retrospect**) for change of use at Annesley Cottage. I will attempt to lay my concerns out in a clear and concise manner however if there is anything you need further backup or clarification on please contact me at [REDACTED]

Reasons for Refusal

The proposed retrospective change of use is contrary to Policy 30(e): Tourism of National Planning Framework 4 (2023) as the proposal results in:

i) An unacceptable impact on local amenity and character of the area

Visual Amenity

Since we purchased Annesley Cottage we have not extended or altered the building in any way externally. We have improved the entrance area freshening up paintwork, weeding regularly and planting out the border within the area we control. We have also recently purchased fencing material to replace the boundary fence in the Spring.

Our property has a driveway for two cars which allows guests to park within the curtilage of the flat and prevents the possibility of congestion and frustrating neighbours on what is a narrow street.

Anything we do externally we do with the full approval of our downstairs neighbour who is an owner occupier. We feel the work we have carried out improves the character of the surrounding area.

You state on page 4 of the Report of Handling "The proposed intensification of use and movements adversely impacts the amenity of neighbouring residents within the building and alters the existing residential character of Burnside and the surrounding predominantly residential area" We operated as a STL for over 2 years and I can confirm that this is not the case.

Residential Amenity (effect upon a neighbourhood's outlook, privacy, sunlight/daylight and any noise or disruption likely to arise directly or indirectly as a result of the change of use to a STL)

Annesley Cottage was constructed in 1898 and subsequently split into four flats all with their own private entrances. Two of the flats are second homes and one is owner occupied. The owner occupied flat is directly below our flat. We are on good terms with our neighbours and regularly check in with our downstairs neighbour to make sure there hasn't been any noise or disruption, his response is always "I don't even know they are there". I'm sure if it would help matters I could provide a signed statement from our neighbour to this effect. We also have a paragraph within our welcome message to guests asking them to give due consideration to our neighbours with regard to noise levels.

Objection – Reading the objection received from Margaret Mongan it seems from the wording ("I feel this will become an Airbnb") this lady didn't realise our Planning Application was in retrospect and that the flat had already been operating as a short term holiday let for over 2 years. This to me answers the question of the potential for noise and disruption given this lady was completely unaware of the existence of our STL.

We operated as a short term holiday let for 2 years and 3 months hosting 87 guest groups and during that time we did not receive one complaint from neighbours or the general public.

You mention on pages 4,5 & 6 of the Report on Handling that our flat due to its high turnover of guests could have an impact on noise and disturbance to neighbours, this has not been the case.

ii)The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefit

How has this been calculated?

We have had 87 guest groups staying in our flat in the last 2 years all spending money in and around Aberfeldy. I can confirm, because I clean the flat, most of them eat out. I have taken great pleasure in promoting local businesses and using local tradesmen where possible. I have two information folders in the flat containing leaflets promoting local places of interest, walks, activities, cafes, restaurants, The Birks Cinema, Dewars Distillery etc etc.

Not only do my guests spend money in Aberfeldy we do too. We carry out our own changeovers and each time we visit we spend money in the local shops and eateries. In 2021 we spent 4 months refurbishing and furnishing the flat at a cost of £15,000 most of which went back into the local economy.

Tourist spend can make a significant contribution to the local economy and provides broader opportunities for business development. Local businesses in Aberfeldy rely on holiday tourists as it does not get the passing trade that the likes of Pitlochry and Dunkeld do sitting at the side of the busy A9. In June of last year The Birks Cinema had to launch an appeal to raise £25,000 as it was struggling financially, losing STLs which provide affordable holiday accommodation is only going to make matters worse for local businesses.

On page five, paragraph six of the Report on Handling you state that "The postcode district level of saturation of potential short-term lets for PH15 is above the level at which it may be considered appropriate to introduce a control area in order to help manage high concentrations of STLs where it affects the availability of residential housing or the character of a neighbourhood....."

To give me a fuller understanding of the processes you have gone through to reach a decision I have several questions about this statement. To avoid rambling I'm going to list them -

1. Before tackling a problem the extent of the problem needs to be established. How did Perth & Kinross Council gather accurate figures re the number of STLs in this and all of its other postcodes?
2. You say PH15 "is above the level of saturation" what is this level and how did you decide it was excessive?
3. Once total numbers of STLs were established how did you decide what % reduction was required and how this would be achieved?
4. You state there is a "saturation of short term lets" in PH15 and yet you are only targeting flats when it comes to planning permission for change of use. Surely change of use is change of use whether it applies to a cottage, house or flat? Why is it only flats who have to apply for change of use when wanting to change an owner occupied property into a STL? This doesn't seem fair given the lack of housing in these desirable areas is not just with starter homes (flats) it's the cost and availability of **all** housing. If a young couple is lucky enough to get one of these flats if the host decides to sell where do they move to when they outgrow the flat? Is the problem in these desirable areas not more down to being priced out of the market rather than a lack of housing coming on to the market?
5. There doesn't seem to have been any differentiation made when applying for planning permission between blocks of flats sharing communal closes and cottage flats such as ours in a block of 4 with private entrances and off street parking. I am aware of the problems in Edinburgh and Glasgow where you have several STLs in a close causing problems to the owner occupiers but surely a cottage flat in a rural area is different?
6. It has been widely reported that a good number of hosts have decided to cease operating rather than go through the planning/license application process. Has the Council taken this into account? Would this reduction in numbers have achieved the targets you're trying to meet without rejecting the hosts who are taking the time and paying to go through the Planning Permission and Licence Applications processes? I feel this should have been stage 2. After accurately establishing the number of STLs the hosts should have then been asked if they were intending to proceed with the planning / licence application process and once all responses were received then the Council could more accurately have decided which areas had a saturation of STLs problem.

7. If a postcode is considered to have an unacceptable saturation level of STLs does this mean **all** planning applications for change of use including the ones in retrospect are rejected, assuming the properties are compliant with PKC's planning requirements in every other way? Looking at some of the other applications in the Highland Ward this doesn't seem to be the case which seems inconsistent and unfair.
8. If the answer to point 6 is NO how do you decide who is granted planning and who is refused planning? In Pitlochry I noticed some flats have been rejected PP and others have been approved PP in what is considered to be an area with an unacceptable level of STLs. To help me understand can you please explain why application 23/01433/FLL was rejected and yet application 23/01405/FLL accepted? Both flats are centrally located, both hosts have applied in retrospect, the flats are of similar size, the flat that was rejected has its own entrance while the one that was accepted has a shared access so more likely to be a nuisance to other residents. The applicant who submitted application reference 23/01405/FLL also owns a property in Birnam which was also approved PP again in another area where the number of STLs exceeds the acceptable level of saturation. Surely if you establish an area has too many STLs then all applications should be rejected to be consistent and fair? The same rules should apply to all.
9. Why haven't second homes been targeted first given they sit empty 85% of the year and contribute very little to the local economy? This again does not make any sense or seem fair. I know of a number of flats in Aberfeldy in this situation and it upsets me to think they sit empty while I have to give up a business that makes up 60% of my income and has contributed a lot of money to the local economy. As I stated previously we have had 87 guest groupings in just over 2 years all eating out in the local cafes, bars & restaurants and visiting and spending money in other local attractions.
10. The Housing problem in the UK hasn't been created solely by the existence of STLs however I do accept that they are a factor in the more desirable areas like Aberfeldy. The problem was created when Council houses were sold off with no long term plan to replace them. The only way this problem will be fixed is by building a mixture of Council Houses and flats and increasing the % of affordable housing private developers are duty bound to incorporate within their schemes.
11. Another big issue in places like Aberfeldy, Pitlochry and Dunkeld is the amount of people with money moving in to the area pricing lower income families out of the market. I remember reading about this very problem on Skye twenty years ago. There are posts every other week on local social media sites from people looking to move into these areas and who can blame them? We were surprised when our bid was successful given the demand for housing in Aberfeldy. We reckon the only reason our bid was successful is that we moved quickly and put a 24hr deadline on our offer as well as the fact that the flat only has a very small kitchenette (2x1.5m) with no space for a washing machine, freezer, dishwasher or tumble drier which is fine for a holiday let but not for a home. For the record there were no other bids. It will be really upsetting as a host if giving up a large % of my livelihood ends up not fixing the problem it's meant to fix ie providing affordable accommodation for people on lower incomes.

Lack of consideration given to Hosts Livelihood

You state "there are no material considerations apparent which justify setting aside the Development Plan". What about people's livelihoods? What about the fact that for many these laws have been implemented in retrospect after they have invested a lot of time and money into a new venture?

There seems to be an assumption that anyone who owns a STL is well off and just looking for something to do with their surplus cash. This is not the case for me I gave up my job and used my savings in conjunction with my partner to buy and refurbish this flat doing most of the work ourselves over a 4 month period. The income from the flat makes up 60% of my income and we only own one STL. We have spent £30000 over the valuation figure of the flat to purchase it (including paying 2nd property tax) refurbish it and furnish it and that doesn't include the money to run it. When we started out in 2021 we spent that money in the knowledge we would have plenty time to recoup it and based on a certain annual return from it operating as a STL which is now looking unlikely! This is very upsetting. There doesn't seem to have been any consideration given to the hosts of these STLs and the impact on their lives. While I understand there is a housing problem this is not all down to the existence of STLs and to just be told after working hard to set up a business you can no longer run it due to **legislation brought in after you started operating** just doesn't seem right.

In Retrospect

I read an article recently about a court case in Edinburgh where Lord Braid ruled that the Scottish Parliament "did not intend" for these new laws to be applied retrospectively. He said "had it been its intention it would have made that clear in express terms, or at least in language which was clearer than that used" What is Perth & Kinross Council's take on this?

Surely it would be fairer to allow existing STL businesses to continue operating and to deal with the issue of saturation levels moving forward. The Council could legislate that if in the future an existing STL host decides to sell their property then the new owner would then need to apply for PP and at this stage the Council could reassess.

Another issue that needs to be addressed is finding a way to inform new STL owners about the need to apply for PP for change of use. It is quite clear from the amount of "in-retrospect" applications that the majority of hosts were like myself completely unaware of this requirement costing us an additional £150 over and above the initial payment of £600 to apply. **Out of interest when was this regulations brought in?** Sadly had I been aware of this requirement I would have applied back in 2021 and probably would have been granted PP.

Summary

I look forward to receiving the answers to my questions regarding the processes you followed to reach your decision but I would also like you to reconsider your decision to refuse our application for planning permission for change of use of a flat to a short term let at Upper South Flat, Annesley Cottage, Burnside, Aberfeldy PH15 2AU taking into account the contents of this Notice of Review summarised as follows -

- the flats contribution to the local economy
- the flat has operated without any complaints for over 2 years
- the work we have carried out improves the character of the area
- our flat has its own entrance and driveway and is in a central location with a mixture of businesses and residential properties.
- the impact on my livelihood of losing this income
- the unfairness of implementing these laws in retrospect
- the court decision in Edinburgh against these new laws being applied in retrospect
- the investment and effort we have put in to make a success of this business which requires a return beyond 2 years.
- we manage and maintain the flat ourselves (I am there at least once a week) which means we can "be relied upon to restrict and control any potential adverse impact on neighbouring properties and local amenity".
- the unfairness of only targeting flats for PP for change of use
- the importance of tourism to local businesses
- the importance of having affordable holiday accommodation in desirable areas
- the importance of being fair and applying the same rules to all
- the existence of a large number of empty second homes in the Aberfeldy area contributing very little to the economy
- kitchenette with lack of facilities (no WM,DW,TD or Freezer) – suitable for a holiday let but not a home
- Superhost status – to achieve this you have to provide top quality accommodation & service and we work hard to maintain this by looking after our property inside and out.