

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

APPLICATION FOR GRANT / RENEWAL OF SHORT-TERM LET LICENCE

PART 1: ABOUT YOU

Are you applying as an individual or corporate entity?

Individual Corporate Entity

2b

Fill in if you are applying as an individual:

Your full name ELIZABETH JANE KITCHING

Date of birth [REDACTED]

Place of birth [REDACTED]

Home Address [REDACTED]

[REDACTED]

Postcode [REDACTED]

Tel. No. [REDACTED] Email address [REDACTED]

Please provide your **home address history for the last 5 years** with no gaps or overlaps, starting with the most recent. Please confirm the dates you resided at these properties (continue on a separate sheet if necessary):

[REDACTED] [REDACTED] 12/2012 2/2023

Agent(s) & Day to Day Manager(s)

Do you have or intend to appoint an agent or day-to day manager?

Yes No

If you answered yes, please provide details for your agent(s) or day to day manager(s).

Full name CHARLES TORQUIL HAMILTON MCINROY

Date of birth [REDACTED]

Tel. No. [REDACTED] Email address [REDACTED]

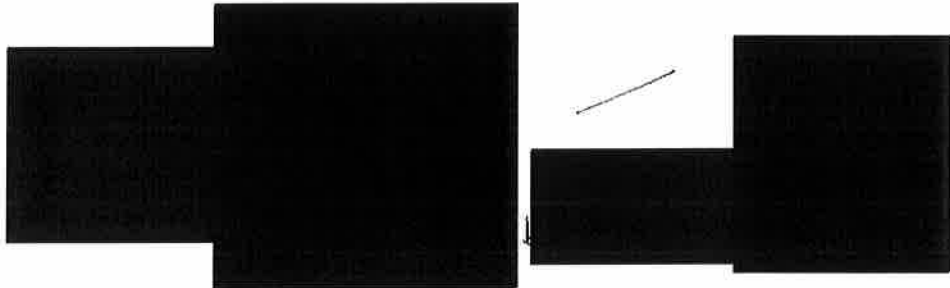
Joint Ownership

Is your property jointly owned? Yes No

If you answered yes, please provide details for all joint owners.

Joint owner(s) (continue on a separate sheet if necessary):

REV. FRANK
HUGH
BLANCHARD
ELIZABETH
JANE
KITCHING



Individuals, please go to Part 2.

Corporate entities

Corporate entities, please complete the relevant sections on the following pages.
Fill in if you are applying as a corporate entity (e.g. company, partnership, trust or charity)

Corporate entity name _____

Limited company number (if applicable) _____

First name and surname _____

Registered or principal office address _____

Tel. No. _____ Email address _____

Names and private addresses and dates and places of birth of its directors, partners or other persons responsible for its management, including trustees in the case of charities (continue on a separate sheet if necessary).

Please complete for all other named persons on the licence (e.g. any agent or day-to-day manager) (continue on a separate sheet if necessary):

CHARES TORQUIL

HAMILTON MCINROY
(Agent)



PART 2: APPLICATION AND LICENCE TYPE

(to be completed by all applicants)

Please select the application type:

- First application (existing operator*)
- First application (new operator)
- New application (where property has been used as licensed STL previously)
- Renewal
- Change to existing licence

**This option is only available for applications made on or before 1 April 2023 by existing operators (ie those operating the premises in which a licence is being applied for as a short-term let on or before 1 October 2022).*

If you are applying to renew or alter your licence, please complete the following fields. If submitting a new application where the property has never been used as a licensed short-term let before, please proceed to '**The Type of Short Term Licence you require**' (below).

Existing licence number _____

Existing licence expiry date _____

If you are submitting a new application where the property has been used as a licensed short-term let before, please complete the following fields.

Previous licence number _____

Previous licence expiry date _____

Please select the type of short-term let licence you require:

- Home sharing
- Home letting
- Home sharing & home letting
- Secondary letting

If you do not own the property which is the subject of this licence application, do you have proof of permission from the owner(s):

Yes No N/A

If you are applying for a change to your existing licence, please indicate the reason for your request (e.g. a change of agent, changes to the property - e.g. an extension to increase maximum occupancy).

PART 3: PREMISES DETAILS

Premises Address TUSCULUM, FLAT 4, 3 LINKS ROAD

NORTH BERWICK Postcode EH39 4LT

Unique Property Reference Number (if known) _____

EPC Rating* Band C (72)

** (if applicable – not required for home sharing or unconventional accommodation)*

Please select the type of premises:

Detached House	<input type="checkbox"/>	Semi-detached house	<input type="checkbox"/>
Terraced House	<input type="checkbox"/>	Flat	<input checked="" type="checkbox"/>
Unconventional accommodation	<input type="checkbox"/>		

From the following options, please select the description that best describes your short-term let:

Self-catering	<input checked="" type="checkbox"/>	B&B	<input type="checkbox"/>
Guest house	<input type="checkbox"/>	Other form of home sharing	<input type="checkbox"/>
Home letting	<input type="checkbox"/>		

Specify the number of rooms within the premises used as:

Bedrooms 2 Bed/Sitting rooms 4

Bathrooms 1 + SEPERATE TOILET Kitchens 1

Lounges 1

Other (please specify) UTILITY ROOM, CORRIDORS, GARAGE

Specify the maximum number of guests 6
(excluding children under 2 years of age)

Advise if you operated this premise as a short-term let prior to 1 October 2022

Yes No

PART 4: CONVICTIONS

Has anybody named on the application been convicted of any offence? Please include details of any unspent convictions in the table below:

PART 5: APPLICATION CHECKLIST

Note – this check list must be fully completed in order to submit your application

Correct application fee	See East Lothian Council website – Civic Licence Fees
Annual gas certificate (for premises with a gas supply)	Valid to: 27 SEP 24
Electrical Installation Condition Report	Valid to: 16 Nov 27
Portable Appliance Testing Report	Valid to: DEC / 23
Fire Risk Assessment	✓
Fire Service Safety Checklist	✓
Legionella Risk Assessment	✓
Planning permission (for premises within a control area or where requested by the licensing authority)	Planning application reference number:
Floor plan	✓
EPC Certificate (for premises which are dwellinghouses)	Valid to: SEPTEMBER 2033
Public Liability Insurance	Valid to: AUGUST 2024
Proof of consent from owner (if applicable)	
Evidence of operation as a short-term let on or before 1 October 2022 (for existing hosts applying during transitional period)	

- Identified the owners and those involved in the day-to-day management of my premises ✓
- Ensured that to the best of my knowledge all those named on my application are fit and proper persons ✓
- Prepared information that will be available to guests at the premises including:
 - (a) a certified copy of the licence and the licence conditions,
 - (b) fire, gas and electrical safety information,
 - (c) details of how to summon the assistance of emergency services, ✓
 - (d) a copy of the gas safety report,
 - (e) a copy of the Electrical Installation Condition Report, and
 - (f) a copy of the Portable Appliance Testing Report.
- Applied for planning permission (if required).
- Noted the requirement to display my licence number and EPC rating on listings for my premises ✓
- Proof that furniture and furnishings/the furniture and furnishings guests have access to, comply with fire safety regulations ✓
- Read and understood the mandatory conditions that will apply to my licence ✓
- Read and understood the additional conditions that will apply to my licence ✓
- Meets current statutory guidance for provision of fire, smoke and heat detection ✓
- Meets statutory guidance for carbon monoxide alarms ✓
- Meets the required regulations for private water supplies (for premises with a private water supply i.e not provided by Scottish Water) N/A
- Meets obligations with regard to the Tolerable and Repairing standard (applicable to dwellinghouses) ✓

PART 6: DECLARATION

East Lothian Council, as licensing authority, will use information it holds about you to determine whether you are a fit and proper person to operate a short-term let. In addition, licensing authorities to which you apply may share relevant information they hold about you with one another to help those authorities determine whether you are a fit and proper person to act as a landlord, or to act for a landlord. They may also share and seek relevant information with Police Scotland and, if appropriate, other relevant authorities.

Anyone who gives false information on this form, or fails to provide the information required by this form, is committing an offence which could lead to prosecution.

I declare that I have read and understood the mandatory conditions that apply to short-term let licences and East Lothian Council's additional conditions

I will comply with the requirement to display a site notice in accordance with paragraph 2 of Schedule 1 of the Civic Government (Scotland) Act 1982

I declare that the information given in this application is correct to the best of my knowledge

Signed _____

Print name MRS ELIZABETH JANE KITCHING

Date 29 | 9 | 23

DATA PROTECTION ACT 2018

Please note that the information given on this form may be stored electronically by this Authority for the purpose of licensing.

The Identity of the Data Controller under the Data Protection Act 2018 ("the Act").

East Lothian Council, John Muir House, Haddington, East Lothian EH41 3HA ("the Council")

The purpose or purposes for which the data are intended to be processed.

The Data will be processed in order for East Lothian Council to fulfil its statutory duty under the Civic Government (Scotland) Act 1982 in receiving, registering, determining and granting applications for licenses under the said Act. The Data will be shared with public bodies who require to be consulted about the application, such as the Police. It will also be shared with internal East Lothian Council services, particularly within the Environment Department who give advice to the Council as Licensing Authority, in respect of the application.

East Lothian Council is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.

Further information can be obtained from:

Data Protection Officer
Licensing, Administration and Democratic Services
John Muir House
Haddington
dpo@eastlothian.gov.uk

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

CERTIFICATE OF COMPLIANCE

SHORT-TERM LETS LICENCE – CONFIRMATION OF
DISPLAY OF PUBLIC NOTICE

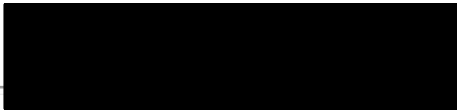
Confirmation Of Display Of Notice

This section must be completed by the applicant and the whole notice returned to the East Lothian Council, Licensing, John Muir House, HADDINGTON, EH41 3HA or licensing@eastlothian.gov.uk at the end of the 21-day display period.

I (Full name of applicant) CHARLES TORQUIL HAMILTON MCINROY

Certify that the notice of application has been displayed as prescribed above for a period of not less than 21 days

From 8 Oct, 2023 ending on 29 Oct, 2023

Applicant's signature 

Date 16 Jan, 2024

Consultation responses

Antisocial Behaviour team – no objection (28 February 2024)

Parking team – no objection (29 February 2024)

Police Scotland – no objection (11 March 2024)

Planning Authority – Certificate of Lawfulness or Development (CLUD) granted 11 May 2021 (5 March 2024)

Rafferty, Alison (Licensing)

From: Hugh MacKenzie [REDACTED]
Sent: 02 October 2023 12:30
To: Short Term Lets
Subject: Re: Objection to short term holiday letting

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Sent from my iPad

On 30 Sep 2023, at 21:11, Hugh MacKenzie <[REDACTED]> wrote:

OBJECTION TO HOLIDAY LETTING

Please direct this email to the appropriate person or Department

The Property in question is:

Flat 4, " Tusculum", 3 Links Road North Berwick

Owner: Jane Kitching

This property is currently advertised as being available for letting and there has been no indication that a STL licence application is in progress.

This property is a two bedroom flat within the converted 36 room property called "Tusculum" which contains five other flats

For some years this flat was let on an irregular basis and it was claimed that the visitors were "family and friends". When it became clear that it was actually being let as a business , the owner was pressed to obtain the usual Planning Consent for change of use from Residential to Business use. This would usually involve an inspection of the premises to see if they were fit for purpose.

Instead of applying for Planning Consent, Ms. Kitching obtained a Certificate of Lawfulness on the false claim that she had been running the Business for 10 years.

The five other owners of flats in Tusculum formally objected to this but found that there was no right of appeal.

So the situation today is that Ms Kitching may have applied for a License to continue with Short-term Holiday Lets in a property which has never been inspected to establish its suitability for this use.

The main concerns from the other owners are:

1) There is a common entrance to five of the flats so there is loss of privacy and concerns about security.

2) There is a particular loss of privacy for Flat 1 as visitors regularly peer through her window.

3) Four of the flats are served by an antiquated lift with trellis gates which is unsuitable for public use on safety grounds. It is often left with the gates improperly closed which is a great inconvenience to Flat 6 on the third floor.

4) The noise from holidaymakers "enjoying" their holiday is often intrusive and requires resident's intervention and on at least one occasion the police have been involved.

5) "Tusculum" is inherently unsuitable for holiday lets. It was not purpose-built as a tenement but was converted to flats in 1950. As a consequence, the rooms do not stack up like for like. For example the room of Flat 4 above our bedroom in [REDACTED] is a livingroom and the kitchen is above another bedroom. The owners are aware of this mismatch and behave with consideration but holiday makers are unaware of this peculiarity.

6) It may be worth stating again that Flat4 has never been inspected the ascertain its suitability for holiday letting

I hope that you will be able to include these points in your review of a Licensing Application for Flat 4 in "Tusculum" for short term letting.

Dr H.A. MacKenzie

[REDACTED]

Objections to the STL License Application

Flat4, TUSCULUM, 3 Links Road, North Berwick

Owner: Jane Kitchen

Agent Torquil McInroy

Reference: UPRN 138020425 Lodged 29th September 2023

From H.A. MacKenzie, [REDACTED]

“Tusculum” is a large Victorian house comprising 36 rooms, divided into six flats.

From the STL Public Register I have just found out that the Application for a Short-Term License for the above premises is “Pending”. This is the first indication that I and the other owners have that a STL License Application was in progress. I note that the Application is dated 29th September.

I have noted that, for other STL Applicants in North Berwick, Notices which indicate that an STL Application has been made has appeared on a nearby lamp post, on an entrance gate or other location where those who are going to be affected by the Application can read the details. This has not happened in this case.

A key factor in my objection is that Flat4 has never been inspected as to its suitability for short-term letting. It was let for many years without Planning Consent and when challenged on this they successfully obtained a Certificate of Lawfulness which did not require an inspection.

In brief, the main basis for objections to this Application are as follows:

1. The premises have never been inspected to assess the suitability of Flat4 for STL.
2. The use of a communal entrance which gives access to five of the six flats.
3. The loss of privacy which results from the use of a common stair by strangers
4. The dangers involved in using an antiquated lift with open trellis gates with which the owners are familiar with but could pose significant dangers to visitors
5. A particular loss of privacy for Flat 1 where strangers can peer directly into the house.
6. The use of Flat 4 as a business is contrary to the Title Conditions of Tusculum

Rafferty, Alison (Licensing)

From: Alan Duckett [REDACTED]
Sent: 04 February 2024 16:02
To: Short Term Lets
Subject: Objection to STL Flat 4 Tusculum

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Dear Sir / Madam,

Please find below my objection to this application

TUSCULUM, 3 Links Road, North Berwick

Owner: Jane Kitchen

Agent Torquil McInroy

Reference: UPRN 138020425 Lodged 29thSeptember 2023

From : A.Duckett, [REDACTED]

“Tusculum” is a large Victorian house comprising 36 rooms, divided into six flats. From the STL Public Register I have just found out that the Application for a Short-Term License for the above premises is “Pending”. This is the first indication that I and the other owners have that a STL License Application was in progress. I note that the Application is dated 29th September.

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4. The dangers involved in using an antiquated lift with open trellis gates with which the owners are familiar with but could pose significant dangers to visitors
5. A particular loss of privacy for Flat 1 where strangers can peer directly into the house.
6. The use of Flat 4 as a business is contrary to the Title Conditions of Tusculum

Please do not hesitate to contact me for any clarifications

Yours faithfully

Alan Duckett

Sent from my iPhone

Rafferty, Alison (Licensing)

From: kathleen.fairweather@[REDACTED]
Sent: 02 February 2024 17:02
To: Short Term Lets
Subject: Short term holiday let for Flat 4 Tusculum
Attachments: Objection.doc

You don't often get email from [REDACTED] [Learn why this is important](#)

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Please find attached my objections to the granting of a license for short term holiday lets to Flat 4 Tusculum, 3 Links Road North Berwick EH 39 4LS

Objection to short term let for Flat 4, Tusculum, 3 Links Road, North Berwick EH39 4LS

Reference number UPRN Owner Mrs Jane Kitchen Agent Torquill McInroy

From Kathleen M Fairweather [REDACTED]

I am surprised to find that an application for a license to use Flat 4 in Tusculum as a short-term holiday let was submitted to the Council on 29th September 2023. There was no notification of this from the owners or the agent of the property and no notice was placed on the street or at the entrance to the property. If a license for Flat 4 to be used for short-term letting has already been granted, it should be withdrawn until the proper procedures have been followed, and neighbors given the opportunity to raise objections.

I live at [REDACTED] a flat in Tusculum, a Victorian house divided in to 6 flats in 1949. 3 of the flats, including mine are entered from York Road and 3 from Links Road. Although my front door is on York Road, my garden is entered from Links Road, via a courtyard which gives access to Flats 4 5 and 6. This is quite confusing for visitors and especially for delivery drivers. After a long period when Flat 4 was used by a family for holidays without any inconvenience to the neighbors, it was given to their daughter who for some years now has used it as a business for short-term lets. This has caused a number of problems for the owners of other properties in Tusculum. The problems that specifically affect my enjoyment of my property are as follows:

1. Those renting Flat 4 often assume that my garden is communal. I have found a (very polite) little Chinese girl enjoying my summer house, an Irish family spreading out their picnic rugs on my lawn and a very abusive Italian who had parked a heavy 4 wheel drive partly on the parapet above my garden where he had broken the paving stones along the top.
2. The shared entrance to Flats 4,5 and 6 leads to a lift which is also used by Flat 2 to reach the courtyard. To reach the door on to the staircase, which most holiday visitors use to access Flat 4, it is necessary for them to go up an outside stair which brings them up directly outside my kitchen window. Most visitors are quite polite and do not peer in, but it is very different when Flat 4 is let to scaffolders, who are in the area to erect and then dismantle stands for golf tournaments. They are not allowed to smoke in the flat, so smoke at the top of the outside stair directly outside my kitchen window and drop their cigarette ends and vapes and beer cans down to the courtyard below. This happens every year.
3. Holiday visitors do not follow East Lothian Council's recycling regulations. They throw everything in to any bin they can find. I keep my green and brown bins in my garden and have to go through the contents each time before I put the bins out to remove anything incorrect. Otherwise, quite rightly, the bins will not be collected.

I appreciate that tourism is important for North Berwick and for the East Lothian economy, but some properties are unsuitable for holiday lets and Tusculum is certainly one of them. If a licence for short term holiday letting is granted to Flat 4 in Tusculum it will make a mockery of the Council's whole licensing scheme. I think it only fair to give the Council a chance to address this issue before I write to the local newspapers.

Lindsay, Arlene (Licensing)

From: Alison Waite [REDACTED]
Sent: 20 February 2024 12:25
To: Short Term Lets
Subject: Objections to the STL Licence Application Flat 4, TUSCULUM, Links Road, North Berwick

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Objections to the STL Licence Application
Flat 4, TUSCULUM, 3 Links Road, North Berwick
Owner: Jane Kitchen ✍
Agent Torquil McInroy
Reference: UPRN 138020425 Lodged 29th September 2023

From A. Waite on behalf of J. Beattie, [REDACTED]

I am writing on behalf of my elderly mother, who has lived in [REDACTED] since 1984. No notification has been received by my mother regarding the STL application made for Flat 4, and none has been seen attached to neighbouring lampposts. My mother's neighbour recently discovered that an application had in fact been posted without notification to neighbours in September 2023. My understanding is that the title deeds specifically ban the use of any part of the house as business premises, and yet the owners of Flat 4 have flaunted this restriction for years, openly advertising the flat as a holiday let.

'Tusculum' was converted from one large Victorian private house into six flats shortly after the Second World War. The house has never been a tenement building and has never been designed, inspected or adapted for use as a short-term letting business. This unsuitability for SLT has been repeatedly highlighted by various aspects of the Links Road access to Flat 4, which have created disruption for everybody, including my mother who is 92 and struggles to climb stairs.

An inspection for STL suitability would have revealed that the lift allowing access to Flat 4 has its original 1940's gates. These have always been trouble-free for the three flats who use the lift a couple of times a day each. However, this lift is not appropriate for careless regular use by holidaymakers expecting automatically closing lift doors. Difficulties have been created for my mother on finding that the lift gates have been left open again and that consequently she cannot use the lift to leave the building when her knees are bad. An inspection would also have found that the courtyard is too small for extra cars. Visitors parking here block residents' cars and access to garage doors. Some of them also treat the adjoining private garden belonging to Flat 1 as a public park.

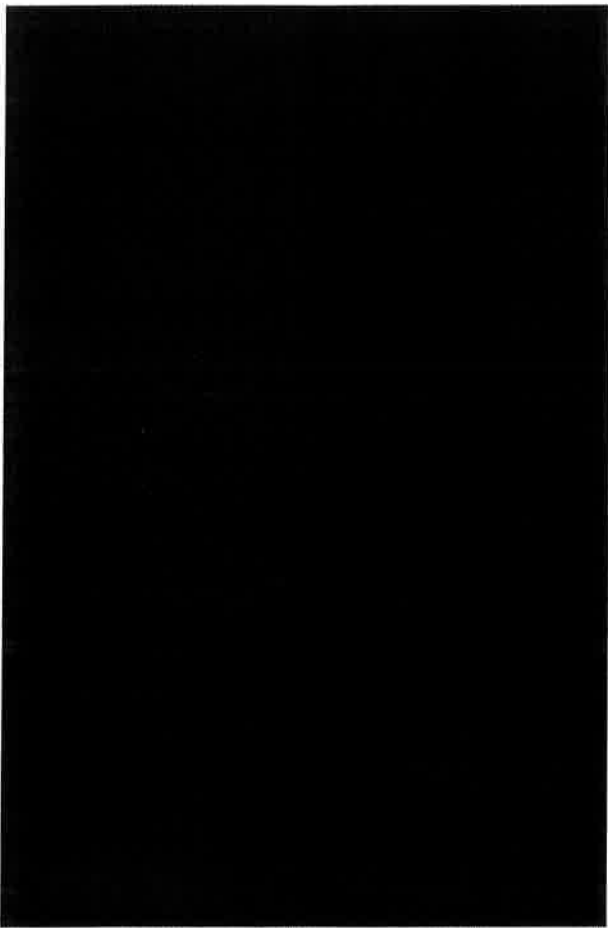
These access restrictions to Flat 4 call into question whether it is appropriate for use as a short-term let.

Rafferty, Alison (Licensing)

From: Anne MacKenzie [REDACTED]
Sent: 03 February 2024 11:19
To: Short Term Lets
Subject: Fwd: Short term letting licence

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Objections to the STL License Application

re: Flat 4, TUSCULUM, 3 Links Road, North Berwick

Owner: Jane Kitching

Agent Torquil McInroy

Reference: UPRN 138020425 Lodged 29th September 2023

From:

Anne MacKenzie



Dear Licensing Officer,

I am writing to express my concerns about both the licensing process for Short Term Lets and about the unsuitability of "Tusculum" as a holiday let property.

The email trail below shows that I wrote to you on the 24th October expressing my concerns about the safety and suitability of this property and was informed by reply that no application was in process but that there was a processing backlog. I have now been told that the application was received on the 29th September yet the usual Notification was not posted at a location where it could be seen by those who would be most affected. This can be confirmed by all of the five affected permanent residents in Tusculum.

The Application has just appeared in the Public Register, but does not indicate the number of rooms, maximum number of occupants and does not have a License Reference Number.

My concerns about licensing this property for short term letting are primarily safety concerns.

The communal entrance from Links Road provides access to 5 of the 6 flats in Tusculum. Some of the residents are elderly and are confused or unsettled by the loss of privacy and the number of unknown faces they intercept in the communal areas.

The property has an antiquated trellis-gated lift with no safety locks. Newcomers to the property are unaware of the lack of lift operating safety restrictions, such as the ability to accidentally stop the lift between floors. Users have opened the gate before the lift slowly creeps up to floor level and stepped out leaving the lift in a dangerous state for the next user who may not realise it is a step-down into the lift. Children should not be able to use the lift unless supervised or trained as fingers can easily be trapped in the trellis.

The lift is only insured for domestic use and not as a business service lift.

In addition, there have been unpleasant altercations with visitors to the property because of inconsiderate car parking which blocks access to residents' vehicles.

Similar altercations have taken place, when holidaymakers party late into the night. The disturbance to other residents is greater than it would be if the building was constructed like a more modern apartment block. In Tusculum, the rooms of each flat do not stack one above the other and, for example, in holiday let property, the living room is above the main bedroom of [REDACTED] and the kitchen of Flat 4 is above our spare bedroom. The living and kitchen rooms are the main socialising rooms for a holiday property.

This issue was recognised when the property was subdivided and protecting the amenity of all residents is the reason that the Title Conditions forbid running a business from any of the flats.

With the deception that that Flat 4 was being used by "Friends and Family" the property was let for several years without Planning Consent. When confronted the owner, again with an element of deception, obtained a Certificate of Lawfulness which circumvented the normal Planning process. As a result, Flat 4 has never been inspected as to its suitability for holiday letting and the other five residents have not had an opportunity before this to draw attention to this anomaly.

I hope my serious concerns are addressed when this application is being considered.

Yours sincerely
Anne MacKenzie

Begin forwarded message:

From: Short Term Lets <stl@eastlothian.gov.uk>
Date: 26 October 2023 at 13:32:00 BST
To: Anne MacKenzie [REDACTED]
Subject: RE: Short term letting licence query

Hi

We have not processed an application for that address but have a huge backlog of applications to process.

Regards

Licensing Officer | East Lothian Council | John Muir House | Haddington EH41 3HA
| T. 01620 827664 | E. licensing@eastlothian.gov.uk

From: Anne MacKenzie [REDACTED]
Sent: 24 October 2023 15:07
To: Short Term Lets <stl@eastlothian.gov.uk>
Subject: Short term letting licence query

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Subject 3 Links Road , North Berwick,

A Victorian house with shared entrances, complex layout and a potentially dangerous lift.

I am contacting you establish if a Short Term Licence Application has been received or STL Licence granted to

Jane Kitching or her agent Torquil McIlroy, regarding the short- term letting of Flat 4 (or B) at 3 Links Road , North Berwick, EH39 4LT.

The owner's home address is: Jane Kitching, [REDACTED]
[REDACTED]

Thank You
Anne Mackenzie

Sent from my iPhone

Re: STL Application for 3/4 Links Road, North Berwick.

Arial View of "Tusculum"

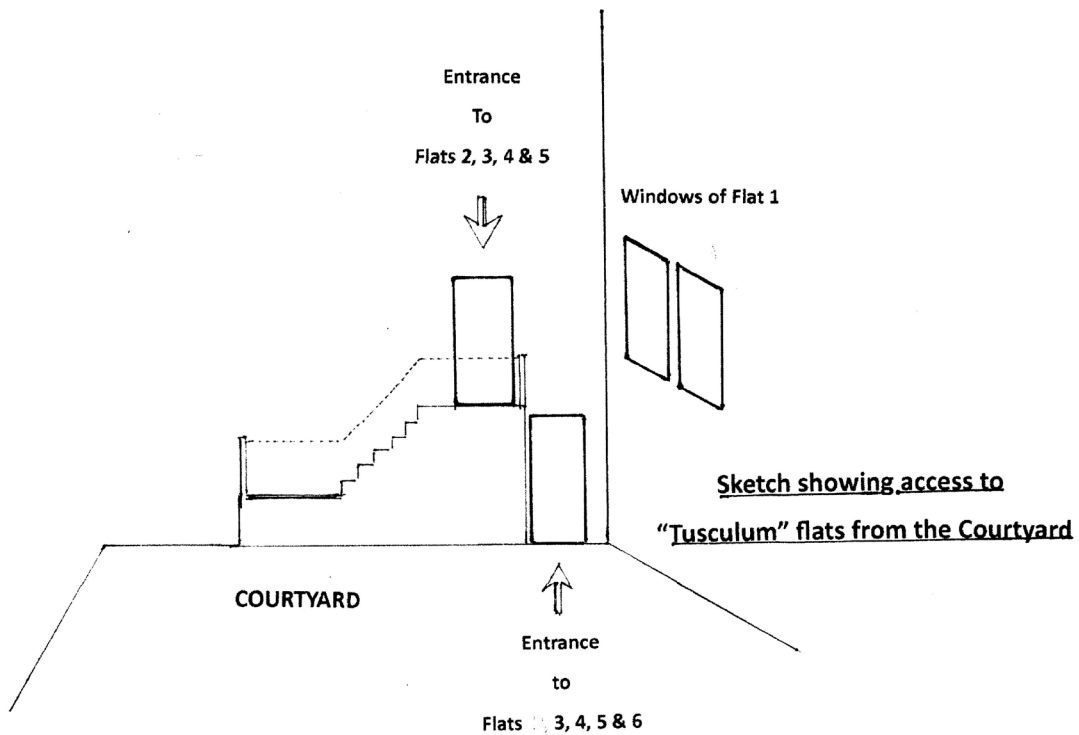




Re. STL Application, 3/4 Links Road, North Berwick

Photograph showing the trellis gate of the lift. There is an inner and outer gate and if either is improperly closed, the lift is immobilised even between floors.

The trellis gate is a particular hazard for children.



nn



Re. STL Application, 3/4 Links Road, North Berwick

Sketch and photograph showing the access to “Tusculum flats from the courtyard.

The lower entrance gives access to Flats 3,4,5 and 6. The upper entrance gives access to the communal staircase and Flats 2, 3, 4 and 5.

Summary of objections to:

Short-Term letting of Flat 4, “Tusculum”, 3 Links Road, North Berwick

- **“Tusculum” was built for single occupancy**
- **With compromises, it was converted into six flats**
- **There are two entrances to flat 4 from the courtyard**
- **The lower entrance gives access to flats 3,4,5&6**
- **The upper entrance gives access to flats 2,3,4&5**
- **There is a lift which can be problematic for visitors**
- **There is a communal staircase which can be noisy**
- **The STL of flat 4 to six visitors causes a loss of privacy**
- **This is the first opportunity for residents to make objections.**
- **The flat has never been scrutinised as to its suitability for STL.**
- **There are security issues with STL in this building**

From: [REDACTED]
To: [Crichton, Rebecca](#)
Subject: Documents for Licensing Sub Committee Tusculum Flat 4 3 Links Rd EH39 4LT
Date: 11 April 2024 15:52:00

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Dear Rebecca

Thank you for contacting me this afternoon. Further to our conversation I attach the following documents to be submitted to the sub Committee prior to the meeting on the 18th April

- 1 Introductory Letter
- 2 Solicitors Letter(another email)
- 3 Letter to Neighbours
- 4 Neighbours Reply
- 5 Newspaper Articles links

<https://www.eastlothiancourier.com/news/19501831.neighbours-lose-appeal-north-berwick-flat-appears-rent-airbnb/>

<https://www.edinburghlive.co.uk/news/edinburgh-news/lothian-airbnb-flat-row-neighbours-21266150>

I will forward a personal statement to you asap

I hope this is in time to be added to the pre meeting documentation

Best Regards

Jane Kitching

Sent from [Mail](#) for Windows

Dear Sir/Madam,

My application for an STL licence at Tusculum, 3 / 4 Links Road, North Berwick, EH39 4LT is due to be heard before the Licensing Sub-Committee at 2pm on Thursday 18th April 2024. I am grateful for receipt of the objections which you have forwarded to me. I have read them carefully.

I wish to be represented at the hearing by my agent, Mr. Torquil McInroy, who has had daily conduct of the letting of this property. He has operated the complaint handling procedure which I put in place in July 2022. All of the complaints have emanated from Dr H. MacKenzie.

I wish to provide a written statement as to my character, to allow the Sub-Committee to assess my suitability, and I am willing to dial in to the hearing by telephone to answer any questions which the Committee may wish to ask me.

I attach a copy of a letter which I sent to my neighbours in July 2022 and a copy of the reply which I received from Dr MacKenzie.

It will be apparent from reading these letters that Dr MacKenzie harbours a deep-seated but wholly erroneous sense of grievance against my deceased mother and me.

I put in place the complaint-handling procedure specifically to distance myself from his continual bullying behaviour. I am advised that I am not obliged to submit to any further harassment or defamation from him in the course of these proceedings and I request appropriate dispensation to be permitted to participate in the hearing in the manner requested above.

The Sub-Committee members will read that, Dr MacKenzie believes that my mother was deceitful for many years in relation to the use of our flat and that I have also

deliberately circumvented scrutiny and behaved dishonestly and illegally in relation to my own dealings with the flat. I attach a letter from the solicitors who acted perfectly properly in the matter of an application for a Certificate of Lawfulness on my behalf.

These defamatory claims, in which Dr MacKenzie persists, are baseless.

Dr MacKenzie appealed to The Scottish Ministers against the grant to me of that Certificate of Lawfulness in relation to my use of the flat. It was held that he had no case and his “appeal” was dismissed. He chose to defame ELC too, claiming that they had failed to handle the application properly. ELC were obliged to issue a Press Release in response to correct the false impression which Dr MacKenzie sought to give. I attach a copy of the newspaper reports from the time.

To summarise, my application is to be permitted to participate in these proceedings by the filing of a written statement as to my character and background, to address the question of my suitability for a Licence; and for my authorised agent, Mr Torquil McInroy, to present my responses to the objections at the Hearing.

I look forward to receipt of the Sub-Committee’s decision on this preliminary matter of procedure in due course.

Yours sincerely

Jane Kitching

From: [REDACTED]
To: [Crichton, Rebecca](#)
Subject: FW: Jane Kitching - Certificate of Lawfulness; Our Ref: 078130-000001 [HM-HMWORKSITE.FID4483425]
Date: 11 April 2024 15:43:55

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Hi Rebecca

I have forwarded the solicitors letter and certificate of Lawfulness for the attention of the Licensing Sub Committee meeting on the 18th April regards Tusculum Flat 4 3 Links Rd EH 39 4 LT

Many thanks

Best regards

Jane Kitching

Sent from [Mail](#) for Windows

From: [REDACTED]
Sent: 11 April 2024 15:39
To: [REDACTED]
Subject: Fwd: Jane Kitching - Certificate of Lawfulness; Our Ref: 078130-000001 [HM-HMWORKSITE.FID4483425]

Sent from my iPhone

Begin forwarded message:

From: Mhairi Innes <Mhairi.Innes@harpermacleod.co.uk>
Date: 8 April 2024 at 17:24:30 BST
To: jane.kitching@icloud.com
Cc: John McHugh <John.McHugh@harpermacleod.co.uk>
Subject: Jane Kitching - Certificate of Lawfulness; Our Ref: 078130-000001 [HM-HMWORKSITE.FID4483425]

Hi Jane

I have been assisting John with this today. We have discussed the issue with one of our colleagues, Peter Ferguson.

Please see his response below following his review of the documentation you sent John earlier.

If you have any questions, please feel free to get in touch.

Thanks

Mhairi

MHAIRI

INNES

TRAINEE SOLICITOR
DISPUTE RESOLUTION

Tel: [0131 247 3348](tel:01312473348)

Mob: 07977859756

Citypoint 65 Haymarket Terrace Edinburgh EH12 5HD

From: Peter Ferguson <Peter.Ferguson@harpermacleod.co.uk>

Sent: Monday, April 8, 2024 5:06 PM

To: Mhairi Innes <Mhairi.Innes@harpermacleod.co.uk>; John McHugh <John.McHugh@harpermacleod.co.uk>

Subject: RE: 078130-000001 - Jane Kitching - Certificate of Lawfulness renewal [HM-HMWORKSITE.FID4483425]

Mhairi, John.

In relation to short term let licence applications, the applicant requires, amongst other things, to prove that short-term letting is lawful in planning terms. Lawfulness of the use can be established by either exhibiting planning permission or by applying for and obtaining a certificate of lawfulness of existing use.

In this case, as Mrs Kitching had used the property for short term letting for over 10 years, she was able to apply for a certificate of lawfulness. An application was made and the application was duly granted by East Lothian Council. The certificate of lawfulness is attached.

In terms of section 159(6) of the Town and Country Planning (Scotland) Act 1997, the lawfulness of a use for which a certificate is in force (which it is here) shall be conclusively presumed.

150 Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful,

(b) any operations which have been carried out in, on, over or under land are lawful, or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act, uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason), and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired, and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this section, the planning authority are provided

with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

- (a) specify the land to which it relates,
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 26(2)(f), identifying it by reference to that class),
- (c) give the reasons for determining the use, operations or other thing to be lawful, and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

- (a) section 3(3) of the M1 Caravan Sites and Control of Development Act 1960,
- (b) section 5(2) of the M2 Control of Pollution Act 1974, and
- (c) section 36(2)(a) of the M3 Environmental Protection Act 1990

The language is slightly awkward here as lawfulness is being used in two senses - (i) the lawfulness of the use and (ii) the lawfulness of the certificate. The lawfulness of the use is established by the grant of the certificate and section 150(6) above. I would regard the lawfulness of the certificate (or indeed permissions or licences issued by a local authority to be manifest.) If a third party wanted to contest such manifest lawfulness, the onus is on them to do so by way of a JR challenge (the deadline for such challenge having long since passed.)

I don't think there is any need for the client to demonstrate the lawfulness of the certificate. In any event, the issues mentioned by Mr Mackenzie (the certificate of lawfulness process did not involve an inspection of the property and that he did not have a right to object/appeal) are entirely consistent with the certificate of lawfulness process (and not mistakes made by ELC in the handling of this particular application.)

Peter.

Peter Ferguson
Partner
Planning & Environmental

Ext: 1052

Tel: 0141 227 9332

Mob: [0796 839 2642](tel:07968392642)

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Our Ref: 21/00090/CLU
Ask For: Caoilfhionn McMonagle
Tel: 0162082 7231
Your Ref:
Date: 16th June 2021

Mrs Elizabeth Jane Kitching
c/o Harper Macleod LLP
Per Peter Ferguson
The Ca'd'Oro
45 Gordon Street
Glasgow
G1 3PE

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 150

DECISION ON APPLICATION FOR CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

PROPOSAL: Certificate of lawfulness for an existing use - Use as short stay let accommodation

LOCATION: Flat 4 Tusculum Links Road North Berwick East Lothian

I refer to your application for a Certificate of Lawful Use or Development under the Town and Country Planning (Scotland) Act 1997: Section 150, reference no 21/00090/CLU.

I write to advise you that the Council has decided, on the basis of the facts presented in the application, to issue a Certificate of Lawful use for the use or development. The Certificate is attached to this letter.

Yours faithfully



Keith Dingwall
Service Manager - Planning

If the applicant is aggrieved by the decision of the Planning Authority the applicant may, within three months from the date of this notice, appeal to the Scottish Ministers under Section 154 of the Town and Country Planning (Scotland) Act 1997. The appeal should be addressed to Planning and Environmental Appeals Division, Scottish Government, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk FK1 1XR. A copy of the notice of appeal must at the same time be sent to Development Management, East Lothian Council, John Muir House, Brewery Park, Haddington, East Lothian EH41 3HA.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 SECTION 150

Certificate of Lawful Use of Existing Use or Development

The East Lothian Council **hereby certify** that on **11th May 2021** the use/operation/development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured red on the plan attached to this certificate, was lawful within the meaning of Section 150 of the Town and Country Planning (Scotland) Act 1997 for the following reason(s) set out in the attached report.

Signed  (Council's proper officer)

On behalf of East Lothian Council

11th May 2021

Date

First Schedule **Certificate of lawfulness for an existing use - Use as short stay
let accommodation**

Second Schedule **Flat 4 Tusculum
Links Road
North Berwick
East Lothian**

Notes

1. This certificate is issued solely for the purpose of Section 150 of the Town and Country Planning (Scotland) Act 1997
2. It certifies that the use/operation/development described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the specified date and, thus, would not have been liable to enforcement action under section 127 of the 1997 Act on that date.
3. This certificate applies only to the extent of the use/operation/development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation/development which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

Dear Neighbours,

Re: Flat 4, 3 Links Road, North Berwick

I am writing to inform you of a change in the arrangements for communicating with me about guests who are staying at the above property. I hope to be able to improve relations with you when you follow the simple procedure which I am now implementing.

I am aware that I have a duty to ensure that guests staying at the property do not cause any unlawful nuisance and I will continue to observe this duty. The threshold which must be crossed, before behaviour can constitute an unlawful nuisance, is much higher than mere annoyance, irritation, frustration or inconvenience on the part of neighbours. Serious, continual, intolerable and avoidable interference with the use of your property must be demonstrated.

I have received complaints about the sound of footfalls emanating from my flat, the sounds of families coming and going to the flat and sand from the beach falling off children's feet on to the stairs. None of these things can constitute an unlawful nuisance nor can they found any reasonable complaint. The accumulation of these trivial, unreasonable complaints, made directly to me, particularly when combined with gratuitous and malicious slurs on my family, amounts to a course of harassment which I am no longer prepared to tolerate.

In future, any complaints which you may choose to raise about guests who are using the property must be made directly to my letting agent, Torquil McInroy on his email

account: [REDACTED]. Your complaint will be logged, evaluated and addressed by him with my full authority.

A record will be kept of the nature of the complaints and how they are resolved. With this dedicated conduit now available to you, it follows that there can be no reasonable justification for you to continue to communicate with me directly about any such matters in the future and I request that you refrain from so doing.

Similarly, there can be no reasonable justification for you to approach any of my guests directly, in order to remonstrate with them or their children, to berate or to upset them in any manner whatsoever, in such a way as to ensure that they never return to the flat for another holiday, thus indirectly causing me further harassment.

I sincerely hope that this new arrangement will prove to be mutually beneficial, and you may be assured that I will monitor its operation closely.

Dear Jane,

Thank you for your latest email where you attempt to improve your currently poor relationship with the residents of Tusculum and provide the email address for Torquil..

I have consulted with my fellow residents and our initial reaction is one of disappointment as we have seldom read such a piece of patronising and self-righteous nonsense.

From the outset, Flat4 has been used as a holiday let on the basis of deceit. Initially with your mother who dishonestly claimed that the flat was only being used by friends and family and then by yourself by illegally running the business without the necessary Planning Consent.

You subsequently formalised the situation via a Certificate of Lawfulness which contained several aspects which were contentious. Unfortunately, and curiously, there is no appeal process or requirement for corroboration or consultation with neighbours so it seems that you have bypassed the planning process which would have consulted with, and respected, the opinion of neighbours. This demonstrates the typical lack of consideration and respect which you have for the other residents of Tusculum who are unanimous in their opposition to holiday lets in Flat 4.

In the latter part of your missive you suggest that all complaints about the holidaymakers should be directed through Torquil. So, for example, if, as we had, a group of drunken and disorderly golfers, yelling their heads off after midnight, we should drop a email to Torquil asking him to remedy the situation at his earliest convenience.....what nonsense!

You are in no position to dictate when and how the Tusculum residents intervene with the temporary occupants of Flat 4. You can however, rest assured that your "guests" will be treated no differently to any other neighbour in Tusculum without any particular harassment.

Your draconian instructions with phrases such as *"follow the simple procedures"*, *"I am no longer prepared to tolerate"*, *"complaints...must be made directly to my letting agent"*, *"there can be no reasonable justification for you to continue to communicate with me directly...or for you to approach my guests directly"* may well cause a deterioration in your already troubled relationship with the Tusculum residents. You don't seem to appreciate the vast difference between a polite request and an autocratic instruction.

What this amounts to, is that the Tusculum residents are being asked to tolerate all the hassle of holiday lets in Flat 4 whereas you are making every effort to distance yourself from the realities of the situation.

Far from improving relations with Tusculum residents your latest authoritarian email has generated greater antagonism to you and your business. Be assured that will continue to be in contact with you when we think it is appropriate as we are in the best position to assess what constitutes a nuisance to the residents of Tusculum.

Regards

Hugh

Additional notes:

- (1) From Kathy Fairweather: Every year, including this year, the flat is let to scaffolders who are erecting stands for golf competitions. They leave the door on the outside stair open, dump beer cans in whatever wheelie bins they can find, smoke outside my kitchen window and tramp sand and grit up the stairs. We have always been told that the flat is let to holidaymakers and Janes communication only refers to holiday makers. Perhaps we could ask Torquil not to let it to workmen. Jan Wood from the top flat asked who cleans the stairs

and I asked the cleaning lady about that. She cleans the York Road entrance and the Links Road entrance and the inside of the lift. Sweeping down or mopping the stairs would have to be agreed and paid for by the only 2 properties that use the stair.

(2) There are other general complaints about:

Noise, Refuse Disposal. Shouting in the stairwell, inconsiderate Car Parking, misuse of the lift, Litter etc. These are matters which can be resolved with neighbours but with the multi-stage process which you propose, it would all be too late.

From: [REDACTED]
To: [Crichton, Rebecca](#)
Subject: Personal Statement for licensing Sub Committee Tusculum
Date: 11 April 2024 16:49:52

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PERSONAL STATEMENT OF JANE KITCHING

My name is Jane Kitching I have a degree in Microbiology and worked for several years in the NHS before taking an art degree and now a full time artist. I exhibit in several galleries of which three are in Scotland, namely Greens and Blues in North Berwick, The Torrance Gallery, Dundas Street, Edinburgh and MacGregor Fine Art, Glasgow.

My parents were missionaries, my father is a clergyman in the Church of England, one of his livings was a retirement post for several years on the Isle of Bute for the Church of Scotland. My mother was a mathematician and teacher. They bought the family flat in Tusculum North Berwick in 1990 for use for the family, their four children and several grandchildren .

In 2000 I and my husband, also a clergyman, bought into the family flat as we thought we would retire there. Unfortunately my husband who had Cystic Fibrosis died at the age of 56 and it became no longer an option to move up to Scotland. The flat at Tusculum remains a family asset and generates a modest supplementary income. Our ties with Scotland are decades long and my siblings and I still love coming to stay in the flat.

Sent from [Mail](#) for Windows