

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

APPLICATION FOR GRANT / RENEWAL OF SHORT-TERM LET LICENCE

PART 1: ABOUT YOU

1a

Are you applying as an individual or corporate entity?

Individual

Corporate Entity

Fill in if you are applying as an individual:

Your full name Benjamin David Taylor-Robinson

Date of birth [REDACTED]

Place of birth [REDACTED]

Home Address [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):

Addresses (last 5 years)	Postcode	Date from (mm/yy)	Date to (mm/yy)

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 Edinburgh Concierge Co.

Date of birth N/A

Tel. No. [REDACTED] Email address holidayletservices@gmail.com

Addresses (last 5 years)	Postcode	Date from (mm/yy)	Date to (mm/yy)
Edinburgh Concierge Company, SOUTH COACH HOUSE, Dunbar	EH42 1SY	05/12	Present

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):

Full name	Date of birth	Addresses (last 5 years)	Email	Tel. No.
Kirsty Anne Taylor-Robinson				

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).

Full name	Personal address	Place of birth	Date of birth

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):

Full name	Date of birth	Addresses (last 5 years)	Email	Tel. No.
Edinburgh Concierge Co.	N/A	Edinburgh Concierge Company, SOUTH COACH HOUSE, Dunbar EH42 1SY	holidayletservices@gmail.com	

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 8 Maule Terrace, Gullane

Postcode EH31 2DB

Unique Property Reference Number (if known) _____

EPC Rating* c

** (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 0

Bathrooms 1 Kitchens 1

Lounges 1

Other (please specify) N/A

Specify the maximum number of guests 4
(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:

NAME	DATE	COURT	OFFENCE	SENTENCE

PART 5: APPLICATION CHECKLIST

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

I have enclosed the following (please tick to confirm (or enter N/A))	
Correct application fee	See East Lothian Council website – Civic Licence Fees
Annual gas certificate (for premises with a gas supply)	Valid to: 11/01/25
Electrical Installation Condition Report	Valid to: 11/01/29
Portable Appliance Testing Report	Valid to: 08/01/29
Fire Risk Assessment	x
Fire Service Safety Checklist	x
Legionella Risk Assessment	x
Planning permission (for premises within a control area or where requested by the licensing authority)	Planning application reference number: N/A
Floor plan	x
EPC Certificate (for premises which are dwellinghouses)	Valid to: 09/01/34
Public Liability Insurance	Valid to: 04/09/24
Proof of consent from owner (if applicable)	N/A
Evidence of operation as a short-term let on or before 1 October 2022 (for existing hosts applying during transitional period)	N/A

I have: (please tick to confirm (or enter N/A))	
Identified the owners and those involved in the day-to-day management of my premises	X
Ensured that to the best of my knowledge all those named on my application are fit and proper persons	X
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.	X
Applied for planning permission (if required).	N/A
Noted the requirement to display my licence number and EPC rating on listings for my premises	X
Proof that furniture and furnishings/the furniture and furnishings guests have access to, comply with fire safety regulations	X
Read and understood the mandatory conditions that will apply to my licence	X
Read and understood the additional conditions that will apply to my licence	X

My premises (please tick to confirm (or enter N/A))	
Meets current statutory guidance for provision of fire, smoke and heat detection	X
Meets statutory guidance for carbon monoxide alarms	X
Meets the required regulations for private water supplies (for premises with a private water supply i.e not provided by Scottish Water)	X
Meets obligations with regard to the Tolerable and Repairing standard (applicable to dwellinghouses)	X

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

Ben Taylor-Robinson

Date

13/02/2024

From: Short Term Lets <stl@eastlothian.gov.uk>

Sent: Thursday, February 29, 2024 11:09 AM

To: Building Standards <buildingstandards@eastlothian.gov.uk>; Raselli, Gail <graselli@eastlothian.gov.uk>; Environment Reception <environment@eastlothian.gov.uk>; Parking <parking@eastlothian.gov.uk>; Lothian and Borders Police (lothianscotborderslicensingeastmid@scotland.pnn.police.uk) <lothianscotborderslicensingeastmid@scotland.pnn.police.uk>

Subject: Short Term Let EL00404 8 Maule Terrace

Good Morning,

Please provide observations/comments regarding the application for a Short Term Let Licence for the above address. All responses should be returned within the 21 day consultation period.

Thanks

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

From: Millar, Neil
Sent: 06 March 2024 09:03
To: Short Term Lets
Subject: RE: Short Term Let EL00404 8 Maule Terrace

Follow Up Flag: Follow up
Flag Status: Completed

Hi Arlene,

Thank you for your email below with attachment.

Please be advised that planning permission is required if there is a material change of use and, whether a change of use is material or not, is a question of the facts and circumstances of the individual situation. I also note that the applicant seeks a 'home letting' short term let licence which is defined by the Scottish Government as 'letting all or part of your own whilst the owner/occupier is not living there'.

Under the provisions of Town and Country Planning (Use Classes) (Scotland) Order 1997, a flat is a sui generis use (i.e. it doesn't fall within any use class). A change of use from a sui generis use to any other use is a change of use of the property. Accordingly, consideration must be given as to whether that change is material or not. In assessing whether the proposed change of use of this flat (8 Maule Terrace, Gullane) for short term letting purposes is material or not, we must consider a range of factors that distinguish the intensity and scale of the use from what would reasonably be expected from typical residential use of a property of this size and type. These include but are not limited to the character of the property, periods and manner of lettings, frequency of arrivals and departures and the intensity of noise and disturbance.

Where planning permission is required for short term let use of flats we have found that the flats availability on a holiday rental platform, coupled with the frequency of the arrival and departures of guests at all times and the movements associated with the changeovers and the resultant noise impact on the other flats, would lead to a different movement pattern which is incomparable with long-term residential use. In those cases we have found that the use of the flat for short-term accommodation constitutes a material change which requires planning permission.

Based on the limited information available please be advised that we are unable to establish whether or not there is a material change of use relating to this property operating as a short term holiday let. Accordingly, please can you advise the applicant that they will need to submit details of their proposal to environment@eastlothian.gov.uk in the first instance for our further review and consideration. The information we require is set out below:

- How long has the property been marketed/used for short term holiday lets?
- How often is the property used as a holiday let per year?
- What is the maximum occupancy of the property? (i.e. how many visitors can occupy the property in one booking)
- What is the minimum and maximum length of stay and what is the most common length of stay?
- How are stays managed for the check in/check out processes (i.e. are guests met at the property by the applicant, a letting company or is a key safe used etc.?)
- What type of guests does this property appeal to (e.g. singles, couples, families, holiday makers, stag/hen dos, people working in the area, family members etc.?)
- How is recycling/bins managed and is the property cleaned between each changeover before new guests arrive? Is this done by the applicant or by an appointed cleaning company?
- How many flats exist within the building and how many flats are there on each floor?
- Does this flat share a communal entrance and/or stairwell with other flats in the building or does it have its own private entrance and access?

Otherwise, please be advised that I have no records of planning permission having been sought nor granted for a change of use of this property for use as a short term holiday let. Neither does it benefit from a Certificate of Lawfulness.

Regards

Neil

On Wed, Mar 6, 2024 at 5:08 PM Short Term Lets <stl@eastlothian.gov.uk> wrote:

Good Morning,

We sent out your application for consultation for the above address, the Planning Team have come back to us with the information below.

You should now contact the Planning Technicians on the email address provided below to discuss your proposal. **PLEASE DO NOT CONTACT LICENSING.**

The application for your Short Term Let Licence will now be placed on hold for up to 3 months with the Licensing Team to allow you time to address this matter.

Thanks

Licensing Team

East Lothian Council

From: Ben Taylor-Robinson [REDACTED]
Sent: Monday, March 11, 2024 6:14 AM
To: Short Term Lets <stl@eastlothian.gov.uk>; Millar, Neil <nmillar@eastlothian.gov.uk>
Subject: Re: FW: Short Term Let EL00404 8 Maule Terrace

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Dear Neil and Team,

Many thanks for your below queries in relation to the STL license application for the above address. Please allow me to give you some background on the property, and then answer your questions below.

The property was purchased in September 2023 by me and my wife. We have been living in Singapore for more than a decade, and have young children. The intended use for the property is that it is our base in the UK for when we visit family and friends with our children throughout the year.

We commissioned an extensive and high-specification renovation, which was completed in December 2023. We used local trades and service providers for this. We stayed in the property in December 2023 and it has since been sitting empty, save for the occasional visit by a local management company to check on security and perform routine maintenance.

In order that the property pays for its annual running costs, we have proposed to selectively let out the property on a limited basis to golfers and couples while we are not in residence, which would be managed and administered by our appointed management company. This is by no means a commercially driven endeavour, as the renovation specification and furnishing is to a high standard, intended to be our personal home in Scotland for when we visit. We do not want excessive wear and tear to the newly purchased fixtures and fittings.

Given the "use" of the property would consist of even fewer movements, changeovers, arrivals and departures than a full-time resident, it cannot be held that there is a material change of use over and above that of a long-term residential use.

With regards to your specific questions below, please find our responses as follows:

- How long has the property been marketed/used for short term holiday lets?
- Currently the property is not marketed as it was purchased in September 2023, and underwent improvement works until December 2023. Only now is the owner applying for a holiday let application.
- How often is the property used as a holiday let per year?
- We anticipate the property is available for use as a holiday let for no more than 245 days. The owners live abroad and the property is reserved for their exclusive use during the months of Jan - March, July and November each year. The property may occasionally be made available for last minute bookings should the owners be unable to visit during their "exclusive use" months.
- What is the maximum occupancy of the property? (i.e. how many visitors can occupy the property in one booking)
- 4 people.
- What is the minimum and maximum length of stay and what is the most common length of stay?
- We anticipate a minimum 3 nights, maximum 14 nights. The owner does not want the refurbished property to be subject to heavy 'wear and tear' as the finish and furnishing are of extremely high quality and for their own enjoyment. Therefore there will be no high turnover of guests at the property. We anticipate 3-5 night bookings will be common, perhaps two or three times a month during the "open" months.
- How are stays managed for the check in/check out processes (i.e. are guests met at the property by the applicant, a letting company or is a key safe used etc.?)

- A professional East Lothian management company ("M.Co") has been appointed in anticipation of the application approval, as well as for regular security and maintenance while the property is unoccupied. The M.Co will be the only source of contact for guests. The owners are not involved in the day to day management of the property or of guests. As this is a premium offering, the M.Co will do face to face check-ins for each guest, and be high touch throughout the stay should the guest need anything, or if there are any issues to be addressed.
 - What type of guests does this property appeal to (e.g. singles, couples, families, holiday makers, stag/hen dos, people working in the area, family members etc.?)
 - The property is primarily the UK-based residence of a family with two young children who live abroad, and will use the property during certain times of the year to visit the UK (where they are originally from). Outside of this, the property will be lightly rented to holiday guests of a high caliber at a premium rate. We anticipate that golfers will be the main type of guest given the property is a short walk to Gullane Golf Club and also Muirfield Golf club. We also anticipate couples who would like to stay in East Lothian for a long-weekend or staycation may wish to stay at the property, as the location is extremely central and the finishing of a high standard. The property is not suitable for a large family or stag/hens parties. In fact, parties will be strictly prohibited to prevent damage to the family's furnishings, and also avoid any disruption to neighbours. The property will also be made available to the owner's family members throughout the year on a non-paid basis. Lastly, we also anticipate a requirement for short term accommodation to house workers from local projects (such as the wind farms) and healthcare workers.
 - How is recycling/bins managed and is the property cleaned between each changeover before new guests arrive? Is this done by the applicant or by an appointed cleaning company?
 - A professional cleaning company will manage the cleaning between the hours of 9am and 1pm, all cleaning products, equipment etc are located at the property, such that bulky items are not required to be delivered each time there is a clean. Cleaning will be done at the end of each guest's stay, unless the guest is staying longer than 5 days, in which case a separate cleaning schedule will be agreed at the time of booking. Recycling and waste disposal is managed by the cleaning company. The renovated kitchen was designed with separate bins for managing the recycling requirements in East Lothian.
 - How many flats exist within the building and how many flats are there on each floor?
- The property is situated within a stand-alone building in a terrace row, which has one apartment on the ground floor and one on the first floor. The ground floor has access via the front of the terrace row, and the property in question (on the first floor) has access via the rear of the terrace row, by way of a privately owned external staircase that leads only to the property's main entrance.
- Does this flat share a communal entrance and/or stairwell with other flats in the building or does it have its own private entrance and access?
 - As above, the entrance is private and not communal. This is not a traditional "flatted" building, rather a converted terrace house with two separate outside entrances that do not coincide.
- Do let me know if you have any further questions, and we would welcome someone from your team to visit the property itself.

Many thanks

Ben Taylor-Robinson

From:
Sent:
To:
Subject:

Millar, Neil
11 March 2024 14:59
Ben Taylor-Robinson [REDACTED]
RE: FW: Short Term [REDACTED] Maule Terrace

Dear Ben

Thank you for your email below.

I can confirm that, based on the information you have provided, planning permission will be required for the change of use of this flat to a short term holiday let. Please note that I cannot advise, at this time, whether or not planning permission will be granted for a proposal of this nature as each case is determined on its own merits.

In the meantime please be advised that the relevant planning application forms can be downloaded and submitted online by clicking [here](#).

Regards

Neil

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Dear Neil,

Many thanks for the below note.

Could you please advise on the technical aspects as to why you believe planning is required, such that we can address this in our application.

We have already established that there is no material change of use over and above a regular residential use, and there is no existing legislation in Scotland that requires planning permission in order to use a property less frequently than a standard residential use.

Best regards

Ben

Lindsay, Arlene (Licensing)

From: Millar, Neil
Sent: 12 March 2024 08:49
To: Ben Taylor-Robinson; Short Term Lets
Subject: RE: Short Term Let EL00404 8 Maule Terrace

Dear Ben,

Please be advised that planning permission is required if there is a material change of use and, whether a change of use is material or not, is a question of the facts and circumstances of the individual situation.

Under the provisions of Town and Country Planning (Use Classes) (Scotland) Order 1997, a flat is a sui generis use (i.e. it doesn't fall within any use class). A change of use from a sui generis use to any other use is a change of use of the property. Accordingly, consideration must be given as to whether that change is material or not. In assessing whether the proposed change of use of this flat (8 Maule Terrace, Gullane) for short term letting purposes is material or not, we must consider a range of factors that distinguish the intensity and scale of the use from what would reasonably be expected from typical residential use of a property of this size and type. These include but are not limited to the character of the property, periods and manner of lettings, frequency of arrivals and departures and the intensity of noise and disturbance.

Where planning permission is required for short term let use of flats we have found that the flats availability on a holiday rental platform, coupled with the frequency of the arrival and departures of guests at all times and the movements associated with the changeovers and the resultant noise impact on the other flats, would lead to a different movement pattern which is incomparable with long-term residential use. In those cases we have found that the use of the flat for short-term accommodation constitutes a material change which requires planning permission.

In your specific case, and based on the further information outlined in your email of 11th March, it has now been established that the use of your flat for short term holiday let accommodation constitutes a material change **which** requires planning permission.

Regards

Neil

From: Ben Taylor-Robinson [REDACTED]
Sent: Tuesday, March 12, 2024 12:41 AM
To: Millar, Neil <nmillar@eastlothian.gov.uk>; Short Term Lets <stl@eastlothian.gov.uk>
Subject: Re: Short Term Let EL00404 8 Maule Terrace

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Dear Neil,

Many thanks for the below note.

Could you please advise on the technical aspects as to why you believe planning is required, such that we can address this in our application.

We have already established that there is no material change of use over and above a regular residential use, and there is no existing legislation in Scotland that requires planning permission in order to use a property less frequently than a standard residential use.

Best regards
Ben

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Lindsay, Arlene (Licensing)

From: Millar, Neil
Sent: 12 March 2024 13:54
To: Ben Taylor-Robinson
Cc: Short Term Lets; Taylor, Emma; Dingwall, Keith
Subject: RE: Short Term Let EL00404 8 Maule Terrace

Dear Ben,

The approach taken by East Lothian Council as Planning Authority in determining whether the use of a property as a short term let is a material change of use echoes the approach taken by DPEA Reporter's and by judges in court cases in that each case is assessed individually and, on a fact, and degree basis.

At this time, I can only reiterate that the factors taken into consideration in determining the materiality of a change of use to form short term holiday let accommodation can include, but is not limited to, the availability of the property as a holiday let, coupled with the frequency of arrivals/departures and duration of stays, movements associated with changeovers, guest use of communal areas and the resultant noise or other impact(s) on residential amenity. Where factors are evidently not aligned to characteristics of a particular type of residential use, a material change of use would be considered to have occurred.

I note that you state that the property is currently regularly cleaned. However, you have not provided any indication as to how often this 'regular' cleaning takes place or how this would align with the use of the property for short term lets where the flat may need to be cleaned every 3 days or after each guest stay. I also disagree that it is for me to provide you with 'evidence or technical analysis' as I can only base my views on the information that you have given and, as you have already been advised, my view is that planning permission is required for the change of use of this flat to short term holiday let accommodation.

Please note that I have copied in my line manager (Emma Taylor) and the Council's Planning Service **Manager (Keith Dingwall)** into this email for their information.

Regards

Neil

From: Ben Taylor-Robinson <[REDACTED]>
Sent: Tuesday, March 12, 2024 1:13 PM
To: Millar, Neil <nmillar@eastlothian.gov.uk>
Cc: Short Term Lets <stl@eastlothian.gov.uk>
Subject: Re: Short Term Let EL00404 8 Maule Terrace

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Dear Neil,

Thank you for your response. I appreciate your perspective, but I would like to clarify some points regarding the assessment of whether a material change of use has occurred. If helpful, I suggest we escalate this to your superior, as you have not understood or replied to the points raised in my below email.

Firstly, while it is acknowledged that a change from a sui generis use to any other use constitutes a change of use, the critical question remains whether this change is material. Materiality, as you've mentioned, is determined by the

facts and circumstances of the individual situation.

You have outlined certain factors for consideration, including intensity and scale, character of the property, frequency of arrivals and departures, and intensity of noise. These factors are indeed relevant, but it is essential to evaluate them in comparison to a benchmark or standard of what constitutes long-term residential use. You have not done this, and therefore could not possibly make any assessment on the matter.

To ensure a fair assessment, you must have established a benchmark for what constitutes long-term residential use in the context of movement patterns and other relevant factors. I imagine this benchmark is based on data from properties in similar locations or industry standards for residential occupancy. You would need to share this benchmark and also the result of your analysis of our property against it. Without your benchmark and supporting analysis, you cannot make such an assertion that the proposed use falls above the parameters of what is considered typical for long-term residential use.

One aspect that supports the argument that the proposed use does not constitute a material change is the regular cleaning of the property. The property is currently regularly cleaned even in its current long-term residential use (invoices can be provided). This demonstrates that the proposed short-term holiday let use does not introduce a new or significantly different maintenance or cleaning regime compared to what is already practiced for long-term residential occupancy.

Leading on from this, a recent Court of Appeal decision noted that it would be a matter of "fact and degree" in each situation - you would need to outline your technical analysis and the degree to which it deviates from a long-term residential occupancy to me, which you have not done.

In the absence of any evidence or technical analysis by your planning office that points to this, we have no choice but to proceed on the basis that planning is indeed not required.

Best regards,

Ben

On Tue, Mar 12, 2024 at 8:40 PM Millar, Neil <nmillar@eastlothian.gov.uk> wrote:

Hi Ben,

The fact that a change of use from a sui generis use to any other use (i.e. from a flat to a short term holiday let) is a change of use of the property and, as the property would be managed by an appointed letting company, advertised online for guest stays between 3-14 nights for a period of up to 245 days of the year and the likelihood that the property will also require to be serviced/cleaned by others, this all leads to a different movement pattern which is incomparable with long-term residential use and which constitutes a material change of use that requires planning permission for it. I therefore disagree with your view that a short term let use of the flat would result in fewer movements, changeovers, arrivals and departures than a full-time resident.

As per the advice given in my previous emails, I am of the view that planning permission is required for the change of use of your flat to short term holiday let accommodation based on the information you have provided.

Regards

Neil

From: Ben Taylor-Robinson [REDACTED]
Sent: Tuesday, March 12, 2024 11:48 AM
To: Millar, Neil <nmillar@eastlothian.gov.uk>
Cc: Short Term Lets <stl@eastlothian.gov.uk>
Subject: Re: Short Term Let EL00404 8 Maule Terrace

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Dear Neil,

Many thanks for your quick response.

The content of your email repeats what has already been discussed, however erroneously states that it has been established that there is a "material" change of use.

We have in fact established the opposite, that any change of use is "not material" in the context of comparing the property to use as a long-term residential (your own standard of comparison). You state that often "movement patterns are incomparable with long-term residential use", and indeed this is the case. The movement patterns would (and indeed are presently) much less frequent, much less noise, much less impact and of a much reduced scale.

To give me the benefit, could you please outline the technicality by which you make your assessment. I am sure you have a benchmark "use frequency" that defines a long-term residential use, or similar determination, by which you can compare all proposals.

You have highlighted some below, such as;

- Intensity and scale.
- Character of property.
- Frequency of arrivals and departures.
- Intensity of noise.
- Among others I am sure.

We can then clearly demonstrate that the proposal falls well beneath the "benchmark" that you use for long-term residential and therefore that there is no "material" change in use.

If you are not able to provide such an analysis, we must therefore conclude that no analysis on "materiality" is possible by the planning department, and therefore that no determination as to whether planning is required can be made.

I look forward to hearing from you.

Best regards

Ben

On Tue, Mar 12, 2024 at 4:49 PM Millar, Neil <nmillar@eastlothian.gov.uk> wrote:

Dear Ben,

Please be advised that planning permission is required if there is a material change of use and, whether a change of use is material or not, is a question of the facts and circumstances of the individual situation.

Under the provisions of Town and Country Planning (Use Classes) (Scotland) Order 1997, a flat is a sui generis use (i.e. it doesn't fall within any use class). A change of use from a sui generis use to any other use is a change of use of the property. Accordingly, consideration must be given as to whether that change is material or not. In assessing whether the proposed change of use of this flat (8 Maule Terrace, Gullane) for short term letting purposes is material or not, we must consider a range of factors that distinguish the intensity and scale of the use from what would reasonably be expected from typical residential use of a property of this size and type. These include but are not limited to the character of the property, periods and manner of lettings, frequency of arrivals and departures and the intensity of noise and disturbance.

Where planning permission is required for short term let use of flats we have found that the flats availability on a holiday rental platform, coupled with the frequency of the arrival and departures of guests at all times and the movements associated with the changeovers and the resultant noise impact on the other flats, would lead to a different movement pattern which is incomparable with long-term residential use. In those cases we have found that the use of the flat for short-term accommodation constitutes a material change which requires planning permission.

In your specific case, and based on the further information outlined in your email of 11th March, it has now been established that the use of your flat for short term holiday let accommodation constitutes a material change which requires planning permission.

Regards

Neil

Lindsay, Arlene (Licensing)

From: Millar, Neil
Sent: 13 March 2024 15:43
To: Ben Taylor-Robinson
Cc: Short Term Lets, Taylor, Emma; Dingwall, Kelth
Subject: RE: Short Term Let EL00404 8 Maule Terrace

Dear Ben,

I have nothing further to add to my previous emails which confirms that, based on the information you have provided, planning permission is required for the change of use of this flat to short term holiday let accommodation. If you are to proceed to commence short term lets from this flat, without planning permission having been sought and granted for that use, then our enforcement officer will investigate this matter as and when the change of use occurs.

Should either Keith or Emma wish to add anything further then I assume they will be in contact with you in due course.

Regards

Neil

From: Ben Taylor-Robinson <[REDACTED]>
Sent: Wednesday, March 13, 2024 1:29 AM
To: Millar, Neil <nmitlar@eastlothian.gov.uk>
Cc: Short Term Lets <stl@eastlothian.gov.uk>; Taylor, Emma <etaylor1@eastlothian.gov.uk>; Dingwall, Keith <kdingwall@eastlothian.gov.uk>
Subject: Re: Short Term Let EL00404 8 Maule Terrace

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

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Dear Neil, Emma and Keith,

Firstly, I want to clarify that my inquiry does not challenge the established approach in determining material change of use. Rather, it highlights deficiencies in the analysis of specific facts pertinent to this case, which have led to an erroneous conclusion. You do not need to repeat your list of "factors" in further emails.

Repeated requests have been made for a demonstration of how the factors outlined by the Council have been analysed with respect to a long-term residential use, and how "fact and degree" have been applied to this specific situation. However, these requests have been consistently avoided.

It is imperative to establish what constitutes a "long-term residential use" within the context of determining the necessity for planning permission. Without this definition, it is impossible to assert confidently whether a material change has indeed occurred. Does such a definition exist? And if so, why has it not been provided despite several requests?

In your email below, you admit now that certain factors, such as cleaning frequency, were not considered in your analysis due to "insufficient information" provided by me to the Council. Information on cleaning frequency was indeed never actually requested by the Council. This casts doubt on the thoroughness of the analysis conducted by

the Council. We can only assume the other other factors are of similar insufficient standing and as a result, you cannot determine with any confidence whether planning permission would be required in this case.

On this point, you erroneously state that there would be cleaning every 3 days. If this is your understanding, then I urge you to re-read my email to you dated 11th March, which clearly states we anticipate two or three bookings per month during times when my family and I are not in residence. Therefore during the seven months of available rental, assuming the worst-case of 3 bookings per month, the property would undergo a maximum of 21 cleans per year under the Short Term Let. During my own stay, being up to the balance 5 months per year, cleaning would be done weekly, leading to 20 cleans per year under long-term residential use. We clearly see no material change to the intensity of cleaning.

In support of my position, I reference the case of Tesco Stores Ltd v Dundee City Council (1992] 2 AC 773, where the House of Lords emphasized the necessity for a noticeable difference in the character or intensity of property use to constitute a material change. Applying the principles established in this case, it is evident that any change in this instance is not material.

Despite my efforts to provide clarity and cooperation, the Council's failure to conduct a thorough analysis leaves it unable to establish with any certainty whether planning permission is required in this case. In the absence of such analysis, we will proceed on the basis that planning permission is not required.

I reiterate my willingness to provide further information and facilitate discussions to reach a resolution that aligns with regulatory requirements and respects all parties' interests.

Many thanks
Ben

On Wed, Mar 13, 2024 at 11:43 PM Millar, Neil <nmillar@eastlothian.gov.uk> wrote:

Dear Ben,

I have nothing further to add to my previous emails which confirms that, based on the information you have provided, planning permission is required for the change of use of this flat to short term holiday let accommodation. If you are to proceed to commence short term lets from this flat, without planning permission having been sought and granted for that use, then our enforcement officer will investigate this matter as and when the change of use occurs.

Should either Keith or Emma wish to add anything further then I assume they will be in contact with you in due course.

Regards

Neil

Lindsay, Arlene (Licensing)

From: Ben Taylor-Robinson <[REDACTED]>
Sent: 02 April 2024 06:41
To: Millar, Neil
Cc: Short Term Lets; Taylor, Emma, Dingwall, Keith
Subject: Re: Short Term Let EL00404 8 Maule Terrace

Follow Up Flag: Follow up
Flag Status: Flagged

Some people who received this message don't often get email from [REDACTED]. [Learn why this is important](#)

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Dear Licensing team,

In the absence of any further information from the planning team in the last 18 days, please continue with the processing of the license application for the above address.

Should anything change, I am sure Keith or Emma would let us know.

Many thanks
Ben

On Thu, Mar 14, 2024 at 9:50 AM Ben Taylor-Robinson <[REDACTED]> wrote:
Dear Neil,

I agree, we should move this into the hands of your more experienced colleagues Emma and Keith.

We have already established that you are not in a position to make the below assertions, and repeating your view over again does not make it any more true or valid.

As you know, administrative decisions, particularly those with potential legal ramifications, must be reasoned and based on relevant considerations. The courts have repeatedly emphasized the importance of transparency and thoroughness in decision-making processes, as outlined in cases such as *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 and *R v Brent LBC ex parte Gunning* (1985) 84 LGR 168.

The Council's repeated assertion without providing substantive evidence or analysis raises questions about the robustness and fairness of the decision-making process, and certainly falls short of the court's requirement on transparency and thoroughness.

In light of the above, as suggested by you, we will leave the follow up in the hands of Emma and Keith, and reiterate my request that you provide a detailed explanation supported by evidence demonstrating how the factors you've outlined lead to the conclusion that planning permission is required in this case. Additionally, I seek clarification on the definition of "long-term residential use" and its application to the assessment of material change of use, as previously requested.

Lastly, I note with concern the mention of potential enforcement action in your previous email. It is important to highlight that threatening enforcement action without due consideration and evidence of a breach may constitute an abuse of power, as seen in cases such as *R v Bow County Court ex parte Pelling* [1991] 1 All ER 198.

I appreciate this is a last minute attempt by the Council to prevent me from moving forward, but as noted above, it is not acceptable (and indeed, not legal) for the Council to throw around these sorts of threats in order to try to alleviate its fiduciary and legal requirement to respond to the issue at hand.

In the absence of providing the legally mandated responses, we will proceed on the basis that planning permission is not required.

I reiterate my willingness to provide further information and facilitate discussions to reach a resolution that aligns with regulatory requirements and respects all parties' interests.

Many thanks
Ben

Lindsay, Arlene (Licensing)

From: Taylor, Emma
Sent: 02 April 2024 14:33
To: [REDACTED]
Cc: Short Term Lets
Subject: RE: Short Term Let EL00404 8 Maule Terrace
Attachments: planning-circular-1-2023-short-term-lets-planning.pdf; ENA-260-2153 Decision Notice - dated 22 August 2023.pdf (STL Materiality).pdf; ENA-230-2259 Decision Notice - dated 25 August 2023.pdf(STL Materiality).pdf; ENA-230-2247 Decision notice - dated 19 July 2023.pdfENF STL.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ben Taylor-Robbins,

Further to the emails sent by Neil Millar I can inform that Sections 26B of the Town and Country Planning (Scotland) Act 1997 states that:

(3) For the purposes of this section, the following tenancies do not constitute a short-term let-

(a) a private residential tenancy under section 1 of the Private Housing (Tenancies) (Scotland) Act 2016,

(b) a tenancy of a dwellinghouse (or part of it) where all or part of the dwellinghouse is the only or principal home of the landlord or occupier.

This matter has understandably been challenged and therefore I have attached the decision notices for a number of Enforcement Notice Appeals that have been made to the Scottish Governments Department of Planning and Environmental Appeals on this. I have also attached the Planning Circular-1-2023 on Short Term Lets and Planning. You will see that if you believe that you do not require planning permission for the operation of a unit of short term letting from your property as there has been no change of use then you have the option of submitting an application for a Certificate of Lawful Use to the Council and put forward your reasoning why no material change of use has taken place at 8 Maule Terrace. However, we have refused to issue a number of Certificate of Lawful Use applications there has not been sufficient evidence to demonstrate that there has not been a change in use of a flat to a unit of short term letting accommodation, therefore any application you make is made at your own risk.

Kind regards

Emma Taylor | Manager- Planning Delivery | East Lothian Council | John Muir House | Haddington EH41 3HA
T. 01620 827258 | F. 01620 827723 | E. etay1or1@eastlothian.gov.uk Visit our website
at www.eastlothian.gov.uk

From: Short Term Lets <stl@eastlothian.gov.uk>
Sent: Selasa, Mei 28, 2024 7:22 PM
To: [REDACTED]
Subject: Short Term Let, 8 Maule Terrace, North Berwick EH31 2DB

Good Afternoon Ben, I hope you are well.

Can you please confirm with regards to your Short Term Let property that this is your second home and that your home/main address is in Singapore as per the application form?

Please see the definitions of Home Letting and Secondary Letting:

- "home letting" means using all or part of your own home for short-term lets whilst you are absent, for example whilst you are on holiday.
- "secondary letting" means the letting of property where you do not normally live, for example a second home

If your home main address is Singapore, then your licence will be for Secondary Letting and not Home Letting as specified in the application.

King Regards

Arlene

Licensing Officer

East Lothian Council

From: Ben Taylor-Robinson [REDACTED]
Sent: Tuesday, May 28, 2024 12:38 PM
To: Short Term Lets <stl@eastlothian.gov.uk>; [REDACTED]
Subject: Re: Short Term Let, 8 Maule Terrace, North Berwick EH31 2DB

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Hi Arlene,

I am well thanks, I hope you are too.

Could I check the nature of this enquiry? We have been round the houses (so to speak!) many times with both licensing and planning from ELC and have been granted a home sharing license already based on those discussions.

Are you looking to re-open this discussion?

I look forward to hearing from you.

Best regards

Ben

From: Short Term Lets <stl@eastlothian.gov.uk>

Sent: Rabu, Mei 29, 2024 4:18 PM

To: Ben Taylor-Robinson [REDACTED]

Subject: RE: Short Term Let, 8 Maule Terrace, North Berwick EH31 2DB

Good Morning, thanks for your quick reply.

This has come about after a review of licence applications has highlighted that a different home address has been provided to the rental property address, and this doesn't correspond with a Home Letting application.

I am looking to update the licence to the correct type but need confirmation from yourself that this is correct please.

Thanks

Arlene

Licensing Team

East Lothian Council

From: Ben Taylor-Robinson [REDACTED]

Sent: Wednesday, May 29, 2024 9:59 AM

To: Short Term Lets <stl@eastlothian.gov.uk>

Subject: Re: Short Term Let, 8 Maule Terrace, North Berwick EH31 2DB

Hi Arlene,

The different address is for convenience such that guests that stay while we are away do not have access to personal letters. We have done this with most suppliers (British Gas etc) as well.

If it makes your review simpler, then please update our address to 8 Maule Terrace. Where we choose to receive letters should not have any impact?

Just to reiterate, we have already been through the licensing process involving ELC Licensing Dept and Planning Dept, including the support of Planning's Legal Dept to arrive at the approval of the Home Letting license.

I am still quite confused as to why any "update" is needed as it has already been determined to be the "correct type" through the above discussions and process with ELC.

Any questions please do call me - it may be much easier to discuss on the phone quickly.

Many thanks

Ben

On Wed, May 29, 2024 at 9:21 PM Fitzpatrick, Sheila <sfitzpatrick1@eastlothian.gov.uk> wrote:

Good afternoon Mr Taylor-Robinson,

Thank you for your email. Your application form was completed by declaring that your home address is [REDACTED]. For licensing purposes, you are required to provide your home address history for the last five years. You have stated that you have lived in Singapore since August 2019.

In terms of the type of short-term let licence you have applied for, you have stated Home Letting. In accordance with the Scottish Government guidance, Home Letting is defined as 'using all or part of your own home for short-term lets whilst you are absent, for example whilst you are on holiday'. As you have stated that your home address is in Singapore, Home Letting is not an appropriate option in relation to the type of short-term let you are operating. In addition, you have declared (in your correspondence with the Planning Authority) that you 'anticipate the property is available for use as a holiday let for no more than 245 days' and 'owners live abroad'.

With reference to your dialogue with East Lothian Council's Planning Authority, I have reviewed this and can confirm their position that planning permission is required to be applied for, as it is their opinion (at this stage) that there is a material change of use of the above address. At no point has the Planning Authority supported your licence application.

I would like to take this opportunity to apologise for the administrative error by the Licensing Authority, for not identifying the licence type prior to the licence being issued however, I am satisfied that the type of licence which should have been applied for and issued, is for Secondary Letting. Your licence will now be amended and a copy of this will be issued to Edinburgh Concierge Company.

I trust this clarifies our position and answers your queries below.

Regards,

Sheila Fitzpatrick

Team Leader – Licensing and Landlord Registration

East Lothian Council

Democratic & Licensing Services

John Muir House

HADDINGTON, EH41 3HA

01620 820623

From: Ben Taylor-Robinson [REDACTED]
Sent: Thursday, May 30, 2024 3:24 AM
To: Fitzpatrick, Sheila <sfitzpatrick1@eastlothian.gov.uk>
Cc: Short Term Lets <stl@eastlothian.gov.uk>
Subject: Re: FW: Short Term Let, 8 Maule Terrace, North Berwick EH31 2DB

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Dear Sheila,

I think there is a misunderstanding between all the ELC departments here. Could you please let me know the best number to contact you on and I will give you a call this morning. You state "Home Letting is not an appropriate option in relation to the type of short-term let you are operating" but you have not fundamentally understood the use and operation of the property.

The last email to ELC Planning on 15th April was a proposal to rent out the property for only one month per year. I do not believe you have reviewed the discussions in its entirety. The 245 days was an initial discussion to allow us the option to rent out for longer periods, should my work take me abroad for longer. Subsequent discussions make this reference out of date and not relevant.

8 Maule Terrace is the only property me and my wife own or rent worldwide. It is my sole and permanent home, and I have only one citizenship, being that of the U.K. When I am not travelling for work, I reside at this address. The stamp duty paid on its purchase confirms this, and it is not compatible to claim it is a second home for a license and also that it is a principal home for stamp duty.

I understand this comes from the desire of ELC Council Tax Dept to charge an increased rate for a second home, and we would fully reject such a designation as it does not fit with any of the facts presented to ELC over the last several months.

Many thanks

Ben

On Thu, May 30, 2024 at 5:20 PM Fitzpatrick, Sheila <sfitzpatrick1@eastlothian.gov.uk> wrote:

Good morning,

Thank you for your email. I refer to your licence application where you have declared that your home address has been Singapore since 2019. Based on that information alone, your application should have been for Secondary Letting. Home Letting or Home Sharing would only be an appropriate option if your main home/residence was the same address as the rental property. An updated licence was issued to your property management agent yesterday (29 May 2024).

If you disagree with this decision, you may have the right to appeal. This would be to the Sheriff. Such an appeal would be required to be by way of a summary application lodged with the Sheriff Clerk within 28 days of 29 May 2024, the date of the decision. The Sheriff may uphold an appeal if he considers that the Council, in arriving at their decision:

- a. Erred in law;
- b. Based their decision on any incorrect material fact;
- c. Acted contrary to natural justice; or
- d. Exercised their discretion in an unreasonable manner

Regards,

Sheila Fitzpatrick

Team Leader – Licensing and Landlord Registration

East Lothian Council

Democratic & Licensing Services

John Muir House

HADDINGTON, EH41 3HA

01620 820623

Dear Sheila,

Thank you for your time on the phone yesterday.

You noted that you were "not sure" if any ELC phone lines are recorded, and it is "a matter for IT". Please confirm with your IT Department whether our call was indeed recorded, and provide the necessary steps for me to obtain a copy of that recording.

During our discussion, you stated that changes to a license are not permitted without an appeal to the Sheriff, as per your own guidelines. Therefore, if you believe there is an error in the originally granted license for Home Letting, you must make your own appeal to the Sheriff and we will address it directly with them. It is unacceptable and unlawful that you refused to comply with your own

guidelines during our call, and provided no valid reason other than "I'm not going to do that".

Furthermore, and for the purposes of record in case there is indeed no recording of our call available, I find your repeated assertion "I am not going to continue the conversation," unprofessional and completely out of line. Your role is to engage in discussions on matters of licensing, not to shut them down when they challenge your position with relevant facts. Hanging up the call because you did not want to address any points that may contradict your position is astonishing and unacceptable.

Your attitude and approach have clearly prejudiced your ability to analyse the facts objectively. Your inability to counter any factual points I raised with evidence, and instead making statements like "I don't believe you" show a complete lack of competence on your part. In a stunning admission, you confirmed on our call that you had not read or reviewed any of the recent correspondence between myself and both ELC Planning and ELC Licensing, which formed the basis of the original license approval. You are required by the UK Supreme Court to act in accordance with your own published policies, as well as consider all relevant information. Failure to do so is unlawful - See "*R (on the application of Lumba) v Secretary of State for the Home Department [2011] UKSC 12*", and "*Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147*".

The lack of transparency at ELC Licensing and changing decisions without proper due process raises serious concerns. I look forward to receiving a recording of our call, should I decide to take the matter further.

Best regards
Ben

Good morning Mr Taylor-Robinson,

I refer to your email of 31 May 2024.

- Recorded telephone calls – I can advise that I have been informed that calls are not recorded.
- Based on the information provided by you in your application, it is not currently clear whether the appropriate form of letting should be Home Letting or Secondary Letting. It is therefore proposed that this case will be brought before the Licensing Sub-committee to consider the appropriate response to this uncertainty. You shall be afforded the opportunity to appear before, or provide representation to the Sub-committee in respect of your position before any decision is taken.
- Appeals to the Sheriff. As per my email of 30 May 2024, if you disagree with a decision of the local authority, you may have the right to appeal. I did not state that changes to a licence are not permitted without an appeal to the Sheriff.
- During the telephone call of 30 May 2024, I advised that I was not aware of your email to the Planning Authority, dated 15 April 2024. As per my email of 29 May 2024, I advised that I had reviewed your dialogue with East Lothian Council's Planning Authority (dated between 6 March 2024 and 2 April 2024). I am also fully aware of your licence application and all communications with the Licensing Officer dealing with this.

Regards,

