

SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT ABERDEEN

[2026] SC ABE 18

ABE-B775-24

JUDGMENT OF SHERIFF ANDREW MILLER

in the cause

KIRK HARRISON

Pursuer

against

ABERDEEN CITY COUNCIL

Defender

Pursuer: Mr Kerr, Lay representative

Defender: Mr Noor, Solicitor

Aberdeen 18 December 2025

Findings in Fact

The sheriff, having resumed consideration of the cause, Finds the following facts admitted or proved:

1. The pursuer is the owner of a mid-terraced house ("the property") in a residential street in Aberdeen.
2. On 26 September 2023 the pursuer submitted an application to the defender for a short-term let licence in relation to the property in terms of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022.
3. One objection to the application was received, from the resident of a neighbouring property.

4. As a result of the objection, the pursuer's application was considered at a meeting of the defender's licensing committee on 27 August 2024.

5. During that meeting the pursuer was represented by Mr Kerr, an employee of the letting agents appointed by the pursuer in relation to the property. The licensing committee heard directly from the objector, who joined the meeting by video link.

6. During the meeting Mr Kerr commented on the matters raised by the objector and made representations in support of the pursuer's application.

7. At the conclusion of the meeting, the licensing committee by majority refused the pursuer's application.

8. On 29 August 2024 the licensing committee issued a written statement of its reasons for refusing the application.

9. Paragraph 33 of the statement of reasons stated that the licensing committee had refused the application on the grounds of "the possibility of undue public nuisance."

Findings in Fact and Law

1. This court has jurisdiction.

2. In refusing the pursuer's application, the licensing committee did not err in law.

3. In refusing the pursuer's application, the licensing committee did not base its decision on any incorrect material fact.

4. In refusing the pursuer's application, the licensing committee did not act contrary to natural justice.

5. In refusing the pursuer's application, the licensing committee did not exercise its discretion in an unreasonable manner.

Findings in Law

1. The pursuer's first crave should be refused.

INTERLOCUTOR

The sheriff, having resumed consideration of the cause, Repels the pursuer's plea in law; Repels the defender's first and second pleas in law for want of insistence; Sustains the defender's third and fourth pleas in law; Refuses the pursuer's first crave; and assigns 21 January 2026 at 10am within Aberdeen Sheriff Court, Civil Justice Centre, Queen Street, Aberdeen as a hearing on expenses, to proceed by Webex.

NOTE:

Procedural History

[1] This summary application, by which the pursuer sought to appeal against a decision by the defender's licensing committee to refuse his application for a short-term let licence, called before me on 2 December 2025 for legal submissions on the merits of the appeal. The pursuer was represented by Mr Kerr, a member of staff of the letting agents appointed by the pursuer to oversee the letting of the property to which the application related. Mr Kerr had also represented the pursuer at the meeting of the licensing committee, at which the pursuer's application was refused. Mr Kerr was appointed as the pursuer's lay representative in relation to these proceedings in terms of rule 1A.2 of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999 on 3 June 2025. The defender was represented by Mr Noor, solicitor.

[2] Both the pursuer and the defender lodged written submissions in advance of the hearing before me, which were adopted and supplemented by further submissions at the bar. At the end of the hearing I made avizandum.

Relevant legislation

[3] It is a matter of agreement that the pursuer's application for a short-term let licence was submitted in terms of the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) Order 2022 ("the 2022 order"), made in terms of section 44 of the Civic Government (Scotland) Act 1982 ("the 1982 Act").

[4] In terms of Article 3 of the 2022 order, "short-term let" means the use of residential accommodation provided in the course of a business to a guest where certain criteria are met, including that the guest does not use the accommodation as their only or principal home and that the short-term let is entered into for commercial consideration. "Short-term let licence" means a licence granted for a short-term let on or after 1 October 2022.

[5] In terms of Article 4 of the 2022 order, a short-term let on or after 1 October 2022 is an activity for which a licence under Part 1 of the 1982 Act is required.

[6] Paragraph 2 of schedule 1 of the 1982 Act requires the licensing authority to send a copy of an application for a short-term let license to the Chief Constable and to the Scottish Fire and Rescue Service and also requires the applicant to display a notice giving particulars of the application and the objection procedure at or near the premises for a period of 21 days from the lodging of the application. Paragraph 3 of schedule 1 sets out the procedure and timescale for objecting to applications. In the event of an objection, paragraph 4 of schedule 1 allows the licensing authority to fix a hearing for the purpose of giving the

applicant and any objector an opportunity to be heard before a final decision is reached in relation to the application.

[7] Paragraph 5 of schedule 1 makes provision for the determination of applications by the licensing authority. So far as material, it provides as follows:

- “(1) Where an application for the grant or renewal of a licence has been made to a licensing authority they shall, in accordance with this paragraph—
- (a) grant or renew the licence;
 - ...
 - (c) refuse to grant or renew the licence.
 - ...
- (3) A licensing authority shall refuse an application to grant or renew a licence if, in their opinion—
- ...
- (c) where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—
 - (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
 - (ii) the nature and extent of the proposed activity;
 - (iii) the kind of persons likely to be in the premises, vehicle or vessel;
 - (iv) the possibility of undue public nuisance; or
 - (v) public order or public safety; or
 - (d) there is other good reason for refusing the application;
- and otherwise shall grant the application.”

[8] Paragraph 17 of schedule 1 allows an applicant for a licence which has been refused to require the licensing authority to give reasons in writing for its decision. Paragraph 18 makes provision for appeals against decisions of licensing authorities. So far as material, it provides as follows:

- “(1) Subject to sub-paragraph (2) below, a person who may, under this Schedule, require a licensing authority to give him reasons for their decision may appeal to the sheriff against that decision.

...

- (7) The sheriff may uphold an appeal under this paragraph only if he considers that the licensing authority, 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.

...

- (9) On upholding an appeal under this paragraph, the sheriff may —
- (a) remit the case with the reasons for his decision to the licensing authority for reconsideration of their decision; or
 - (b) reverse or modify the decision of the authority,
- and on remitting a case under sub-paragraph (a) above, the sheriff may —
- (i) specify a date by which the reconsideration by the authority must take place;
 - (ii) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including this Act)."

[9] It was common ground that the pursuer's application for a short-term let license was submitted and determined in accordance with this statutory framework. The options which were available to the defender's licensing committee as reasons for refusing the application were those listed in paragraph 5(3)(c) of schedule 1 of the 1982 Act. The grounds upon which I would have been entitled to uphold the pursuer's appeal against the refusal of his application are those listed in paragraph 18(7) of schedule 1.

Background

[10] The pursuer submitted an application for a short-term let licence in relation to a four-bedroomed, mid-terraced, three storey house, situated in a residential street in Aberdeen. He intended that the property would accommodate up to six guests. It was a matter of agreement that, prior to the pursuer's application, the property had been used for the purpose of short-term lets for a continuous period of around 10 years and that, on 3 June

2024, the defender's planning department had granted planning consent for that use to continue. Notice of the application was given to the Chief Constable, Scottish Fire and Rescue and, via a public notice displayed outside the property, local residents. No objections were received from the Chief Constable or Scottish Fire and Rescue. One letter of objection was received from a member of the public who lived in a neighbouring property. That prompted the defender's licensing committee to arrange a hearing to consider the application. The hearing took place on 27 August 2024. The pursuer did not attend the hearing, but he was represented by Mr Kerr of his appointed letting agents, who attended the hearing in person. Mr Kerr was also the pursuer's appointed lay representative in the proceedings before me. The objector joined the hearing by video link and was questioned by members of the licensing committee.

[11] According to the written statement of reasons issued by the licensing committee on 29 August 2024, the objector stated that the property had been used for short-term lets for a number of years and was in his opinion poorly managed. His two main areas of complaint related to waste management and parking. In relation to waste management, the objector stated that the property's refuse bins were overfilled on a regular basis as a result of the multiple occupancy of the property. This attracted birds and animals who scattered the refuse, making a mess of the street. He estimated that this happened "around once a month, almost every bin collection day." With regard to parking the objector stated that, although the application sought a licence to accommodate up to six occupants at the property, the driveway was only able to accommodate one vehicle. Commercial vehicles were often parked there. The street was subject to parking restrictions including double yellow lines. There was therefore no scope for appropriate roadside parking of the other vehicles used by occupants of the property. The objector also complained that neighbours had no contact

details for the letting agents in order to complain about these matters. Although he had personally spoken to a representative of the letting agents previously, that had led to little or no improvement. According to paragraph 23 of the statement of reasons, the objector confirmed that he had not experienced any anti-social behaviour from guests staying at the property.

[12] Mr Kerr responded to the matters raised by the objector and addressed the committee on the pursuer's behalf, inviting them to grant the application. According to the committee's written statement of reasons, Mr Kerr sought to minimise the objector's concerns with regard to waste management. He made reference to a couple of incidents which he was aware of in around October 2023, which he said had been dealt with quickly by the cleaners appointed by the agents to service the property. He stated that the parking of commercial vehicles did happen from time to time but that he was not aware of that being a common occurrence or causing any significant issues. With regard to the agents' contact details, Mr Kerr is noted as having stated that an information pack for guests was left within the property with contact details for the agents and that the cleaning company also had that information. He explained that the agents manage a lot of properties, that it was not common practice for letting agents to provide their contact details to neighbours and that neighbours tended to obtain such information by speaking to the occupants of properties. However, he made it clear that he was willing to establish lines of communication with the objector and other neighbours for the future. According to the committee's written statement of reasons, after both the objector and Mr Kerr had been given the opportunity to sum up, the committee proceeded to a vote. By six votes to three, the committee refused the application.

[13] According to paragraph 33 of the written statement of reasons, the application was refused “on the grounds of the possibility of undue public nuisance.” Further detail of the committee’s reasoning was articulated in the final four paragraphs, which are in the following terms:

“34. The Committee had noted that it was generally agreed that there had been issues within the premises, although there was dispute as to the frequency and severity of those issues.

35. The Committee were concerned at the absence of any means of contact the neighbours had in the event of any issues. Additionally, the lack of any coherent procedures to deal with any issues that might arise was a concern.

36. The Committee considered the applicant’s argument that going forward there would be better communication with neighbours but were not satisfied this would be sufficient.

37. In summary, the Committee weighed the risks to the residents in terms of the possibility of public nuisance against the applicant’s right to apply for the licence. On balance the committee considered the lack of sufficient management procedures resulted in the grounds of refusal stated at paragraph 33 being applicable.”

Pursuer’s submissions

[14] Under reference to paragraph 18(7) of schedule 1 to the 1982 Act Mr Kerr submitted that, in refusing the pursuer’s application, the licensing committee had both erred in law and exercised its discretion in an unreasonable manner. The error of law related to the committee’s characterisation of the matters raised by the objector as giving rise to the possibility of undue public nuisance, in terms of paragraph 5(3)(c)(iv) of schedule 1 to the 1982 Act. In order to constitute an undue public nuisance, an act or omission required to materially affect the reasonable comfort and convenience of life of a representative cross section of a class of the public (*Attorney General v PYA Quarries (No 1)* [1957] 2 QB 169 per Romer LJ at page 184) or must amount to an unlawful act or omission which endangers the life, safety, health, property or comfort of the public (*In re Corby Group Litigation* [2008]

EWCA Civ 345 per Dyson LJ at paragraph 27). These authorities indicated a demanding test, which was not met by the matters raised by the objector who, being the only objector, did not constitute “the public” for these purposes. At most, the objector’s complaints amounted to a private nuisance or mere discomfort.

[15] With regard to the assertion that the licensing committee exercised its discretion in an unreasonable manner, Mr Kerr founded on a number of factors. The premises had been used for the purpose of short-term lets for a period of 10 years preceding this application. The defender’s planning department had granted planning consent in June 2024 for such use to continue. There was no complaint of anti-social behaviour relating to the property. The licensing committee had “ignored” the management procedures which the pursuer had in place, and had offered to introduce, in order to address the objections. The committee had not offered any advice in relation to further procedures the pursuer might have put in place to meet any concerns the committee may have had.

[16] The committee had demonstrated an inconsistent approach to applications for short-term let licences, which was apparent from the fact that it had refused the pursuer’s application in relation to this property but had, on other occasions of which Mr Kerr had become aware subsequent to the committee hearing, granted applications in relation to other properties in Aberdeen, two of which were in the same street as the pursuer’s property. However, I understood that neither of those applications had attracted any objections and therefore neither would have triggered a hearing before the licensing committee. The committee had granted short-term let licences in August 2024 for two other properties in different parts of Aberdeen, which had attracted four and seven objections respectively, including alleged anti-social behaviour relating to one of those properties. The outcomes of these applications indicated the licensing committee’s inconsistency, which was contrary to

the apparent expectation of the Scottish Government document “Right First Time – A practical guide for public authorities in Scotland to decision-making and the law,” (3rd edition, 2020), page 15 of which appeared to anticipate that, in exercising any discretionary power, a local authority would develop a consistent policy for dealing with applications such as this, whether or not they were objected to.

[17] Mr Kerr accepted that he had not made reference to any of these other applications when he had addressed the licensing committee in relation to the pursuer’s application. He also accepted that these other applications may well have been dealt with by differently constituted licensing committees and that, in the absence of contextual detail, the court was not in a position to conduct the kind of comparative exercise which this particular aspect of his submissions would have required.

Defenders’ submissions

[18] Mr Noor stressed the limited grounds upon which the court was entitled to interfere with the licensing committee’s decision, in terms of paragraph 18(7) of schedule 1 to the 1982 Act. The statutory appeal procedure did not entitle the court to simply review the licensing committee’s decision and substitute its own view; the court required to focus on the committee’s decision-making process (*Latif v Motherwell District Licensing Board* 1994 SLT 414). In order to succeed, a ground of appeal should relate to a matter which was central to the decision (*Morton v City of Dundee District Council* 1992 SLT (Sh Ct) 2). The court should not disturb the licensing committee’s exercise of its discretion unless satisfied that its decision was one which no reasonable licensing committee could have reached (*Wordie Property Co Limited v Secretary of State for Scotland* 1984 SLT 345; *The Noble Organisation Limited v City of Glasgow District Council* (No 3) 1991 SLT 213). The committee had heard

from the objector and questioned him about his concerns. Mr Kerr had heard the objector's comments and had the opportunity to respond to them. Both the objector and Mr Kerr were given the opportunity to sum up before the committee reached its decision. The committee therefore had a clear basis upon which to identify the issues relevant to the application. The weight to be given to each issue was thereafter a matter for the committee (*Texaco Limited v City of Glasgow Licensing Board* 1999 SCLR 184).

[19] Mr Noor invited me to reject Mr Kerr's assertion that comparison of the outcomes of different applications for short-term lets demonstrated inconsistency on the part of the licensing committee. The court was not in a position to carry out any comparative exercise in the absence of further information about the other applications to which Mr Kerr referred. In any event, those other applications had not been referred to by Mr Kerr during the committee hearing and were therefore not before the committee when it considered the pursuer's application. The contextual details of the other applications could not be known. The committee's duty was to fulfil its statutory functions having regard to the circumstances of the individual case before it, which the committee had done in this case. Mr Noor pointed out that the page of the Scottish Government's "Right First Time" document founded upon by Mr Kerr specifically cautioned decision-makers that:

"...[W]here legislation confers a discretion on a decision-maker, the decision-maker must not surrender that discretion – to another person, to a set of rules, or to a "policy." The decision-maker must keep an open mind and consider each case on its own merits; otherwise there is a failure to exercise discretion properly. The authority must not "close its ears" to particular arguments."

If the licensing committee had sought to deal with applications for short-term let licences in accordance with a policy of the kind envisaged by Mr Kerr, its decision-making process may have been open to criticism on the basis that adherence to the policy was at the expense of appropriate focus on the circumstances of the individual case (*City of Glasgow District*

Council v Girvan 1998 SLT 1004). Mr Noor submitted that the licensing committee had exercised its discretion reasonably in refusing the pursuer's application.

[20] With regard to the alleged error of law Mr Noor observed that the 1982 Act does not define "undue public nuisance" for these purposes. He submitted that, in the context of an application for a short-term let licence, a nuisance which materially affects the reasonable comfort and convenience of a class of the public, namely those living in other properties in the same street at the pursuer's property, could aptly be described as a public nuisance (*Attorney General v PYA Quarries Limited; Bengal Dish Limited v Aberdeen Licensing Board*).

There was no requirement for the committee to receive objections from the Chief Constable or Scottish Fire and Rescue, or objections in relation to anti-social behaviour before it could exercise its discretion to refuse an application for a short-term let licence. The objector lived in a neighbouring property and the matters raised by him were clearly issues which had the potential to affect residents of other properties in the street. They could appropriately be characterised as giving rise to the possibility of undue public nuisance, which was all that was required by paragraph 5(3)(c)(iv) of schedule 1 to the 1982 Act (*Anderson v Fife Council* Cupar Sheriff Court, 22 March 2006, unreported). The licensing committee was a lay decision-making body and not a court. An excessively technical approach to the committee's application of the law was not appropriate. The court should accord weight to the licensing committee's local knowledge and the extent to which that informed its deliberations in an individual case (*Pagliocca v City of Glasgow District Licensing Board* 1995 SLT 180 at page 184D-G).

[21] Far from ignoring Mr Kerr's comments in relation to management procedures, the committee had clearly regarded those procedures as important and had considered their adequacy as a means of addressing the objector's concerns. The committee had simply not

been reassured that the procedures Mr Kerr had suggested for the future would be sufficient to avoid the potential for the issues raised by the objector to give rise to undue public nuisance.

Decision and reasons

[22] I am not satisfied that the defender's licensing committee erred in law in its approach to the issue of undue public nuisance or that the committee exercised its discretion unreasonably in refusing the pursuer's application for a short-term let licence.

[23] Although the phrase "undue public nuisance" is not defined for the purposes of the relevant provisions of the 1982 Act, I was referred to cases which shed some light on its meaning. In order for an activity to be regarded as a public nuisance, it must affect an identifiable class of the public (*Bengal Dish Limited v Aberdeenshire Licensing Board*, per Sheriff Principal Pyle at para [11]). Although only one person objected to the pursuer's application, he was a resident in a neighbouring property and the issues he raised were capable of affecting a class of the public, namely residents of the street. That appears to have been the view taken by the committee, having regard to its reference in paragraph 37 of its statement of reasons to "the risks to the residents in terms of the possibility of public nuisance" (emphasis added).

[24] With regard to the extent to which an activity must affect an identifiable class of the public in order to amount to a public nuisance, I do not accept Mr Kerr's general proposition that the impact requires to be towards the higher or more extreme end of the scale. The cases relied on by Mr Kerr do not support that approach. According to *Attorney General v PYA Quarries Limited* (per Romer LJ at page 184), the scope of public nuisance includes any nuisance which "materially affects the reasonable comfort and convenience of life" of a class

of the public (emphasis added). According to *In re Corby Group Litigation* (per Dyson LJ at paragraph 27), a public nuisance is "...an unlawful act or omission which endangers the life, safety, health, property or comfort of the public" (emphasis added). These passages appear to indicate that the phrase "public nuisance" is apt to cover a wide spectrum of potential impacts on an identifiable class of the public, from danger to life at one end of the scale to a material impact on the reasonable comfort and convenience of members of that class at the other. I was not addressed in relation to the significance of the word "undue" in this context, but it appears to me that the requirement that the public nuisance be "undue," which I understand to mean "to a level that is more than necessary, acceptable or reasonable," is consistent with the approach illustrated by *Attorney General v PYA Quarries Limited* and *In re Corby Group*, namely that in order to constitute a public nuisance, an activity must "materially" affect a class of the public in one or more of the ways indicated by those cases.

[25] I am satisfied that the concerns expressed by the objector, relating to regular and continuing issues concerning waste management and parking, in the absence of management procedures which were acceptable to the committee, entitled the committee to conclude that the premises were not suitable or convenient for the proposed activity having regard to the possibility of undue public nuisance, which was all that was required in terms of paragraph 5(3)(c)(iv) of schedule 1 to the 1982 Act.

[26] I am not satisfied that the licensing committee exercised its discretion in an unreasonable manner (*Wordie Property Co Limited v Secretary of State for Scotland; The Noble Organisation Limited v City of Glasgow District Council*). The committee had regard to a number of relevant considerations in reaching its decision, including not only the matters raised by the objector but Mr Kerr's response, including his proposals for improvements to

management procedures. The weight to be given to each of those considerations was a matter for the committee (*Texaco Limited v City of Glasgow Licensing Board*). As already noted, the committee was clearly not reassured that the management procedures proposed by Mr Kerr on behalf of the pursuer would deal adequately in future with the issues raised by the objector. I was not referred to any authority for Mr Kerr's proposition that, in those circumstances, the committee was obliged to identify what further procedures the pursuer might have put in place in order to meet the committee's concerns. That was a matter for the pursuer and his agents.

[27] Comparative information about the outcome of applications for short-term let licences for other properties was not provided to the licensing committee during the hearing but, in any event, the committee's obligation was to decide the pursuer's application on its own particular facts and circumstances (*City of Glasgow District Council v Girvan*). In an appeal of this nature the court must focus on the licensing committee's decision-making process, recognising the importance of the committee's role and of its local knowledge, in a general sense, of the significance of the issues raised in the context of the location with which the application was concerned (*Pagliocca v City of Glasgow District Licensing Board*). It is not open to the sheriff to conduct a review of the committee's decision and to substitute their own view (*Latif v Motherwell District Licensing Board*).

[28] The appeal is refused. I have assigned a hearing on expenses, which may be discharged administratively if parties are able to notify the sheriff clerk of an agreed position in good time prior to the hearing.