

Item: 3

Planning Committee: 7 October 2026.

**Change of Use from Flat to Self-catering Unit (Retrospective) at
66B Victoria Street, Kirkwall.**

Report by Director of Infrastructure and Organisational Development.

1. Overview

- 1.1. This report considers an application for the change of use of a flat at 66B Victoria Street, Kirkwall, to a self-catering unit. One valid representation has been received, objecting to the development on the grounds that it would harm the historic character of the listed building and the Conservation Area and would result in the loss of residential accommodation and further reduce housing for permanent residents and erode the area's traditional residential character.
- 1.2. Following assessment of the development proposal with reference to the limited scale and nature of the proposal it considered that the development complies with relevant planning policies, and having also considered the matters raised by the objector, there are no material planning considerations that would outweigh a positive determination of this application.

Application Reference:	26/068/PP.
Application Type:	Planning Permission.
Proposal:	Change of use from a flat to a self-catering unit (retrospective).
Location:	66B Victoria Street, Kirkwall.
Applicant:	Rosemary Gunn.

- 1.3. All application documents (including plans, consultation responses and valid representations) are available for members to view [here](#) (click on “Accept and Search” to confirm the Disclaimer and Copyright document has been read and understood and then enter the application number given above).

2. Recommendation

2.1. It is recommended that members of the Committee:

- i. Approve the application for retrospective planning permission in respect of the change of use from a flat to a self-catering unit at 66B Victoria Street, Kirkwall.

3. Consultations

Scottish Water.

3.1. Scottish Water has no objection to this planning application.

Orkney Heritage Society (OHS)

3.2. As this application does not affect the appearance of the C-Listed property, OHS has no comment to make except to make the rather obvious observation that the loss of long term lets to short term tourism lets is only adding to the housing crisis Orkney faces.

Development and Marine Planning

3.3. In the absence of current research, data and a local policy approach on short term lets the above application on should primarily be assessed against National Planning Framework 4 Policy 30.

4. Representation

4.1. One objection has been received from:

- Leslie Sinclair, 31A Broad Street Kirkwall KW15 1DH.

4.2. The representation is on the following grounds:

- The proposal has the potential to affect both the listed building itself and the setting of neighbouring listed buildings.
- The courtyard formed an important element of Kirkwall's historic urban fabric and makes a positive contribution to the special character and appearance of the Conservation Area.
- The listed building has features of special architectural and historic interest, which contribute to the significance of the area.

- Policy 8 of the Orkney Local Development Plan 2017 requires development affecting heritage assets to preserve or enhance their significance, setting and special interest.
- No heritage impact assessment has been submitted, contrary to the requirements of National Planning Framework 4 Policy 7(a).
- Loss of residential accommodation within Kirkwall Conservation Area.
- The cumulative increase in short-term lets has contributed to the displacement of permanent residents and a reduction in the area's traditional residential character.
- The application fails to demonstrate that any public, social, economic or environmental benefits outweigh the identified heritage impacts, as required by Policy 8 and associated Supplementary Guidance.

5. Relevant Planning History

5.1. Planning applications

Reference	Proposal	Location	Decision	Date
91/111/PPF.	Proposed Alterations to a House and Store to Form 2 Flats.	66a Victoria Street, Kirkwall.	Approve, subject to conditions.	16.05.1991.

6. Relevant Planning Policy and Guidance

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#). National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.2. NFP4 forms part of the statutory development plan and must be considered as a whole in the determination of planning applications. This proposal has been assessed against all relevant policies of the Development Plan. The policies, supplementary guidance and planning policy advice listed below are the principal policies relevant to this application:
- National Planning Framework 4:
 - o Policy 3. Biodiversity.
 - o Policy 7. Historic assets and places.
 - o Policy 13. Sustainable Transport.
 - o Policy 22. Flood risk and water management.

- o Policy 27. City, town, local and commercial centres.
- o Policy 30. Tourism.
- Orkney Local Development Plan 2017:
 - o Policy 1: Criteria for All Development.
 - o Policy 3: Settlements, Town Centres and Primary Retail Frontages.
 - o Policy 4: Business, Industry and Employment.
 - o Policy 8: Historic Environment and Cultural Heritage.
 - o Policy 13: Flood Risk, SuDS and Waste Water Drainage.
 - o Policy 14: Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - o Historic Environment and Cultural Heritage (2017).
- National Planning Policy:
 - o Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

7. Legislative Position

- 7.1. Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”
- 7.3. Annex A continues as follows:
- The House of Lords’ judgement also set out the following approach to deciding an application:
 - o Identify any provisions of the development plan which are relevant to the decision.

- o Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
- o Consider whether or not the proposal accords with the development plan.
- o Identify and consider relevant material considerations for and against the proposal.
- o Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
 - o It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
 - o It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - o Scottish Government policy and UK Government policy on reserved matters.
 - o The National Planning Framework.
 - o Designing Streets.
 - o Scottish Government planning advice and circulars.
 - o EU policy.
 - o A proposed local development plan or proposed supplementary guidance.
 - o Community plans.
 - o The environmental impact of the proposal.
 - o The design of the proposed development and its relationship to its surroundings.
 - o Access, provision of infrastructure and planning history of the site.

- o Views of statutory and other consultees.
 - o Legitimate public concern or support expressed on relevant planning matters.
 - The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.
- 7.4. Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:
- Failing to give complete, precise and relevant reasons for refusal of an application.
 - Reaching a decision without reasonable planning grounds for doing so.
 - Not taking into account material considerations.
 - Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.
- 7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

Status of the Local Development Plan

- 7.6. Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

Status of National Planning Framework 4

- 7.7. National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of NPF4 and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a provision of the Orkney Local

Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.

- 7.8. In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

8. Assessment

- 8.1. As noted in section 1 above, permission is sought for the change of use from a flat to a self-catering unit (retrospective) at 66b Victoria Street, Kirkwall. A location plan attached as Appendix 2 to this report. The self-catering unit comprises one bedroom, a combined kitchen and a living room and separate shower room. No alterations have been undertaken to the property, either internally or externally and none are proposed through this application.

Principle

- 8.2. As noted above, the site lies within Kirkwall Town Centre. Orkney Local Development Plan (OLDP) Policy 3 states that commercial development which is appropriate to the scale and function of individual settlements, and which contributes to the vibrancy and vitality of our town centres, will be supported.
- 8.3. National Planning Framework (NPF)4 Policy 30 - Tourism states that any proposal should be compatible with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors. NPF4 Policy 27 - City, town, local and commercial centres states that development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses, will be supported.
- 8.4. Given the site is located within Kirkwall Town Centre and would create accommodation which will attract visitor/tourism to central Kirkwall which can contribute to the viability of the town centre, and with reference to OLDP Policy 3 and NPF4 Policies 27 and 30, the proposed use is considered to be acceptable in principle, subject to compliance with other policies.

Design

- 8.5. No alterations to the flat, either internally or externally, are proposed.

Biodiversity

- 8.6. Due to the area currently in use and the property having not undergone any exterior changes, biodiversity will not be impacted.

Residential Amenity

- 8.7. The property comprises a small, single-bedroom flat (approximately 27m²) located on the first floor of a traditional stone building with a private main door entrance. Access is taken from a communal yard serving both residential and commercial premises. Residential properties are located adjacent to and below the application unit, with a variety of commercial uses nearby, including restaurants, bars, hotels and self-catering accommodation. The site is located within Kirkwall Town Centre, an area characterised by a mixed-use pattern of development and a relatively high level of activity during daytime hours, with activity levels generally reducing in the evening.
- 8.8. The nature of self-catering accommodation means that guests are likely to arrive and depart on a regular basis, often with luggage and personal belongings, and may have different patterns of movement compared to permanent residents. As a result, activity associated with the use could be greater than that typically associated with a conventional dwellinghouse. However, the property is limited in size and contains only one bedroom, thereby restricting the number of occupants. Consequently, the overall level of activity generated by the use is not considered likely to be materially greater than that associated with permanent residential occupation. Furthermore, given the limited occupancy of the premises, any noise or disturbance arising from its use as self-catering accommodation is unlikely to differ significantly from that of a conventional residential unit.
- 8.9. In assessing the proposal against NPF4 Policy 30 (Tourism), consideration has been given to the potential impact on the amenity of neighbouring residents and the character of the surrounding area. Given the modest scale of the unit, its location within a mixed-use town centre environment, and the absence of any external alterations or intensification of use beyond that which could reasonably be expected from residential occupation, the proposal is not considered to result in any unacceptable adverse impacts on residential amenity.
- 8.10. The applicant has provided an overview of the business and the reason behind the proposed change of use and recognises the conflicting issues with the economy from tourism and local housing demand considerations. It is recognised that the use of this property as self-catering would result in the direct loss of residential

accommodation, which given the recognised need and demand for housing in Orkney, is an important consideration.

- 8.11. The proposed change of use to self-catering supports the provision of tourist accommodation within a town centre location and is therefore considered to comply with the relevant provisions of NPF4 Policy 30 (Tourism). Policy 30(e)(ii) recognises that proposals involving the loss of residential accommodation will only be supported where the loss is outweighed by demonstrable local economic benefits.
- 8.12. In this instance, a balance must be struck between the competing objectives of supporting the local tourism economy and safeguarding the supply of residential accommodation. While the proposal would result in the loss of one residential unit, the property is located within Kirkwall town centre where it is well placed to provide visitor accommodation in a sustainable and accessible location. The proposed self-catering use would contribute to the local tourism offer, support visitor expenditure within nearby businesses, and assist in meeting demand for tourist accommodation. Having regard to the size and scale of the proposal, in particular the fact that it is a small unit forming part of a traditional building with no open space or car parking directly associated with the unit; the economic benefits associated with the continued use of the property for tourism purposes are considered to outweigh the loss of a small single unit of residential accommodation. On balance, the proposal is therefore considered to accord with the requirements of NPF4 Policy 30(e)(ii).

Historic Environment

- 8.13. The property is a Category C listed building situated within the Kirkwall Conservation Area. As no works are proposed to the listed building itself, the proposal does not require Listed Building Consent.
- 8.14. The application relates solely to a change of use, with no external alterations proposed to the property. As such, it is not considered that the proposal would have any adverse impact on the character or appearance of the Conservation Area, and its character and appearance would therefore be preserved.
- 8.15. The proposed use is compatible with the surrounding area and would not adversely affect the character or appearance of the Conservation Area. Accordingly, the proposal is considered to comply with Policy 8 of OLDP and Policy 7 of NPF4.

Roads

- 8.16. No additional parking provision is proposed as part of the development. Given the nature of the proposal, there is no requirement for an increase in parking provision.
- 8.17. NPF4 Policy 13: Sustainable Transport seeks to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday journeys, whilst reducing the need to travel unsustainably.
- 8.18. In this case, the proposal does not result in a requirement for additional parking and is therefore considered acceptable. The development accords with the aims and objectives of NPF4 Policy 13: Sustainable Transport.

Appraisal

- 8.19. This application seeks retrospective planning permission for the change of use of a first-floor flat to short-term self-catering holiday accommodation. The flat is a self-contained property with its own independent access. The entrance is reached via external steps from a courtyard that is shared with other properties and businesses.
- 8.20. The proposed change of use of the flat from residential to short-term holiday let will result in the continued provision of a holiday accommodation unit within Kirkwall Town Centre which supports vitality and viability of the town centre and also the wider tourism and wider economy.
- 8.21. The Local Development Plan 2017 does not contain a specific policy on the change of use of flats to holiday lets. However, part e) of Policy 30 (Tourism) of NPF4 states that:
- Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:
 - An unacceptable impact on local amenity or the character of a neighbourhood or area; or
 - (ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.
- 8.22. One representation has been received objecting to the proposal on the grounds of potential impacts on the listed building, the Conservation Area, the loss of residential accommodation, and the cumulative impact of short-term lets within Kirkwall.

- 8.23. These matters have been fully considered in the assessment of the application. As no internal or external alterations are proposed, the development would not adversely affect the character, appearance or setting of the listed building, neighbouring heritage assets or the Kirkwall Conservation Area.
- 8.24. The loss of one small residential unit, which is already operating as a self-catering facility and forms part of a traditional building is considered acceptable in planning terms, noting that the proposal would provide tourist accommodation in a town centre location, and contribute to the local economy - matters which are directly supported by OLDP Policy 3 and NPF4 Policies 27 and 30. Having regard to the scale of the proposal and the mixed-use character of the area, the economic benefits are considered to outweigh the loss of a single unit of residential accommodation. Accordingly, the matters raised in the representation do not warrant refusal of the application

9. Conclusion

- 9.1. The proposal relates to the retrospective change of use of an existing self-contained flat to short-term self-catering accommodation. No external alterations are proposed and, as such, the proposal would not adversely affect the character or appearance of the Category C listed building, neighbouring listed buildings, or the Kirkwall Conservation Area. The proposal is considered to comply with Policy 8 of the OLDP2017 and Policy 7 of NPF4.
- 9.2. The proposal would not result in an unacceptable impact on residential amenity and is compatible with the mixed-use character of Kirkwall Town Centre. Whilst the development would result in the loss of a single residential unit, the provision of tourist accommodation in a sustainable location would contribute to Kirkwall Town Centre viability and the local visitor economy and provide demonstrable economic benefits. It is therefore considered to be compliant with OLDP Policy 3 and NPF4 Policies 27 and 30 and on balance, these benefits are considered to outweigh the loss of residential accommodation.
- 9.3. The proposal is considered to comply with the relevant provisions of the Orkney Local Development Plan 2017 and National Planning Framework 4 and accordingly is recommended for approval.

For Further Information please contact:

Margaret Gillon, Senior Planner (Development Management), Email
margaret.gillon@orkney.gov.uk

Implications of Report

1. **Financial:** None.
2. **Legal:** Detailed in section 7 above.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
4. **Human Resources:** None.
5. **Equalities:** Not relevant.
6. **Island Communities Impact:** Not relevant.
7. **Links to Council Plan:** Not relevant.
8. **Links to Local Outcomes Improvement Plan:** Not relevant.
9. **Environmental and Climate Risk:** None.
10. **Risk:** If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission on the basis of the proposal being contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

List of Background Papers

Orkney Local Development Plan 2017, available [here](#).

National Planning Framework 4, available [here](#).

Appendix

Appendix 1 – Planning Conditions.

Appendix 2 – Location Plan.

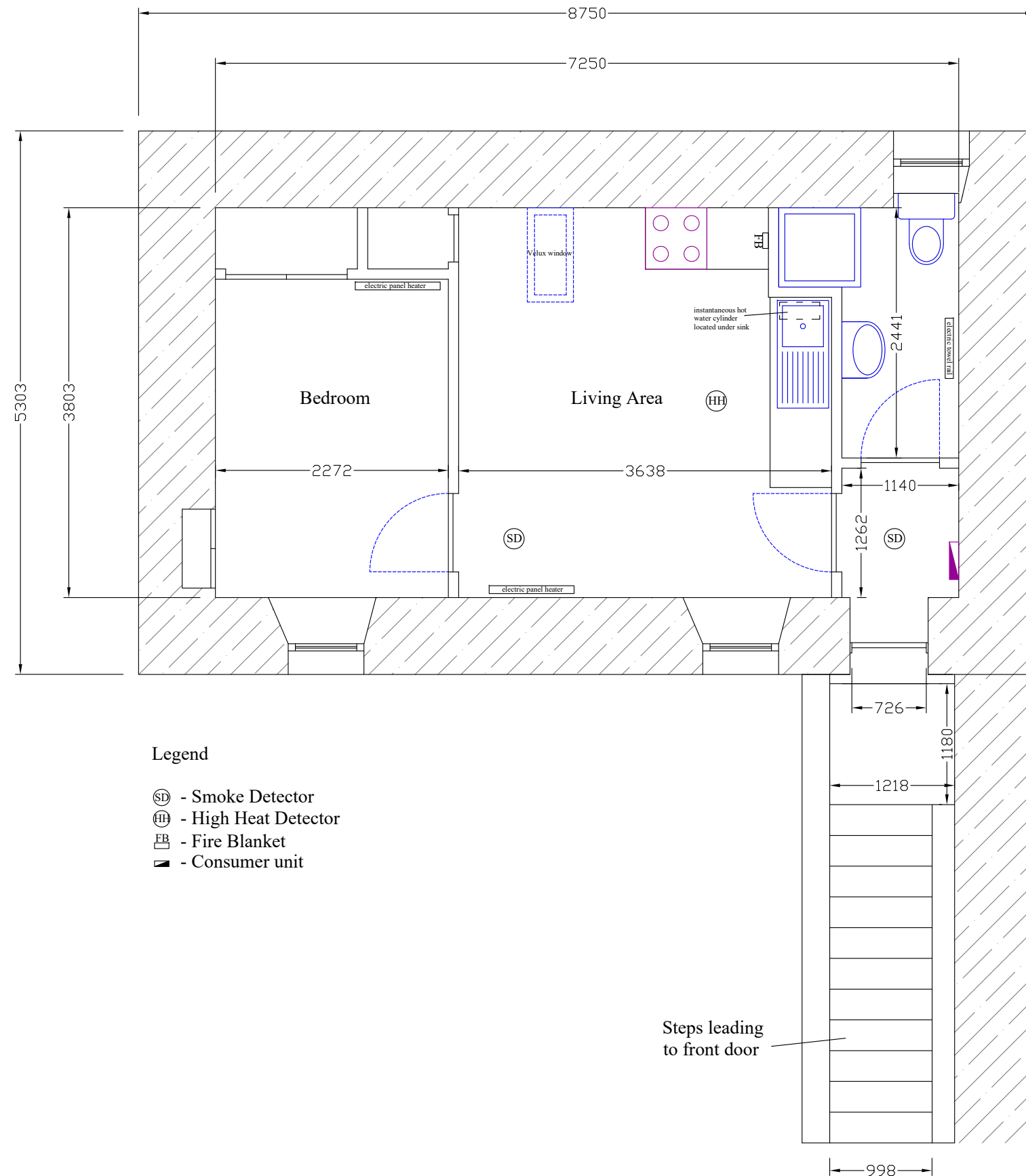
Appendix 1.

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended, which limits the duration of planning permission.

02. Occupation of the self-catering unit hereby approved shall not exceed a maximum of 28 days by any person or group of persons, between the dates of 1 March and 31 October (inclusive) in any calendar year. To facilitate the enforcement of such control, the operators of the self-catering unit shall throughout the lifetime of the development maintain and make available to the Planning Authority, if requested, a register of occupiers of the self-catering unit to which this planning permission relates.

Reason: To ensure that the self-catering unit is occupied only on a short-term basis.



Legend

- Ⓢⓓ - Smoke Detector
- ⓂⓂ - High Heat Detector
- FB - Fire Blanket
- CU - Consumer unit

Licensing Plan of 66b Victoria Street, Kirkwall, KW15 1DN.
Applicant Rosemary Gunn, Braehead, Old Finstown Road, St Ola, KW15 1TW

Plan Size A3. May 2026. Scales As Shown.

Drawn by S J Omand, Chartered Surveyors, 14 Victoria Street, Kirkwall, KW15 1DN.

