

**South Ayrshire Council**

**Report by Depute Chief Executive and Director  
of Housing, Operations and Development  
to South Ayrshire Council  
of 15 December 2022**

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**Subject: Short Term Lets Planning Guidance**

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**1. Purpose**

- 1.1 The purpose of this report is to seek approval to publish the draft Short Term Lets planning guidance for public consultation.

**2. Recommendation**

- 2.1 It is recommended that the Council approves the publication of the draft Short Term Lets planning guidance for public consultation.**

**3. Background**

- 3.1 On 19 January 2022 the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 was approved by the Scottish Parliament. The Order introduces a new mandatory licensing system for Short-term Lets which commenced on 1 October 2022.
- 3.2 Part of considering a licence application includes checking whether the use would be a breach of planning controls, i.e. whether planning consent is required for the proposed use. Hosts and operators are therefore advised to engage with the planning service, prior to submission of a licence application, to confirm whether they require planning permission or not.

**4. Proposals**

- 4.1 In order to provide greater clarity and consistency to both applicants and Council officers for when planning applications will be required, and how they will be assessed, the Planning Service has prepared the draft non-statutory guidance set out in Appendix 1.
- 4.2 The guidance is based on national planning requirements and the policy provisions of the Council's adopted Local Development Plan (LDP2). Although it will be non-statutory and not part of the development plan, it will form a material consideration in the determination of planning applications, once adopted.
- 4.3 The draft planning guidance is presented in two parts: Part 1 explains the circumstances for when a planning application is likely to be required for a Short Term Let(STL). It is expected that normally applications will only be required for flatted properties. The guidance seeks to strike a balance between protecting the

amenity of more sensitive residential areas and allowing the STL sector to contribute to the economic vitality and tourist accommodation sector of South Ayrshire.

- 4.4 Part 2 sets out the information and justification that will be required to be included as part of any planning application, including an operating plan, and the main policy considerations for assessing the application, based on the LDP2 policies. A major consideration is what likely impact a proposed Short Term Let property would have on the amenity of neighbouring properties and character of the surrounding area. The extent to which the property would differ from a property in normal residential use will be a guide.
- 4.5 The guidance indicates that proposals are more likely to be approved when they are for 'home sharing' or 'home letting', or is for secondary letting and the property is self-contained in terms of private access and curtilage; or is for secondary letting and the property relies on shared access but is either situated within a town centre or is a one-bedroom property limited to a maximum of two guests.
- 4.6 Proposals not meeting these criteria are likely to be refused, unless local circumstances dictate otherwise.
- 4.7 If approved the draft guidance will be published for consultation and the Planning Service is keen to gather the views of a wide range of stakeholders and local residents. The feedback from this will inform a final version which will be taken back to Council for approval.
- 4..8 It is noted that, in November 2022, the Scottish Government laid before Parliament a revised National Planning Framework 4 (NPF4), with the intention of it being passed into legislation early in the new year. NPF4 introduces a policy position in relation to Short Term lets and this will be taken into account during our consultation process. For clarity, there is no formal consultation on this revised NPF4 document.

## **5. Legal and Procurement Implications**

- 5.1 There are no additional legal implications arising from this report.
- 5.2 There are no procurement implications arising from this report.

## **6. Financial Implications**

- 6.1 There are no financial implications for the Council in relation to this report.

## **7. Human Resources Implications**

- 7.1 There are no immediate human resources implications from this report, however this workstream may increase the workload of the service and this will be considered as part of the Staff Resource review as set out in the paper to Cabinet on 1 November 2022 in respect of developer contributions.

## **8. Risk**

### **8.1 *Risk Implications of Adopting the Recommendations***

8.1.1 There are no risks associated with adopting the recommendations.

### **8.2 *Risk Implications of Rejecting the Recommendations***

8.2.1 There is a risk that if the recommendations are rejected that there will not be a consistent and clear method or policy basis for determining planning applications for short term lets proposals. This may lead to inconsistent decision making that does not benefit the local area, and a greater number of planning appeals. Potential inconsistency in decision making would create uncertainty for the STL industry and the local residents adjacent to these proposals

## **9. Equalities**

9.1 The proposals in this report have been assessed through the Equality Impact Assessment Scoping process. There are no significant potential positive or negative equality impacts of agreeing the recommendations and therefore an Equalities Impact Assessment is not required. A copy of the Equalities Scoping Assessment is attached as Appendix 2.

## **10. Sustainable Development Implications**

10.1 ***Considering Strategic Environmental Assessment (SEA)*** – This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy. It provides guidance on the interpretation of policies with the Local Development Plan, which has been through an SEA process.

## **11. Options Appraisal**

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

## **12. Link to Council Plan**

12.1 The matters referred to in this report contribute to Commitments 4 of the Council Plan: South Ayrshire Works/ Make the most of the local economy; and A Better Place to Live/ Enhanced environment through social, cultural and economic activities.

## **13. Results of Consultation**

13.1 Consultation has taken place with Councillor Bob Pollock, Portfolio Holder for Economic Development, and the contents of this report reflect any feedback provided.

## **14. Next Steps for Decision Tracking Purposes**

14.1 If the recommendations above are approved by Members, the Depute Chief Executive and Director of Housing, Operations and Development will ensure that all necessary steps are taken to ensure full implementation of the decision within

the following timescales, with the completion status reported to the Cabinet in the 'Council and Cabinet Decision Log' at each of its meetings until such time as the decision is fully implemented:

<b>Implementation</b>	<b>Due date</b>	<b>Managed by</b>
Consultation on the draft document will commence in December 2022 for 6 weeks. The results of this consultation and a finalised version of the STL planning guidance will be taken back to Council in Spring 2023.	Spring 2023	Service Lead - Planning and Building Standards

**Background Papers**    [Local Development Plan 2](#)

**Report to Cabinet of 30 August 2022 - [Short Term Let Licensing Scheme](#)**

**Report to Cabinet of 1 November 2022 - [Developer Contributions Update relative to Planning Permissions \(2021/2022\)](#)**

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**Date: 5 December 2022**

## South Ayrshire Council

# FINAL DRAFT Planning guidance (non-statutory) – Short Term Lets and Planning Permission

November 2022

## **Part I – The need (or not) to obtain planning permission to use a dwelling for a short term let**

On 19 January 2022 the [Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022](#) was approved by the Scottish Parliament. The Order introduces a new mandatory licensing system for Short-term Lets which local authorities are required to establish by 1 October 2022.

Under provisions within the Licensing Order, a preliminary ground for refusing to consider an application for a Short-term Let is that the use of the proposed premises would constitute a breach of planning controls set out under the Town and Country Planning (Scotland) Act 1997 by virtue of section 123 (1) (a) or (b) of that Act. Hosts and Operators are therefore advised to engage with the Council's planning service, prior to submission of a licence application, to confirm whether they require planning permission or not.

### **When is planning permission required?**

The requirement for planning permission arises when there is a "material change of use". The ruling from the courts is that short term lets can, but do not necessarily, involve a material change of use from residential use.

#### Temporary Licences

Where a short-term let proposal (for any property type) is of a one-off, time-limited nature and shall be the subject of a non-renewable temporary licence only, the planning authority shall not invite an application for planning permission. This pragmatic position reflects the precedent established in planning statute that a temporary use of land may comprise permitted development on account of its finite duration.

#### Dwellinghouses

Under Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997, a house remains in use as a house whether it is the sole or main residence of the occupants or not. This sets a context that a house being used on a short-term basis does not constitute a material change of use.

Therefore, short stay use of a house is unlikely to require planning permission provided that it is occupied by a single household as defined in Class 9.

#### Dwellingflats

Residential flats do not fall within Use Class 9 and are defined as Sui Generis (outwith a specific Use Class). This status reflects the fact that a flat within a block containing residential properties forms a different context given that it has shared circulation and amenity spaces, and horizontal as well as vertical separation. On this basis, a flat being used as short-stay accommodation is considered differently to a house and is likely to involve a material change of use which requires the benefit of planning permission.

Where the dwelling is a flat, the applicant must provide evidence that the dwelling has planning permission or a certificate of lawfulness issued by the Planning Authority for the use of the flat as short stay accommodation or a certificate of lawfulness confirming that the extent of the use does not amount to a material change of use or is exempt from enforcement action.

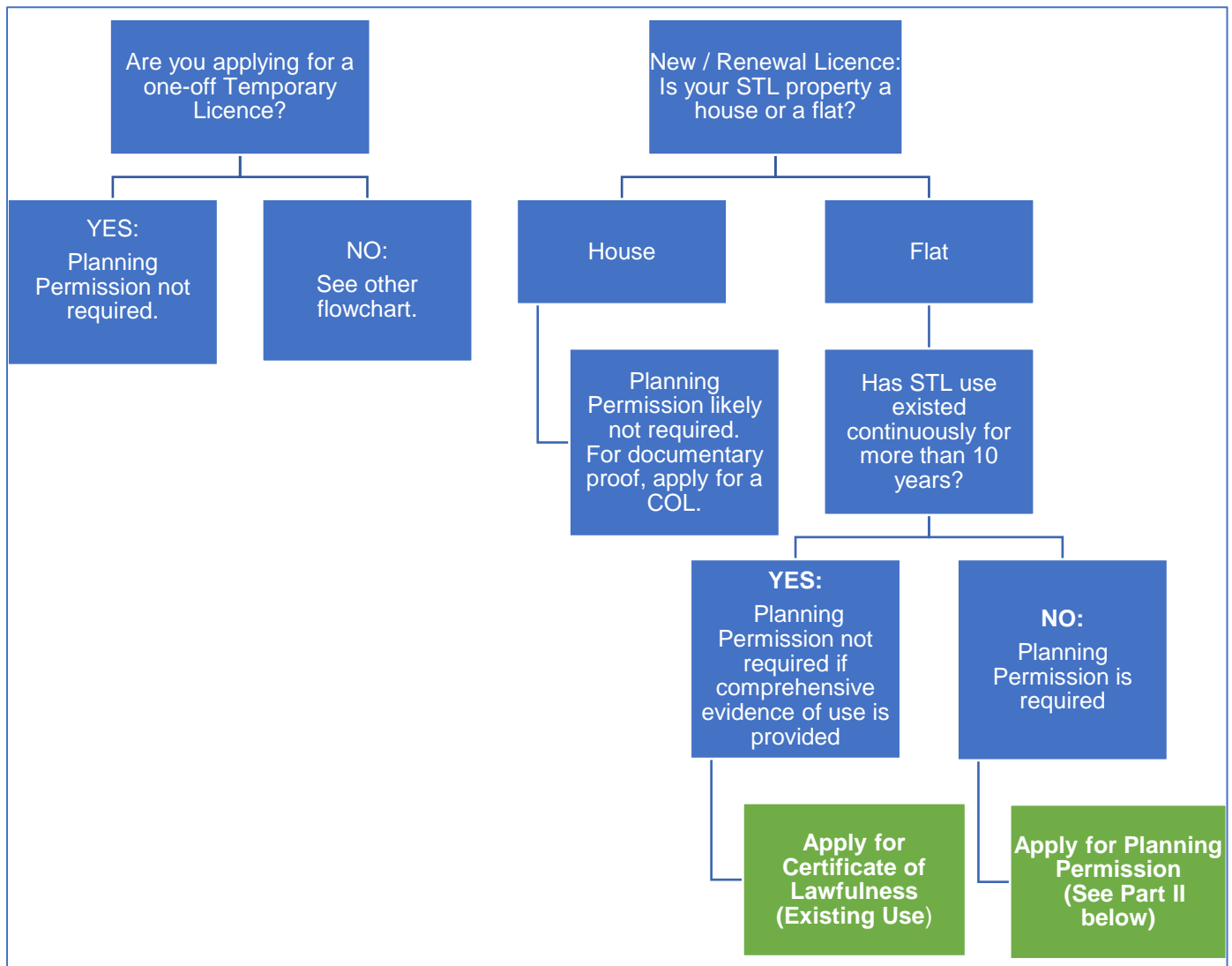
Anybody can seek a Certificate of Lawfulness if they wish to ascertain whether an existing use is lawful. You might wish to seek a Certificate of Lawfulness where, for at least the last 10 years:

- you have been using the property in the same way; and no enforcement action has been taken against the change of use.

Broadly speaking, if you are seeking a Certificate of Lawfulness on the grounds that no enforcement action can be taken it is your responsibility to demonstrate to the planning authority that:

- a) the change of use occurred more than 10 years prior to your application;
- b) the use has continued without interruption for at least 10 years;
- c) the use has not increased or intensified during those 10 years; and
- d) no formal enforcement action has been taken in respect of the use.

**Flowchart: When is planning permission (PP) required?**



## Part II – Policy approach for planning applications

### What information should I submit?

Where your short-term let (STL) proposal requires planning permission (see Part I above), we require certain information to understand the nature of your STL operation. It is important that the description of your STL operation specified in your planning application matches that which you apply for in your STL Licence<sup>1</sup>.

Before you apply for planning permission, you must provide a precise account of how your STL operation works / will work in practice. In order to allow a complete and accurate assessment of your application, the Planning and Building Standards Service (PBS) require you to submit an Operating Plan which sets out the practical operation of the STL operation. This must contain details specifying all operational, management and servicing matters. You should attach to your Operating Plan any relevant documents that demonstrate how you operate the Short Term Let.

#### Operating Plan Checklist:

The following list suggests key points for your Operating Plan to detail and address (please include any further information you believe is relevant to your proposal):

- **How the property is to be let**
  - Are you the sole owner of the property and do you live in the property as your permanent private residence during and/or between each STL period?
  - Are you personally liable for the council tax and all other utility bills?
  - Do you lease the property for STL purposes as a private individual or a company?
  - Does the leasing of this property for STL purposes form part of a wider business?
- **Who will use the property**
  - Max number of individuals in a single guest party and related criteria; whether single family / household restriction or 'multiple occupancy' groups allowed
- **The extent and duration of the property's STL use**
  - Operating season and all associated limits; available months / all-year, min/max days for single stay, aggregate and max total days let annually
- **The configuration and facilities of the accommodation**
  - All shared areas and facilities e.g. common entrance/close, lift, shared landing, bin store, communal garden / drying green, shared unallocated private parking etc. Specify the number of neighbouring properties sharing each common area / facility
  - Number of bedrooms, total sleeping capacity (cross-reference max. guests)
  - Any external areas / features, especially balconies etc.
  - Status and quantity of available parking (designated space/s, public street)
- **How the property is to be managed**
  - How secure property ingress/egress is provided and maintained
  - Handover / changeover arrangements; timings and whether in-person
  - All servicing arrangements e.g. cleaning, laundry, deliveries, drop-off/pick-up
  - How any guest / neighbour complaints, disputes / issues will be reported and resolved
- **How you will safeguard neighbouring amenity**
  - Please document all measures you take to prevent nuisance to neighbours. This may include 'house rules' within the STL contract, and other measures to control noise / activity etc.

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<sup>1</sup> Planning will be a consultee in respect of your STL Licence application and will make representation if a mismatched operation is presented at the latter stage



## **How will my planning application be assessed?**

Your proposal to form an STL from your property introduces a material change of use in planning terms. This may impact the established character and amenity of the surrounding area - and especially immediately neighbouring properties. Any impacts must be balanced against the net economic benefit the provision of visitor accommodation may contribute. This reflects the policy objectives expressed through [Local Development Plan 2](#) (LDP2) via its core principles, strategic policies and subject detail policies. LDP2 forms the prime material consideration in the determination of planning applications.

**LDP policy: residential policy** (pg.63) seeks to ensure housing is of a high quality in terms of safety, amenity, accessibility, sustainability, layout and design, and confirms these principles apply throughout the area and especially where development may affect established residential areas. Proposals which threaten the character of existing residential areas will be seen as not in keeping with these principles.

The policy states:

*We will aim to protect the character and amenity of areas that are mainly residential, particularly from non-residential development which could have negative effects on the local amenity.*

The planning assessment of your proposal shall principally focus upon considering whether an appropriate standard of amenity will likely be upheld – both in terms of the neighbouring properties and the wider local area.

Each case must be assessed on its own merits as residential amenity is not one universal standard. Rather, the established standard of residential amenity to be maintained in a given case may be locational: with regards to the existing character, density and land use mix at the locale. For example, a town centre location has different characteristics, and consequent expectations e.g. regards noise and privacy, compared to a suburban or rural setting. Given the variable interaction of these factors, the circumstances of each proposal may be unique to some extent – requiring individual assessment to balance the opportunity and constraints of the case.

Where an existing operation has already been established at the application site over a meaningful period (minimum one year), appropriate evidence submitted by the applicant of it having operated without adverse effect on the local residential amenity, and where not directly disputed by any objections received, will be a material consideration in the planning assessment.

Though title deeds may sometimes include certain prohibitions, stipulations or restrictions as to the precise nature of a dwelling's occupancy or usage, it should be noted by all parties that any dispute over title deeds are a private legal matter and are not a material consideration for planning purposes.

A key benchmark is considering the overall **domestic equivalence** of the character and effect of the STL operation in practice. This means whether it is likely that the operation of the STL would exceed reasonable domestic usage, and adversely affect residential amenity especially in terms of:

- the impacts from the characteristics and intensity of the operation (including letting type, guest numbers / frequency, and the degree of servicing it necessitates), as assessed in combination with;
- the overall suitability of the host property itself for short term lets; especially in its configuration and capacity for nuisance arising from shared entrances, facilities, outdoor spaces.
  - We will consult the Ayrshire Roads Alliance (ARA) to consider parking sufficiency for guests.

**All proposals will require individual assessment against this benchmark.** The guiding principles below are intended to give practical examples of factors influencing whether a particular planning application is likely to be supported.

Your proposal is more likely to be approved where planning permission is sought for:

1. 'Home sharing' or 'home letting'.
2. Secondary letting and the property is self-contained in terms of private access and curtilage;
3. Secondary letting and the property relies on shared access but is either:
  - a. Situated within a town centre as designated in the local development plan, or
  - b. A one-bedroom property limited to a maximum of two guests.

Your proposal is likely to be refused planning permission if it does not meet these criteria unless significant material considerations specific to the individual case indicate otherwise.

**Please see the Glossary overleaf for licence type definitions.**

#### How does my planning permission relate to my licence application?

The planning permission process affords amenity protections considered from a land use perspective in keeping with the context of planning legislation. This high-level regard complements the additional amenity protections afforded through the [licensing legislation](#), whereby the STL licence application process assesses and regulates detailed amenity matters such as behaviours and property management / specification via licence conditions (with attendant licence enforcement and revocation powers).

Where approved, your planning permission is a precursor to your requirement for an STL Licence. Your planning permission will be approved conditionally for a temporary time period tied to the duration of an STL Licence if so approved. It shall therefore be your responsibility to apply to renew your planning permission before it expires, should you intend to apply for an STL Renewal Licence. Besides ARA advice on parking, there will be no other conditions attached to your planning permission, so as not to duplicate conditions separately applied to the Licence itself and for which Planning do not hold enforcement powers.

## Glossary

Licence types:

**home sharing** – means you rent out all or part of your own home while you're living there

**home letting** – means letting all or part of your own home while you're not there, for example while you're on holiday

**secondary letting** – means letting a property where you do not normally live, for example a second home or holiday let

## South Ayrshire Council Equality Impact Assessment Scoping Template

Equality Impact Assessment is a legal requirement under the Public Sector Duty to promote equality of the Equality Act 2010. Separate guidance has been developed on Equality Impact Assessment's which will guide you through the process and is available to view here: <https://www.south-ayrshire.gov.uk/equalities/impact-assessment.aspx>

Further guidance is available here: <https://www.equalityhumanrights.com/en/publication-download/assessing-impact-and-public-sector-equality-duty-guide-public-authorities/>

The Fairer Scotland Duty ('the Duty'), Part 1 of the Equality Act 2010, came into force in Scotland from 1 April 2018. It places a legal responsibility on Councils to actively consider ('pay due regard to') how we can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions. [FSD Guidance for Public Bodies](#) in respect of the Duty, was published by the Scottish Government in March 2018 and revised in October 2021. See information here: <https://www.gov.scot/publications/fairer-scotland-duty-guidance-public-bodies/>

### 1. Policy details

Policy Title	Draft Short Term Lets Planning Guidance
Lead Officer (Name/Position/Email)	Craig Iles Service Lead Planning & Building Standards <a href="mailto:craig.iles@south-ayrshire.gov.uk">craig.iles@south-ayrshire.gov.uk</a>

**2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this policy? Please indicate whether these would be positive or negative impacts**

Community or Groups of People	Negative Impacts	Positive impacts
Age – men and women, girls & boys	N/A	N/A
Disability	N/A	N/A
Gender Reassignment (Trans/Transgender Identity)	N/A	N/A
Marriage or Civil Partnership	N/A	N/A
Pregnancy and Maternity	N/A	N/A
Race – people from different racial groups, (BME) ethnic minorities and Gypsy/Travellers	N/A	N/A
Religion or Belief (including lack of belief)	N/A	N/A
Sex – (issues specific to women & men or girls & boys)	N/A	N/A
Sexual Orientation – person's sexual orientation i.e. LGBT+, lesbian, gay, bi-sexual, heterosexual/straight	N/A	N/A

Community or Groups of People	Negative Impacts	Positive impacts
Thematic Groups: Health, Human Rights & Children's Rights	N/A	N/A

**3. What likely impact will this policy have on people experiencing different kinds of social disadvantage i.e. The Fairer Scotland Duty (This section to be completed for any Strategic Decisions). Consideration must be given particularly to children and families.**

Socio-Economic Disadvantage	Negative Impacts	Positive impacts
Low Income/Income Poverty – cannot afford to maintain regular payments such as bills, food, clothing	N/A	N/A
Low and/or no wealth – enough money to meet Basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future	N/A	N/A
Material Deprivation – being unable to access basic goods and services i.e. financial products like life insurance, repair/replace broken electrical goods, warm home, leisure/hobbies	N/A	N/A
Area Deprivation – where you live (rural areas), where you work (accessibility of transport)	N/A	N/A
Socio-economic Background – social class i.e. parent's education, employment and income	N/A	N/A

**4. Do you have evidence or reason to believe that the policy will support the Council to:**

General Duty and other Equality Themes Consider the 'Three Key Needs' of the Equality Duty	Level of Negative and/or Positive Impact (High, Medium or Low)
<b>Eliminate unlawful discrimination, harassment and victimisation</b>	Low Positive
<b>Advance equality of opportunity</b> between people who share a protected characteristic and those who do not	Low Positive
<b>Foster good relations</b> between people who share a protected characteristic and those who do not. (Does it tackle prejudice and promote a better understanding of equality issues?)	Low Positive
Increase participation of particular communities or groups in public life	Low Positive
Improve the health and wellbeing of particular communities or groups	Low Positive
Promote the human rights of particular communities or groups	Low Positive
Tackle deprivation faced by particular communities or groups	Low Positive

**5. Summary Assessment**

<b>Is a full Equality Impact Assessment required?</b> (A full Equality Impact Assessment must be carried out if impacts identified as <b>Medium and/or High</b> )	<b>No</b>
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**Rationale for decision:**

Not required as there is no specific impact on communities, groups of people, employees or thematic groups.

**Signed :**      Craig Iles      **Service Lead -Planning & Building Standards**

**Date:**          10 November 2022