

# **Council scheme on short term lets is “onerous and oppressive”**

**A council scheme to regulate Airbnb-style accommodation in Edinburgh is “onerous and oppressive” and goes beyond the aims originally set out by the Government, a court has heard.**

Four short-term let landlords or letting agents have launched a court battle with The City of Edinburgh Council in bid to change new rules they say will wipe out the holiday lets sector in the capital.

The crowd-funded judicial review began on Thursday, as a lawyer set out the case against the policy she said had “elements of contradiction and duplication” woven through it.

Morag Ross KC, acting on behalf of the petitioners, focused on a presumption against granting licences for tenements. She said this policy was “perverse” and there was “unequal treatment” of hosts who use second homes as short-term lets (STLs), as opposed to those who only let out their property at certain times of the year or have guests staying in a spare room.

The group, which successfully crowdfunded £300,000 to bring the legal challenge, (said to be the biggest legal crowdfunder yet) along with council officials and their respective legal

teams filed into a courtroom at the Court of Session on Thursday.

Appearing before Lord Braid in the first six-hour hearing, Ms Ross indicated the evidence – including the policy itself, the original aims listed in The Scottish Government’s legislation, and court rulings on past licensing and planning applications – which she said showed the scheme was “unlawful” and should be taken back to the drawing board.

She said: “There has to be acknowledgement that second letting has generated public interest and comment.

“There is a view that this is a problem. But that of course is only one view.”

She said the key concern of the petitioners, Ralph Averbuch and others, was that the policy had been developed in an “inconsistent and incoherent way”.

“The petitioners are not opposed to regulation,” she said, adding it was necessary to “protect against bad practice”.

In a scathing attack on the city council’s STL scheme, which was approved by councillors in September, she described it as “onerous and oppressive” and “lacking in transparency”.

## **Regulations**

Currently, anyone who operates Airbnb-style accommodation must lodge an application with the local authority by October this year, after new powers were devolved by The Scottish Government in 2022.

The scheme also requires owners of any second home being used for holiday letting for under 10 years to obtain planning permission – or a certificate of lawfulness if used for that purpose for over a decade. There is a ‘rebuttable presumption’ against flats in tenement buildings or with a shared main door

being granted a licence, meaning landlords who fall into this category will have to demonstrate to the council why their case should be an exception.

Ms Ross said it was “perverse” to refuse a licence for an STL where planning permission has already been approved for that very use.

She said the council’s evidence suggested the justification for this was that there was something “special” about tenements in Edinburgh.

“There is nothing particularly magical about flats in Edinburgh,” she added.

She argued the decision to include added protections for tenements did not meet the aims of the policy – which are the preservation of public safety and order and the prevention of crime.

“Tenements are not inherently unsafe,” she said. “It’s impossible to see what it is about the tenement policy that achieves or could achieve the aim of preserving public safety and preventing crime.

“The Scottish Government view the primary motivation for introducing legislation as to improve guest safety. It is not legitimate for [the council] to draw out broader aims such as improvement of amenity.

“If it’s intended to encompass some of the more far reaching aims, for example to do with availability of housing, level of rent – the sort of much bigger social issues to which passing reference is made... even if it were legitimate to have regard to those broader aims – and I say it’s not – what is it about restricting second letting on tenements that would achieve those aims?

“That is not explained.”

# Three year rule

She also raised the fact that those with secondary lets would have to renew their licence every year, whilst hosts who do home letting or home sharing where the property is their primary residence must re-apply every three years.

“The impact is that it is unfair and the inequality of treatment does not have a justification,” she said, adding this represented a “lack of understanding” of the impact on operators.

“The effect of limiting licensing to a year is in practical terms to prevent, or make it much more difficult, for service providers to take bookings more than a year in advance,” she said, highlighting that in Edinburgh, particularly for the festivals, it is common for accommodation to be booked more than a year in advance.

A licensing condition also included by the council is for secondary lets to have carpet “or similar floor covering” in bedrooms, living rooms and hallways to reduce noise disruption to flats below.

Ms Ross said in her submissions that this left owners of ground floor properties in a state of uncertainty over whether to “take their chances” and not get carpeting laid.

“If my application is refused I can’t make another application for a year, so I need to get this right.”

She said the cost of carpeting a property “is not trivial”.

“It’s not a trivial expense. It’s indicative of an approached preparation of policy which suggests a degree of carelessness to its application and its comprehensibility.

“Or possibly its indicative of overreach – of the respondent saying: we’re allowed to do this, we’ll just make it an

unqualified condition.”

She said this was “another example of irrationality,” which she added was a “recurring theme” of the scheme.

During Thursday’s session, Ms Ross said the petitioners had been concerned “for some time” about the accuracy of statistics on the number of holiday lets in the capital used by the council. She said it had been claimed there were 13,200 in 2019 but the operators’ own research showed there was less than half that.

She said the case was “not about an analysis of Airbnb’s data” but added there was a “wide difference” between the council’s figures and those of the petitioners.

James Mure KC, acting on behalf of the council, began his defence as the hearing’s first day drew to a close.

Responding to the points made about statistics, he said: “One of the advantages of having the licensing system is we will have data we can monitor from year to year.”

He added: “There is a basis for this regulation, that the Government thought for a number of years about introducing regulation both through planning and licensing.”

*by Donald Turvill, Local Democracy Reporter.*

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