

Court of Session rejects Edinburgh's short term lets policy as "unlawful"

The City of Edinburgh Council's licensing scheme for short-term lets has been branded unlawful by the Outer House of the Court of Session – less than four months before it was due to come into force.

A ruling by Lord Braid concluded that parts of the new policy designed to regulate Airbnb-style accommodation in the city by introducing a licensing regime was not within the law. The policy states that "secondary letting in tenement orchaard main door accommodation is considered as unsuitable" and the burden would be on the applicant or property owner to show why their property should be exempt.

Four letting operators and landlords raised an action for judicial review at the Court of Session last month after raising £300,000 to fund the legal costs. This is believed to be the highest every crowdfunded legal challenge.

The four petitioners argued that the scheme was "onerous and oppressive" and went beyond the aims originally set out by the government, which were designed to improve guest safety. The court also found that the policy breaches The Provision of Services Regulations 2009 regulations.

And the petitioners hailed the decision as “a victory for law and common sense” and said it should signal a “fresh approach” to short-term lets licensing from the council and The Scottish Government.

But housing campaigners disagreed and said it “flies completely in the face of democracy and the will of the people” however as “an overwhelming majority of people in this city support tighter restrictions on STLs”.

Edinburgh City Council has been approached for comment.

Holiday let hosts are required to submit an application by 1 October, a deadline which was extended from April this year, however this is now likely to be revised again as the council deals with the implications of the decision.

Lord Braid, who listened to arguments from both sides during the two-day hearing, ruled that a ‘rebuttable presumption’ against granting licenses for secondary lets – an entire property that is not an operator’s principal home – within tenement blocks was unlawful.

He also found the lack of provision for temporary licences and requirement for some hosts to supply floor coverings went beyond the council’s powers.

A statement issued by petitioners following publication of the judgement on Thursday stated: “We have yet to fully digest the detail of the decision but we hope that this will give common cause to both the Scottish Government and City of Edinburgh Council to seek a fresh approach that aims to collaborate and

work with local operators of self-catering accommodation, recognising the many good things it brings to the economy and people of Scotland.

“As the largest crowd funded case in the history of the UK, the petitioner team are deeply grateful to the many small, local businesses that supported the campaign financially in such uncertain times. That grass roots support made it possible for us to take this action, challenging both licensing and planning surrounding short term lets in Edinburgh and the potential wider impact across urban and rural Scotland. “

Rosie Walker, partner and head of litigation at Gilson Gray, who represented the short-term let operators who brought the action, said: “The court found that the City of Edinburgh Council’s short-term let licensing policy was unlawful at common law and in breach of The Provision of Services Regulations 2009 for a number of different reasons. Most strikingly they found that it was not for the council, as licencing authority, to decide that a licence should not be granted just because a property is in a tenement.

“Our clients took the brave decision to bring this action against the local authority to protect their businesses and, more widely, to protect an industry that is very important to the Edinburgh economy.

“Short-term accommodation providers create a significant number of jobs in the city and deliver flexible accommodation that hotels and other operators simply cannot – particularly during important events like the Edinburgh Festival. The campaign was the largest crowdfunded legal case in Scottish history, underlining the strength of support for our clients. It comes on the back of years of engagement by the Industry with the Scottish Government and the local authority to try to put in place a workable regulatory framework.”

Fiona Campbell, chief executive of the Association of Scotland's Self-Caterers, said: "We are pleased this decision from the Court of Session confirms that The City of Edinburgh Council's short-term let licensing policy was unlawful in respect of the rebuttal presumption and contravenes Provision of Services Regulations.

"We pay tribute to the determination and courage of the four petitioners, and are extremely thankful to all those who donated and the superb legal team. This was a team effort and they can be incredibly proud of what they achieved.

"The impact of this will not be confined to the capital as the decision has ramifications for licensing schemes across Scotland.

"The Scottish Government need to go back to the drawing board on short term let regulation and engage constructively with industry to provide a regulatory framework that works for all stakeholders.

"The time to act is now and the ASSC has pragmatic, fair and proportionate policy solutions which can assist."

Eilidh Keay from tenants' union Living Rent Edinburgh said the decision "demonstrates how a small group of people can use their money and power to weaponise the legal system to their advantage".

She said: "This flies completely in the face of democracy and the will of the people.

"Edinburgh needs homes, not holiday lets. In coming down in support of short term let operators, this decision seems to have forgotten that Edinburgh is in the midst of a housing crisis.

Lothians MSP, Miles Briggs said: "This legal decision against the lawfulness of short term lets legislation is another

example of Edinburgh City Council failing to do their due diligence and a scheme which has faced problems from the outset.

“Short term lets provide accommodation in the capital to meet the high demand of tourists who want to visit the city, especially during the Festivals.

“Without the option of short term lets there would be a significant lack of places for people to stay and prices will almost certainly rocket.

“We need a reasonable regulatory framework to manage short term lets, but the current legislation is clearly unworkable.

“Scottish Conservatives warned SNP-Green Ministers that the scheme was unworkable but they failed to listen.

“It’s now time Ministers suspended the short term lets legislation and consult again on a workable solution which would deliver the health and safety outcomes we all want to see.”

by Donald Turvill, Local Democracy Reporter.

The Local Democracy Reporting Service (LDRS) is a public service news agency. It is funded by the BBC, provided by the local news sector (in Edinburgh that is Reach plc (the publisher behind Edinburgh Live and The Daily Record) and used by many qualifying partners. Local Democracy Reporters cover news about top-tier local authorities and other public service organisations.

Additional reporting by The Edinburgh Reporter



The City Chambers ©2023 The Edinburgh Reporter