

Council makes changes to STL policy after judicial review

Edinburgh Council has made changes to its short term lets licensing policy after parts of it were ruled unlawful.

Rules which would have made it more difficult for entire homes to be used as holiday lets have now been scrapped.

But the group which brought the legal challenge said there remain “fundamental issues” with the scheme and accused the council of attempting to “shut down the sector”.

Short-term let (STL) operators are still required to apply for a licence in Edinburgh by 1 October if they want to keep taking bookings and welcoming guests whilst their application is considered.

The new regulations have been introduced in response to concerns about the impact of Airbnb-style accommodation on residents and the availability of housing in the capital.

In June, just four months before coming into effect, aspects of the policy, agreed by councillors last year, were found to be unlawful by the Court of Session.

The ruling by Lord Braid came after a two-day hearing in Edinburgh, which went ahead after a group of opponents to the STL scheme including Louise Dickins of Dickins Property raised £300,000.

The case centred on a presumption against allowing entire

tenement flats to be used for short-term letting unless their owners could demonstrate why they should be exempt.

The judge said it was “not the function” of the council “to decide that a licence should not be granted because a property is of a particular type or is in a particular area”.

He said a similar presumption against granting temporary licences for secondary lets – any entire property used for holiday letting – was also unlawful, as well as a rule requiring the same type of STLs to have “a suitable floor covering such as a carpet” in bedrooms, living rooms and hallways.

All unlawful elements of the policy have now been removed from the council website and a new version of the guidance has been published online.

The council stressed that the requirement to obtain an STL licence “is unaffected by the court’s judgement” and that there have been no changes in relation to home letting, home sharing or temporary exemptions.

“Existing hosts and operators have until 1 October 2023 to apply for a licence in order to continue operating whilst their application is being considered. You are an existing host or operator if you have already been using your property to provide short term lets prior to 1 October 2022.

“If you were not using your premises to provide short term lets before 1 October 2022, you cannot take bookings or receive guests until you have a licence.”

In a statement, the four petitioners who raised the legal challenge said: “We are happy with the changes made to the revised policy, at least in so far it follows Lord Braid’s judgement and removes the ‘presumption of rebuttal’ entirely from the policy.

“It remains to be seen if the City of Edinburgh Council (CEC) will follow Lord Braid’s advice granting a licence to all properties with consideration of the property.

“It is the safety and responsibility of the owner that should be the only factors considered if a certificate of lawfulness or full planning consent has been obtained. Currently CEC have only granted two full time secondary let short term lets for the whole of Edinburgh.”

However they said some of the policy is “still flawed” including the requirement for secondary let hosts to obtain planning permission, or a certificate of lawfulness if the property has been used for holiday letting for more than 10 years.

“This should not be a mandatory requirement for those operating before the control area designation,” the statement added. “For those cases, planning status can be demonstrated through a certificate of lawfulness if requested, but this should not be a condition of applying for a licence.

“This confusion is the main reason why so few responsible and well run operators have applied and remain reluctant to apply for a licence following the outcome of the judicial review.

“We would not at all want to give the impression that we are now happy with the policy as there are still major fundamental issues and concerns with the way CEC is using a combination of planning and licensing policies to shut down the sector.

“Since 1st October 2022 only a handful of properties have been given planning permission (as opposed to a certificate of lawfulness where CEC has no choice if operating over 10 years).

“It is inevitable that many more legal challenges will take place if CEC continues to grant only a handful of secondary let licences through a combination of planning and licensing

measures, particularly for businesses that commenced operations before the control area was designated.”

The Association of Scottish Self Caterers – which has equated the new rules to a “de-facto ban on short-term lets in Edinburgh” – said a second judicial review is now planned focusing on “the retrospectivity of applying planning policies”.



Edinburgh City Chambers. Photo: © 2022, Martin P. McAdam
www.martinmcadam.com