

Council calls for new laws to permit regulation of short term lets

Edinburgh Council has called for emergency legislation to be passed by The Scottish Parliament to allow its crackdown on short-term lets to continue as originally planned.

An Inner House judge ruled this month that the council's planning guidance for owners of AirBnB-style holiday lets was unlawful, which could have a significant impact on the authority's approach to regulating the sector.

Following the judicial review at the Court of Session, Lord Braid found rules of the city-wide 'control area' – introduced last year in a bid to tackle high concentrations of short-term lets (STLs) – could not be applied retrospectively.

As a result the council is no longer able to demand that all operators of entire property 'secondary' lets seek planning permission as part of their application for a licence, only those who began operating after the control area was introduced back in September 2022.

While council chiefs maintain planning permission will be required in the vast majority of cases, the ruling means potentially thousands of applications will have to be assessed on a case-by-case basis to test if the change of use of a property has been 'material'.

It is understood this could stretch resources in the city's planning department and lead to significant additional staff and enforcement costs.

The council has yet to decide whether it will appeal the judgement.

'Continue with original approach'

A cross-party motion tabled by the council's Labour administration alongside Green and Lib Dem councillors, and backed by SNP councillors, will now ask the Minister for Local Government, Joe FitzPatrick MSP, to introduce an emergency bill to Holyrood.

Councillors said this should "address the legislative deficiencies" in the original legislation that allowed local authorities to set up STL control areas.

It said failing that, ministers should "consider what changes to primary or secondary legislation or other options might be required so Edinburgh Council can continue with its originally intended approach, as agreed cross-party".

Edinburgh Greens councillor Chas Booth said the court's decision was "good news for lawyers but bad news for communities and bad news for anyone seeking a genuinely affordable place to live".

He said: "It's vital the council considers whether there are grounds for appeal and, if not, that we approach The Scottish Government to urge them to put measures in place to allow us to effectively, clearly and quickly regulate this sector.

"The council does have powers under licensing legislation to refuse licence applications where there is a suspected breach

of planning control. It's essential we make effective use of those powers."

Planning Convener, Cllr James Dalglish, said: "Although we still have to decide or appeal or not – and I feel very much that's open for discussion among all the political groups – it is my personal opinion that now is the time to move past this costly tit for tat appeals and counter-appeals and focus on what we need to do to make our policies work for residents.

"As a result of our policies we're seeing properties that were being used for STLs now moving back into residential use. That could be someone's new home.

"Because of this policy we can now really tackle issues that are short-term let-related such as anti-social behaviour, which I know many of our residents are worried about."

Conservative councillor Jo Mowat said she felt it would be "premature to call for an emergency bill prior to getting clarity from The Scottish Government on the principle of retrospectivity" and her group voted against the move.

She said: "My concern is simply one of process, that to go through asking for something – a new piece of primary legislation – which is time consuming and will take a long time to come through, whereas appropriate guidance could come through much more quickly and we may not need emergency legislation once we had seen what that guidance is."

'Policy solutions'

Ahead of the meeting when they agreed their next move councillors were presented with a series of 'policy solutions' to achieve a 'fair and balanced approach' to regulation by trade body the Association of Scotland's Self-Caterers (ASSC).

In an email to elected members the organisation's CEO Fiona

Campbell suggested that the council determines all existing STLs established prior to the control area coming into force are considered lawful use and won't need planning permission.

She said this would "draw a line under current legal uncertainty and the potential for further costly appeals, disputes and potential compensation claims".

Ms Campbell also proposed bookings have a minimum duration of five nights to "ensure turnover of guests will typically be limited to once per week".

And she suggested the council ensures STL owners install noise monitoring systems to mitigate any disturbance to neighbours.

She said: "It is essential to achieve a balance between the needs of residents, businesses and visitors in Edinburgh.

"At the current time, 1,842 secondary let licences have been applied for, representing approximately 0.5 per cent of all dwellings in Edinburgh. This is significantly below the cited expectations of 12,000 short-term lets across the city.

"Approximately 1,300 of the 1,842 secondary let licence applicants have a corresponding planning status that is yet to be determined through either a certificate of lawfulness or a planning application.

"This means a subjective and complex decision-making process will be required to determine the planning status for each application for a licence. Each case will be open to challenge and costly appeals to the [Scottish Government] and potential further Court of Session challenges."

Compensation claims

It is understood that, on the back of the Court of Session ruling, the council has been contacted by aggrieved STL operators who have previously been refused planning permission.

However Cllr Dalglish said having sought legal advice the council "is not liable for compensation". Councillors have been told each claim will be looked at on its individual merit.

Several holiday hosts owners been in touch with the Local Democracy Reporting Service to say they plan to seek compensation.

One said: "We received what seemed to us an unfair refusals in planning for our five properties in Edinburgh last year. We still believe strongly that our operations do not detrimentally impact on the local amenity and should not be considered a material change of use."

Another said any operators who made planning applications based on the "now deemed unlawful actions of the council" should be able to "seek compensation for the cost of an application that wasn't required, even if planning was actually granted".

The operator said: "I spent almost £3,000 on my application including planning, architect and advertising fees."

'Increase our housing stock'

Following the meeting, Council leader Cammy Day welcomed the joint motion and said that better managing the "number and location" of STLs across the city was "one way in which we can increase our housing stock".

He said: “It’s well known that we face unique pressures here in Edinburgh, with a small but densely populated city centre and fast-growing population, and it’s vital for us to strike the right balance between promoting our visitor economy while looking after the people that live here all year round.

“Clearly, however, we must do this according to the legislation and, following the recent judicial review finding, we need to make sure it’s as fair and effective as it can be – for both residents and operators. As agreed at full council today a report setting out next steps will be brought back before councillors early in the new year.”

by Donald Turvill Local Democracy Reporter



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