

# **Court of Session finds STL control area requirements “unlawful”**

**A crackdown on short-term lets by The City of Edinburgh Council has been ruled unlawful for a second time – with a judge describing the authority’s approach as ‘unfair and illogical’.**

Short-term-let (STL) operators took the council to court last month as they challenged the roll-out of the city’s ‘control area’ designed to manage high concentrations of holiday lets.

Issuing his decision Lord Braid said it could not be applied retrospectively, making the council’s requirement for all landlords of entire property STLs to seek planning permission unlawful.

It is likely to have a significant effect for Edinburgh’s regulation of AirBnB-style accommodation in the capital as a whole, including possible legal action from those who have been refused planning permission so far.

The case centred on the council’s interpretation of Scottish Government legislation, which states the use of an entire property as a short-term let “will be a material change of use requiring planning permission” in a control area.

The judge found that when drafting the legislation, the Parliament “did not intend” for it to be automatically applied

to all STLs, but instead just those set up after the control area was designed on 5 September 2022.

He said that the petitioners – who in court argued the council was “at odds” with the Government on the issue – were “correct in submitting that planning permission would need to be applied for” even if it had already been obtained prior to that date.

“Consider the example of two operators each using a property for short-term letting on 4 September 2022 and each doing so lawfully because the change of use in each case was not material,” the judge wrote.

“One had the foresight to apply for and obtain a certificate of lawful use (which merely declares that the use is lawful) but the other did not. It is not at all obvious why they should be in a different position from each other as of 5 September 2022.”

Lord Braid said this was “not only unfair, but illogical.”

He added that the application form for Edinburgh’s STL licencing system – parts of which were ruled unlawful by the same judge in June – “actively discourages anyone from applying who does not have either planning permission” or an application in the pipeline.

He said: “That does in my view go too far, since it fails to recognise that there will be cases where planning permission is not required.”

by Donald Turvill Local Democracy Reporter



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