

Costs of short term let legal actions revealed

The City of Edinburgh Council spent nearly £400,000 defending their short-term let policies which were eventually declared unlawful after two court cases in twelve months.

The costs were revealed in a Freedom of Information request (FOI) by the Local Democracy Reporting Service (LDRS).

It showed that the council's legal fees for two judicial reviews raised by letting operators totalled £243,470. Expenses paid out to the petitioners are understood to be in the region of £150,000.

Curbs on AirBnB-style accommodation in the capital have been introduced to manage the "number and location of STLs across the city".

But parts of the authority's approach to regulating short-term lets (STLs) through licensing and planning systems were struck down by the Court of Session.

Last June Lord Braid concluded that a presumption against granting licences for tenement flats was unlawful, before a second case challenging the city's STL 'control area' resulted in the same judge rule that its implementation had been "unfair and illogical".

Conservative councillor Phil Doggart said: "This seems to be have been a wild goose chase exercise at a large cost to the taxpayer.

“The money might have been better put to uses that would benefit the rest of the city.”

However the council’s planning convener argued that defending the policies was “the right thing to do” as the outcomes “provided clarity going forward for both Edinburgh and other local authorities”.

Iain Muirhead, one of the operators who took the council to court, said it was time to “bring an end to expensive legal challenges and claims” and “draw a line in the sand with existing STL operators who acted in good faith so they can move forward fully licences”.

The council was able to quickly amend its licensing policy to comply with legislation, however the outcome of second review is likely to have a significant impact on the crackdown.

This is because the council can no longer that demand all owners of entire property ‘secondary’ STLs seek planning permission as well as a licence – and will have to look at each property on a case-by-case basis, prolonging the application process and stretching resources in council departments.

Fiona Campbell, CEO of the Association of Scotland’s Self-Caterers said the “hefty legal bill “could have been easily have been avoided if Edinburgh Council had “listened to the sector about its legally unsound and disproportionate planning and licensing policies”.

She said: “The sad fact of the matter is that it should not have taken two instances of grassroots legal action from local business owners to arrive at this stage.

“The ASSC believes the Council has the necessary tools to fairly and effectively regulate short-term lets and it should update its policies and guidance as soon as practically possible to reflect the legal judgements.

“As ever, the self-catering industry, which contributes so much to the local economy, stands ready to work with them in a constructive and positive manner on its regulatory framework.

“Other Scottish councils should take note of what has happened in the capital and revise any legally unsound policies to avoid local taxpayers footing the bill for similar costly legal advice.”

The council has refused to publish the legal advice it received in advance of both court cases following a separate FOI by the LDRS.

Ms Campbell called on the authority to release the advice “in the interests of transparency”. The council has been asked to review the decision.

Cllr James Dalgleish, Planning Convener for The City of Edinburgh Council, said: “We set out our short term let policies to help us manage the number and location of STLs across the city and to address anti-social related problems.

“Defending the Judicial Reviews was the right thing to do and we acknowledge their findings. As a result there is now clarity going forward for both other local authorities and stakeholders in the industry.

“A report detailing the implications of the Judicial Reviews, and what it means for our policies, including setting out recommendations for amending associated planning guidance, will be discussed at Planning Committee later this month. This will allow us to have a thorough discussion with an open and transparent debate around the next steps.

“A part of making our STL policies successful is to work across the spectrum of opinion on this issue and I look forward to reaching out to all political parties and stakeholders to do so.”

Councillor Adam Nols-McVey said that the council's SNP group which he leads "remains fully committed to short term let controls".

He said: "These are crucial to protect our housing in the city for residents and help tackle the city's housing crisis. However we really need the administration parties to sort themselves out.

"The Labour Planning Convener is saying one thing, the Liberal Democrat regulatory convener is saying something else and the Tory councillor they put in charge of enforcement is saying something different too.

"This is fast becoming a farce. Labour have made public comments which risk piercing the confidentiality of legal advice, which would undermine the council's position even further. We're saying clearly to the Labour, Tory, Lib Dem administration they need to sort themselves out. We can't risk losing these controls because of their incompetence."

Cllr Alys Mumford, Edinburgh Greens co-convener, said it was "deeply disappointing" that so much public money had been spent, adding it "could have potentially been avoided if the legislation passed by The Scottish Government was clearer from the start".

She added: "The STL industry, which claims to support reasonable regulation, could have worked with the council to create that reasonable regulation, but instead have simply resorted to the courts. Their cavalier attitude is partly to blame for this cost to the public purse as the council rightly does all it can to prevent the impact of STLs on spiralling housing costs."

Mr Muirhead added: "Given the number of full time STL applications of only 1,800 are far below numbers envisaged by the council, with figures of 12,000 regularly quoted, it is clear that a sensible resolution could now be reached that

will allow a reasonable supply of short term lets in the city.”

by Donald Turvill Local Democracy Reporter



02/10/2023 PHOTO Alan Simpson Applications for short term let licenses advertised in doorways on the Royal Mile Edinburgh.