

# **Council will not offer blanket approvals for historic short term lets**

**Edinburgh Council planning officers have said that proposals suggested to them to grant blanket approvals of short-term lets (STLs) which were operating prior to the introduction of the city's control area, would be unfair, and perhaps illegal.**

The move would allow applications for change of use of whole properties to AirBnB-style lets before September 5 2022 to become automatically lawful, and would have the effect of excluding hundreds of STL landlords from planning regulations which have resulted in many being refused planning permission.

Officers said this could spark "accusations of unfairness" and the approach being branded "legally flawed" as they urged councillors not to proceed with it.

City councillors called for a report exploring the pros and cons of the proposal which was set out in a letter to the council from the Association of Scotland's Self Caterers (ASSC) in January.

The trade body said that granting certificates of lawfulness for legacy short-term lets (STLs) would be an opportunity to

“draw a line in the sand and move forward with STL legislation” by offering a “balanced, reasonable, proportionate and lawful solution to the current challenge”.

The plea came following a successful legal challenge the form of a Judicial Review to the implementation of a city-wide STL control area.

It was ruled that the council could no longer demand change of use applications for all entire property holiday lets – known as ‘secondary lets’ – but only those where the change occurred after the control area’s designation, following a judicial review brought by operators last year.

For those in existence prior to it coming into effect in September 2022, planning permission is still required where the change of use was ‘material’. This is determined through a ‘fact and degree’ assessment of the extent to which a property’s activity differs from its use as a permanent home, by looking at factors such as turnover of guests and the impact on neighbours.

In order to have this assessment carried out without seeking full planning permission – risking refusal – many STL owners have opted to apply for certificates of lawfulness instead as an alternative procedure.

A report responding to the ASSC’s proposal said there are 1,605 STLs which have been granted planning permission or lawfulness certificates, or are yet to be determined. The total number of refusals has been requested by the Local Democracy Reporting Service. There have also been 1,958 secondary let applications to the council’s STL licensing scheme which is a separate procedure.

The report said as the number of whole house lets listed on AirBnB in Edinburgh dropped from around 8,000 in 2019 to 4,648 in December 2023 – with just over 1,500 of these available for 90 or more days per year – that this meant its crackdown

was "having an effect in controlling overall numbers of STLs in Edinburgh".

The ASSC urged the council to change its policy so that "any property in existing use that is not subject to complaint or enforcement is not considered to be a material change of use and therefore does not require planning permission and a certificate of lawful use can be granted".

Setting out the potential benefits of this approach officials said it would "provide clarity for operators and would mean that those to which this approach applies, could continue their business, subject to obtaining an STL licence.

They said it would also "significantly reduce the risk of the council being subject to further legal challenge" and "reduce the administrative burden of having to carry out individual fact and degree assessments . . . which in some instances can be complicated and time consuming".

However, officers added: "Creating a blanket approach to making decisions . . . could result in cases where material changes of uses have occurred but that, as a result of a procedural policy decision, would be deemed to not involve a material change of use.

"It would effectively define what is a material change of use in a procedural policy. Such procedural policy as proposed cannot make something that is a relevant consideration irrelevant or an irrelevant consideration relevant.

"If implemented, the ASSC approach could create the potential for accusations of unfairness for those who have been subject to previous refusals of planning permission or certificates of lawful use.

"There is also the potential that individuals or groups could be aggrieved by the change in approach, particularly if housing is being lost and they consider the approach to be

legally flawed.

“Taking account of the risks and benefits of each of the options explored, it is not proposed to bring into effect the ASSC proposal. The current fact and degree approach to assessing whether material changes of use have occurred is consistent with the court decisions on STL uses (including the recent Judicial Review). It is also consistent with the way in which other certificates lawful use are assessed.”

The report, which will be discussed at the Planning Committee on Wednesday 24 April said a future report will “consider the issues that ASSC has raised further in a policy context”.

Planning Convener Cllr James Dalgleish, Labour, said: “We introduced the short term let (STL) control area to help us manage the number and location of STLs across the city. We continue to face uniquely difficult housing pressures with a small but densely populated city centre and fast growing population across the city as a whole.

“It’s important to strike the right balance between promoting our visitor economy while looking after our residents who live here all year round. We declared a Housing Emergency late last year due to our chronic shortage of affordable homes and the STL control area in Edinburgh is already returning unauthorised short term lets back to their residential use

“Our current policy to determine if a material use of change of use has occurred for STLs operating before the control area came in is in line with planning legislation and the recent ruling of the Judicial Review. It determined that STLs operating before the control area came in may still need planning permission which should be considered on a case by case basis.

“If implemented, the ASSC’s proposal could lead to accusations of unfairness for operators who have been subject to previous refusals of planning permission or certificates of lawful use.

“Going forward, we’ll bring another report to Planning Committee on National Planning Framework 4 and City Plan 2030 to determine if we need to make any further changes to our guidance for businesses on STLs.”

Ben Parker, housing spokesperson for the council’s Green group said he was “delighted this report firmly rejects the industry lobby group proposal to grant blanket planning consent to nearly 1,500 short term lets”.

He said: “As the report makes clear, this would set a very dangerous precedent; would be against planning law and would remove any council control over the impact on neighbours or spiralling rents from those holiday lets.

“I’m frankly astonished that the Labour administration and their Lib Dem and Tory colleagues even considered this proposal in the first place, which would have had the effect of running up the white flag on efforts to regulate this sector.”

ASSC has been contacted for comment.

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.