

Edinburgh Council breaking the law “on an industrial scale”

Edinburgh Council is facing “serious questions” after it emerged it is breaking the law “on an industrial scale” by placing homeless people in 30 unlicensed houses in multiple occupation (HMOs) across the city.

The authority’s top legal expert has warned the practice “cannot continue” and that the cost of finding alternative temporary accommodation “could be substantial”.

Homeless charity Shelter called on the council to clarify what its plans are for anyone who might be forced to move out of unlicensed HMOs and said forcing residents on to the streets “simply should not be an option”.

Councillor Jane Meagher, convener of housing, homeless and fair work committee, admitted the situation was “unsustainable” but said a “guillotine approach” would be “inhumane” and could lead to an increase in rough sleeping.

A new report written by Nick Smith, Edinburgh City Council’s monitoring officer, said that during the pandemic when urgent action was taken to prevent the spread of Covid-19 homeless accommodation was “procured at short notice”.

This included using B&B-type accommodation which did not comply with the council's own regulations requiring HMOs – properties occupied by three or more people who are not from the same household – to be licensed to ensure residents are kept safe and afforded suitable living conditions.

Mr Smith said the decision was taken “on a balance of risk, considering the public health requirements at the time, as well the need for the landlord to be (or become) registered”.

However the council's reliance on unlicensed HMOs has continued long beyond the end of the pandemic. The number of households in temporary accommodation across the capital has risen to over 5,000 from 3,570 at the start of the first lockdown in 2020.

This has been driven in part by increasing numbers of asylum seekers and refugees presenting as homeless, and various policy changes by the UK and Scottish Governments including the removal of local connection, the early prison release scheme, changes to the welcome accommodation policy for Ukrainian Displaced People (UDPs) and accelerated asylum decisions.

Further enquiries by the Local Democracy Reporting Service confirmed 30 illegal HMOs are still being used by Edinburgh Council, with around 700 rooms currently occupied in non-compliant shared houses.

Inspections of all properties have been undertaken prior to placing any people within them, according to the report.

The council wrote to landlords “to request that they register for an HMO licence to resolve the position,” Mr Smith wrote. “Many did so or have undertaken to do so, but others have refused or taken no action.

“The council therefore remains in breach of its HMO licensing duty by maintaining the support of homeless persons and

households in some unlicensed HMO properties.

“Operating an unlicensed HMO is a criminal offence. The council is empowered to take appropriate enforcement action against any unlicensed HMO properties and their landlords.

“The normal enforcement response would be to serve a rent penalty notice and consider reporting the offending landlord to the Crown Office and Procurator Fiscal for potential criminal prosecution in circumstances where they do not apply for a licence and continue to operate the HMO property.”

The report, which will be discussed at a full council meeting next week, added this “potentially undermines” the council’s crackdown on unlicensed landlords, amounted to illegality and maladministration “and cannot continue”.

Edinburgh Council now spends around £50m a year on temporary housing, up from £16.7m in 2019-20. As demand has risen, the council has been forced to place hundreds of households in B&B-type provision, which the Scottish Government classes as ‘unsuitable’ and says should only be used as a last resort and for a maximum of seven days.

However amid a housing emergency in Edinburgh and increasing rates of homelessness, the local authority regularly fails to meet this target.

Finding alternative accommodation for people currently staying in the 30 unlicensed HMOs is likely to drive costs up even higher. “Whilst the cost of finding alternative temporary accommodation for homeless persons of households in Edinburgh could be substantial,” Mr Smith wrote, “it is not possible for the council to remain legally non-compliant.”

A report to the housing, homelessness and fair work committee on Tuesday, October 1 recommends councillors to instruct officials to “take immediate steps to secure safe transition to compliant temporary accommodation from all unlicensed HMO

accommodation for all homeless households affected”.

It said: “Ongoing efforts have been made with providers to achieve licensed status. Seven operators who require an HMO and are currently unlicensed, and have no application in process, are undertaking renovations and have indicated they will apply once these renovations are complete. The majority of these providers are on ‘spot purchase’ contracts, requiring no notice period.”

Alison Watson, director of Shelter Scotland, said: “This report raises serious questions which need answers quickly.

“Most pressingly, we need to know what plans are in place for anyone who might be forced to move out of their temporary accommodation; forcing residents on to the streets simply should not be an option.

“Edinburgh’s homelessness system is failing, the council is breaking the law on homelessness on an industrial scale, and it’s devastating lives.

“When the capital declared a housing emergency we made clear that every part of the council had to work together to tackle it, but it was also a call to action for every level of government.

“This is another stark reminder of why that action is so urgently needed.”

Cllr Meagher said: “The broad situation is that we are under phenomenal pressure to provide accommodation for people.

“On the one hand we have a legal obligation to provide accommodation for people and on the other hand we have a severe shortage of accommodation.

“These are the kinds of dilemmas we are caught in. We have to prevent people from being at the worst end of homelessness which is being on the streets – rough sleeping.”

The housing convener said while some HMOs were not licensed all were subject to fire safety gas and electricity checks.

She said: "Some of the premises are in the process of being licensed.

"It's not just a question of filling in a form and submitting it, it's about much more complicated and costly things than that. For example, it might include having to install kitchens or having to make alterations to the building which would be costly."

"We do understand this situation is not sustainable, but we also understand we can't have a situation where it would be the owners of the unlicensed HMOs would be locking the doors.

"A guillotine approach would be inhumane and in my view completely unacceptable, but also would potentially lead to a significant number of people rough sleeping.

"We can't continue forever with this situation. It's not a situation where you can just say 'we're going to stop now'. Because we're talking about human beings and responsibility for them and their welfare, as well as the welfare of the wider city."

By Donald Turvill Local Democracy Reporter