



ASSC Submission to Angus Council Short-Term Let Licencing Consultation

Founded in 1978, the ASSC are the leading source of knowledge on short-term letting and holiday homes in Scotland and are the only trade body representing the interests of the traditional self-catering sector. We represent over 1,400 members, operating tens of thousands of self-catering properties throughout Scotland, from city centre apartments to rural cottages, to lodges and chalets, to castles. The ASSC commits its members to maintaining the principles of “quality, integrity, cleanliness, comfort, courtesy and efficiency” and to offering visitors to Scotland consistently high standards within their self-catering properties.

Introduction

The Association of Scotland’s Self-Caterers (ASSC) welcomes the opportunity to respond to the Angus Council’s consultation on short-term let licencing. As the main trade association for the self-catering sector in Scotland, the ASSC hopes that our expertise and insight can help inform the approach taken by Angus Council. We have always strived to work collaboratively and proactively with both local and national government stakeholders to ensure a balanced and proportionate outcome for all. We wish to make clear that the ASSC is not averse to regulation; but we do challenge policies that are pursued while lacking a firm evidence base which will damage the livelihoods of our members.

Self-catering properties have been a longstanding presence in communities for generations, especially in rural communities, and provide an economic boost for local areas and enhance Scotland’s tourist accommodation offering. Such self-catering properties are legitimate, bona fide businesses whose owners depend on the money generated for their livelihood – it is not a hobby or a way to supplement their income. This is entirely separate from the ‘homesharing’ concept, or those amateur operators who utilise online marketing platforms but are not subject to the same levels of existing regulation.

With the competition to maintain standards, holiday let owners often spend money more frequently on additional property maintenance than they would on their own property. Their guests spend money in local food shops, cafes, gift shops, restaurants, tourist attractions etc – many of which would simply be unviable without visitor spending. Self-catering currently boosts the Scottish economy by more than £867m per annum according to Frontline Consultants. Given the importance of ensuring a sustainable recovery, and the significance of this measure for the livelihoods of our members in this region, we would respectfully encourage Angus Council to work as closely as possible with the sector and to minimise the regulatory burden on small business.

ASSC Comments on Draft Short-Term Let Policy

In regard to Angus Council’s *Draft Short-Term Let Policy for Angus*, the ASSC wish to make comments on the following areas:

- Renewal of Licences
- Appendix C – Required Information (Layout Plan)
- Fees
- Appendix G – Possible Additional Licence Conditions

Renewal of Licences

We would highlight that Glasgow City Council and North Ayrshire Councils are proposing ten-year and five-year renewals respectively.

Fees

At Appendix B – Application Procedure and List of Application Consultees, the document notes: *“The Application should be accompanied by the prescribed fee. The Council is permitted to set reasonable fees. The total amount of fees received by the Council must be sufficient to meet the expenses of the Council in exercising their function.”* However, Angus Council has not outlined its proposed licence fees or structures in this consultation. Other local authorities, as part of their consultation process, have included estimated fees for stakeholders to comment on and the ASSC would argue that such figures, as well as an explanation behind the criteria used, are absolutely integral to this exercise. Our industry cannot be expected to have any confidence in the new system in their absence – how can we be expected to properly engage with the consultation if we do not know the expected costs imposed on business and how they are measured against cost recovery?

Overall, the fees attached to short-term let licencing are meant to be based on the principle of cost recovery – therefore, the ASSC believes that fees should not be set at a level greater than the amount necessary to recover establishment and running costs. If a fee structure with costly, disproportionately high fees was introduced, this will reduce accommodation capacity in the region and will damage the industry at a time when we need to work towards a sustainable recovery.

We would refer Angus Council to Scottish Government guidance which highlights ways to keep costs down, including: (a) economies of scale; (b) integrating service delivery with other housing and licencing functions; (c) using online and digital verification where possible, for example through photo and video evidence instead of a visit; and (d) taking a proportionate, risk-based approach to checks and verification, for example in considering whether, when and how often visits to premises are needed, especially in more remote and rural areas where the costs of such visits could be higher.

It is imperative that any fees are kept as low as possible given the environment many small businesses find themselves in. In this regard, we wish to highlight our proposal which we believe could assist with an efficient and cost-effective way of securing compliance with the Licencing Order. The ASSC have worked in partnership with Quality in Tourism to promote a self-declaration model with risk-based inspections by the licencing authority.

Overall, this approach has four main advantages:

- It minimises the work required by the licencing authority to set the system up and renew licences;
- Allows the licencing authority to focus its inspection resources on a risk-based basis;
- Requires responsible behaviour and compliance by the operators; and
- Minimises the additional costs to operators (which will have to be absorbed as an additional business cost and/or passed on to the very visitors we want to visit your area to boost our economic recovery).

We understand that local authorities across the country are facing severe pressure on their resources and we believe this system can go some way to help with the administrative challenges associated with the licencing regulations. We would be delighted to meet with officials to discuss this in further detail to see whether it would be appropriate for Angus Council.

Appendix C – Required Information (Layout Plan)

Appendix C point 2 notes that a short term let licencing application include a layout plan at scale 1:100 which should include a legend explaining the scale used and the symbols used, as well as a description of the premises as described at 2 (a), (b), (c), (d), and (e).

Such a technical layout plan will necessitate an expensive piece of work by a contractor which will be another cost on legitimate small businesses operating without issue for decades. This will be in addition to the cost of a licence fee (currently unknown), compliance with existing regulations, the mandatory and additional conditions, not to mention other factors such as rising energy costs.

Appendix G – Possible Additional Licence Conditions

Angus Council have set out a list of additional conditions which could *“be added on a case-by-case basis, as necessary”* or *“may be added in response to local challenges and concerns specific to certain models of short-term letting.”* The ASSC would argue that many of the additional conditions listed are unnecessary. This is either due to a replication of mandatory conditions; that they do not relate to the provision of accommodation through short-term letting; or are not within the control of the individual operator. We explain this below.

“1. The licence holder must take reasonable steps to manage the premises in such a way as to seek and prevent and deal effectively with any anti-social behaviour by guests to anyone else in the short-term let and in the locality of the short-term let.”

Incidents of anti-social behaviour in self-catering premises are rare. Last year, the ASSC submitted Freedom of Information requests to all thirty-two local authorities in Scotland and the results of this show that there is a mismatch between perception and reality: the number of ASB complaints against holiday lets in Scotland over the past five years is minimal.

Professionally run self-catering businesses already do this as part of the basic management of the property. Operators want harmonious relationships with neighbours and the local community – it is not in their interest to allow any anti-social behaviour in their business. This is part of the basic management of their property and there already is existing anti-social behaviour legislation that can be utilised by councils to respond when complaints arise. For instance, the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 granted local authorities the power to deal specifically with the problem of antisocial behaviour in properties let for holiday use. However, this needs to be enforced, as the Cabinet Secretary for Housing Shona Robison MSP stated: *“We expect all relevant authorities to use the powers available to them to deal with antisocial behaviour”* (Shona Robison MSP, in answer to Parliamentary Question S6W-03022, 01/10/21. Url:

<https://archive2021.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S6W-03022&ResultsPerPage=10>).

“2. The licence holder must take reasonable steps to:

- ensure that no disturbance or nuisance arises within or from the premises, for example by explaining the house rules to the guests;***
- deal effectively with any disturbance or nuisance arising within or from the premises, as soon as practicable after the licence holder is made aware of it; and***
- ensure any vehicles belonging to guests are parked lawfully, for example explaining where any designated parking spaces are to be found and highlighting any local rules.”***

The language attached to the additional conditions that the licence holder must *“ensure”* that no disturbance or nuisance arises within or from the premises, or indeed ensure vehicles belonging to

guests are parked lawfully, is unreasonable. First, many operators will not always be on site at their property. Second, while operators can reasonably *ask* that their guests comply with the two aforementioned examples but they cannot *compel* them to do so. In addition, we are very concerned at the cost implications for Angus Council to enforce this – will the Council have officers patrolling near self-catering units to check that guest vehicles are parked in an appropriate fashion? Third, that “*deal effectively with any disturbance or nuisance arising within or from the premises*”, this should be dealt with by existing anti-social behaviour legislation. This is a duplication of regulatory regimes.

Licensing authorities cannot be allowed to set restrictions on premises where there is a perception there may be an issue. Restrictions should not be put in place where there is potential or existing issues in the vicinity of the premises unless it can be shown the issues occurring in the vicinity originated specifically from the short term let premises.

The ASSC believe that Angus Council *could* adopt additional conditions in relation to: (a) noise monitoring; and (b) community accreditation and mediation. However, on any additional conditions applying to noise, there **has** to be a causal link to issues from those premises. One example where such conditions have been shown to work is Barcelona, where this was introduced by local government, and further information is available in the ASSC’s Forward Together paper (see ASSC, Forward Together: A Collaborative Approach to Short-Term Letting, Url: <https://www.assc.co.uk/policy/forward-together-a-collaborative-approach-to-short-term-letting/>).

“3. The licence holder must manage the premises in such a way as to respect and protect the privacy and security of neighbours.”

As stated, this is part of the basic management of a property that many legitimate businesses will already be doing. We refer you to the ASSC’s Code of Conduct which could be utilised instead of an additional condition. For more details, see: <https://www.assc.co.uk/policy/code-of-conduct/>

“4. The licence holder must ensure:

- ***guests know and understand any particular rules applying to shared areas and entrances;***
- ***guests understand that shared doors should be properly and securely closed after use; and***
- ***the provision of access codes or keys to guests cannot be used by guests to gain access to shared areas after they have finally departed.”***

Of course, operators should *ask* their guests to comply with rules relating to shared entrances, areas and doors but cannot *compel* them to do so. In terms of the provision of access codes or keys to guests, this is part of the basic management of a property and should not be an additional condition.

“5. The licence holder must ensure that the bedrooms, living room and hallway in the premises are carpeted.”

Applying a condition that the licence holder must ensure that bedrooms, living room and hallway are carpeted is disproportionate and is yet another cost levied on businesses. This would not be asked of a private landlord renting out a property where noise complaints had been levelled by neighbours, so short-term lets operators should not be discriminated against in this manner. Furthermore, from both a commercial and equalities perspective, operators need to make their premises as accessible and inclusive for all of their guests. For instance, carpeting can trigger conditions such as asthma and other adverse effects.

“6. The licence holder must take reasonable steps to ensure that guests do not 35 first arrive or finally depart from the property between the hours of 11pm to 7am. The licence holder must advise guests of this as part of their booking terms and conditions. (“Reasonable steps” allows for exceptions, such as significantly delayed transport).”

While we note that Angus Council state that “reasonable steps” would apply to ensuring that guests arrive or leave during specific hours, it is again unfair to place the onus on operators on factors that are completely outwith their control, such as delayed transportation. At the present time, due to difficulties faced by airport operators, as well as ongoing industrial action on the railway network, many guests will arrive at their destination late due to no fault of their own. Angus Council should not use the language of “ensure” on factors that are not the preserve of operators.

“7. The licence holder must provide adequate information on, and facilities for, the storage, recycling and disposal of waste.”

“8. The licence holder must advise guests of:

- ***their responsibilities;***
- ***the use of the bins/sacks provided for the premises; and***
- ***the location of the nearest recycling centre or recycling point.***

“9. The licence holder must:

- ***clearly label bins as belonging to the premises;***
- ***ensure that guests manage their waste in compliance with (8) including when they depart; and***
- ***maintain the bin storage area and the exterior of the premises in a clean and tidy condition.”***

The Council state the licence holder “must” in respect of the above points – while operators can advise guests of refuse collection day, they cannot compel them to comply. On a more practical point, we are dealing with individuals in Angus for a holiday and who will not wish to spend a large amount of time familiarising themselves with waste management and recycling issues. Furthermore, operators should of course provide the necessary materials and advice regarding waste disposal but expecting every holidaymaker to follow this to the letter, especially when many may reside in areas with different policies for recycling etc, is unreasonable.

Once again, there is a presumption of bad practice by short-term let operators implicit in the possible additional conditions. There is no business incentive for self-caterers to rent out properties sprawling with rubbish. Self-caterers have provided well-maintained and clean environments for guests for decades and we would like to see what evidence the Council holds to show that littering and waste disposal is a specific problem of the self-catering industry compared to any other type of property. Finally, this additional condition also raises the question of enforceability: how will Angus Council monitor compliance?

“10. The Licence holder must not affix a key box, or other device to facilitate guest entry to the property, to any public or jointly owned private infrastructure without prior written permission of the relevant authority or owner(s). The licence holder must be able to produce the permission to the licensing authority on request.”

Prohibiting the use of keyboxes or other related devices is arbitrary. First, it should be recognised that keyboxes are used for a variety of different purposes, not just to facilitate entry to a short-term let – for example, they are readily utilised by carers. We would presume that Angus Council have no issue with keyboxes for this purpose but why should it be any different for short-term lets? It is the same device affixed to a door used to enable entry.

Securing the agreement of all owners within a property will be near impossible to achieve. Unanimity of agreement for any change to a property (e.g., repairs) is difficult to secure in other contexts but would be especially so for keyboxes used by short-term let operators. We therefore ask the following: will this become a general policy for all keyboxes within the local authority area, or do Angus Council intend to solely discriminate against their use by short-term let operators?

Furthermore, Angus Council need to take cognisance of how the pandemic has changed the way operators interact with guests. There has been shift in consumer behaviour away from traditional meet and greets between operator/guest towards information being shared electronically and via apps. Indeed, due to specific Covid-19 legislation, it wasn't always possible for the two parties from different households to meet in-person – this is why many therefore chose to use keyboxes to ensure guests could gain access to properties. Generally, the ASSC would encourage its members to affix any keybox in a manner that is aesthetically appropriate as possible.

“11. Amplified music shall not be played in the garden area or in any part of the property such that it can be heard in the garden area at any time.”

If such an additional condition was taken forward, Angus Council will need to define what amplified music means as what is 'loud' to one individual compared to another is relative, as well as how this will be assessed. We would raise the issue of enforceability of this and would also like to see what evidence the Council holds that this is a problem within self-catering units in of itself and compared to other types of property.

“12. The external garden area including any facilities located in the garden such as hot tubs, swimming pools, bars or barbeques shall not be used after 2100hrs.”

Hot Tubs / Swimming Pools / Barbeques

Operators can ask guests not to use hot tubs, swimming pools or barbeques after a certain timeframe but cannot compel them to do so. What evidence does Angus Council possess to suggest that these facilities are a particular problem when part of short-term lets? What criteria did the Council use to determine 2100hrs?

Furthermore, if the hot tub is located within a self-contained self-catering unit, why do Angus Council consider it necessary to apply what amounts to a hot tub curfew? Moreover, this raises the matter of enforceability: will the Council employ someone to ensure that guests are using hot tubs / swimming pools / barbeques at appropriate hours? This appears to be another instance of short-term let businesses being discriminated against compared to other accommodation providers or types of property.

Bars

Any short-term letting business with a bar, which is highly unlikely, would be a licenced premises under the Licencing (Scotland) Act 2005 and would be subject to that legislation. This is a duplication of existing regulation and should not form part of additional conditions.

Overall, many of the possible additional conditions are unenforceable and will merely burden the licencing authority. If Angus Council cannot enforce these, it is incompetent and leaves the Council open to judicial review. Many of the additional conditions are part of the basic management of a property and could instead be delivered by a clear and robust Code of Conduct, such as that devised by the ASSC.

Fiona Campbell

Chief Executive of the Association of Scotland's Self-Caterers

e: fiona@assc.co.uk