



ASSC Submission to City of Edinburgh Council Short Term Lets 2022 – Consultation 2

Founded in 1978, the Association of Scotland’s Self-Caterers (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 City of Edinburgh Council’s second consultation on their short-term let licensing scheme. 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 the 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, as is the case with this draft policy and consultation exercise.

If agreed, this proposed licensing policy will devastate the self-catering sector within the capital – a vital source of alternative accommodation for visitors to the city – and will have the effect of jeopardising Edinburgh’s position as a Festival city and one which can host large events due to the likely reduction in properties. It also puts at risk the substantial economic contribution made by the self-catering industry, estimated at approximately £90m per annum by Frontline Consultants.¹ Given the importance of ensuring a sustainable recovery for Scotland’s tourism industry, and the significance of this measure for the livelihoods of our members, we would respectfully encourage City of Edinburgh Council to rethink its approach and work as closely as possible with the sector and to minimise the regulatory burden on small business.

Summary

We have incorporated our answers to the questions listed on the Council’s online portal into this submission which also outlines our significant concerns with the proposed approach in the *Draft Short-Term Let Licensing Policy*.

Overall, the ASSC maintains that:

- Edinburgh Council’s proposals amount to a de-facto ban on short-term lets despite assurances to the contrary.

¹ Frontline Consultants, *Economic Impact of Self-Catering Sector to the Scottish Economy* (2021). See: <https://www.assc.co.uk/wp-content/uploads/2021/09/Economic-Impact-Study%E2%80%93Scotland.pdf>

- The proposals will devastate the self-catering sector, a vital component of Scotland’s tourist economy, and threatens the livelihoods of legitimate small business owners who have benefited local economies for decades.
- If enacted in its present form, as aspects of the policy are *ultra vires*, this opens up the real possibility of legal challenges to the Council.
- There is a presumption of bad practice in the short-term let industry in the draft document that is unevidenced and there are multiple instances where the Council discriminates against secondary letting compared to other types of short-term let.
- Many of the proposed additional conditions duplicate the mandatory conditions or existing regulations and are unenforceable, burdening the licencing authority and individual operators for no discernible benefit.
- The recovery of the tourism sector will be damaged by these plans, putting at risk the £90m per annum boost that self-catering provides to the city.
- Edinburgh’s position as a Festival city will be jeopardised, as will its ability to host similarly large events in the future.

ASSC Comments on City of Edinburgh Council Draft Short-Term Let Licensing Policy

STL Application Process

4.1

City of Edinburgh Council need to justify why they are only intending to grant one-year licenses to secondary lets, when most other local authorities are proposing at least three-years for this type of short-term let, with Glasgow City Council proposing five-years and North Ayrshire Council ten-years respectively. Moreover, the reasoning behind the disparity in the length of a license between secondary letting and other forms of short-term let – homesharing, homeletting, and homeletting and homesharing (all three-years licenses) – ought to be explained by the Council.

4.2

A 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 on top of the cost of a licence fee, compliance with existing regulations, the mandatory and additional conditions, not to mention other factors such as rising energy costs. Unless pertaining to maximum occupancy, there is absolutely no need for a floor plan.

4.3 f.

On the need for an Annual Emergency Lighting Certificate, City of Edinburgh Council provide no explanation of why this is only required for secondary letting as opposed to other types of short-term let. This is another inconsistency between different types of short-term let.

Notice of Application

4.7

The draft policy document does not set out the application fee for short-term let operators, nor does it go into any level of detail in terms of the criteria in the processing of determining the fees. 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 this consultation if we do not know the expected costs imposed on business? Moreover, it has been impossible to set rates for future guests with an absence of knowing what licence fees should be.

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 is introduced at this critical time, this will reduce accommodation capacity and will damage the industry at a time when we need to work towards a sustainable recovery. Moreover, any fees proposed should be applicable to all types of short-term let – be it secondary letting or homesharing – since licencing authorities will be assessing for the same conditions.

We refer City of Edinburgh 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 City of Edinburgh Council.

Evidence of Operation as a STL before 1 October 2022

4.9

City of Edinburgh Council should outline what they mean by applicants being required to “certify” that they have been operating a short-term let prior to 1st October 2022.

Temporary Licenses

4.11 & 4.12

There is no explanation provided as to why temporary licenses are deemed acceptable for home letting, homesharing, and home letting and homesharing, compared to secondary letting. To uphold the main principle of licensing – to ensure health and safety – there needs to be consistency between all types of short-term let, otherwise this is severely undermined. This is another example of the different treatment of secondary letting compared to other types of short-term let which lacks reasoning.

Tenement / Shared Main Door Accommodation

4.16 & 4.17

The draft policy states that “*tenemental accommodation, or those with a shared main door, are suitable for secondary STL due to its character, location and risk of creating undue nuisance.*” This is yet another instance of the Council holding secondary letting to a different standard compared to other types of short-term let. There is no real elaboration on why other types of short-term let may be appropriate compared to secondary letting.

The ASSC strongly contend that this section is *ultra vires*, thereby opening up the possibility of legal challenge. It is also beyond the scope of the licencing legislation and the policy intentions of the Scottish Government. Licensing relates to the safety of an activity, whereas this is a planning consideration. Furthermore, we firmly believe that both Options A and B would technically amount to a de-facto ban on short-term letting within Edinburgh, contrary to assurances made by the Council that this is not the case. We therefore strongly refute and reject Options A and B presented by the Council in the draft policy and consultation.

In general, there is an important and crucial distinction between planning and licensing considerations. Edinburgh Council’s draft policy states that “*the key aims of licensing are the preservation of public safety and order and the prevention of crime*”, yet the policy drifts into planning considerations, especially issues of use.

Overprovision / Cap on Numbers

On a related point, we note the recent comments made by the Leader of City of Edinburgh Council Cllr Cammy Day regarding the possibility of a cap on numbers: “*We will now progress implementing the changes and the next step should be looking at whether we can apply a cap on numbers, too.*”² Additionally, Questions 4 and 5 in the Council’s licensing consultation relate to limitations on the number of nights for which short-term lets could be used in each year.

² Cllr Cammy Day quoted in Scottish Government, ‘Controlling short-term lets’, 01/08/22. See: <https://www.gov.scot/news/controlling-short-term-lets/>

First, as this relates to planning, capping numbers should not form part of the current consultation relating to short-term let licensing. Second, the Council does not have the power to introduce such measures on secondary letting so this should not be included in this consultation exercise on licensing. Finally, it should be remembered that overprovision powers were withdrawn from the Scottish Government’s licensing legislation in November 2021. This recognises that the government’s objective with the regulations was about ensuring health and safety across all short-term lets, not addressing housing issues. The Council should not be seeking means to reintroduce this and instead focus on applying and enforcing the powers it already has at its disposal.

Temporary Exemptions

4.21

There is no explanation provided as to why temporary exemptions are deemed acceptable for home letting, homesharing, and home letting and homesharing, compared to secondary letting. To uphold the main principle of licensing – to ensure health and safety – there needs to be consistency between all types of short-term let, otherwise this is severely undermined.

Accommodation Inspections

4.29

The Council should outline what they mean by a “*risk-based approach*” as well as the criteria for inspection.

Compliance and Enforcement

4.38

What is a “*general enforcement fee*” and why is it needed? If this will be levied in addition to the general license fee, this could quickly see costs mounting up for small business owners. While the Council “*notes Scottish Government guidance on frivolous or vexatious complaints*”, this tilts the balance towards community control of the entire process, with established businesses being at the mercy of neighbourhood complaints.

Appendix 2 – Additional Conditions

We are extremely saddened that throughout the draft policy statement, there is a presumption of bad practice against the short-term let industry, from issues such as anti-social behaviour to littering, which we find incredibly disheartening and disappointing given the immense economic opportunities the sector provides to the city, as well as the fact that many businesses in the area have been a welcome part of the community for decades. Additionally, many of the additional conditions are unenforceable and will merely burden the licencing authority when the Council’s resources are already incredibly stretched. If City of Edinburgh 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.³

³ ASSC, *Code of Conduct*. See: <https://www.assc.co.uk/policy/code-of-conduct/>

We disagree with the following proposed additional conditions:

STL 1

This would appear to replicate the mandatory conditions.

STL 2

This does not fit with the activity of self-catering.

STL 3

This proposed condition is both unrealistic and unreasonable. With the arrival and departure times, it is 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 industrial action on the railway network, many guests will arrive at their destination late due to no fault of their own. Expecting licence holders to meet guests upon their arrival at the accommodation shows a lack of understanding of how self-catering works. Self-catering is non-serviced accommodation. A fuller definition of the activity is provided in our response to STL 5.

STL 4

This has been drafted in a manner which would resemble a condition for a HMO, not short-term let accommodation, and these are two completely different forms of activity and should be treated accordingly.

STL 5

This is unreasonable for two reasons. First, given the very nature of self-catering, operators cannot be present at all times at their accommodation. At a basic level, self-catering provides non-serviced accommodation which distinguishes it from other forms of tourist accommodation. A self-catering property generally meets the following criteria: (1) a property that is available to rent by visitors on a short-term basis for the purposes of a holiday or a short break; and (2) a self-contained unit with its own cooking facilities, which may form part of a larger property, or be grouped with other units on the same site. Second, owners cannot “prevent” the actions of individuals residing in their premises. There is existing anti-social behaviour legislation which should be enforced should problems arise in terms of short-term let accommodation.

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".⁴ In addition to enforcing current regulations, this condition could easily be replaced by a Code of Conduct for all short-term let operators in the city.

As an aside, this condition appears to recognise that anti-social behaviour is not limited to secondary STLs but the Council ignores this for the purposes of the tenement restriction at 4.16 to 4.18 for secondary letting only, which shows the inconsistent nature of this policy.

STL 6

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 City of Edinburgh 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 the Council intend to solely discriminate against their use by short-term let operators?

Furthermore, City of Edinburgh 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.

STL 7

The language in this section states that the licence holder "*must ensure*". While operators can and will inform guests about rules applying to shared entrances/areas/doors, they cannot compel them to comply.

On any additional conditions applying to noise and anti-social behaviour, which would cover both STL 5 and STL 7, there has to be a causal link to issues from those premises. Licencing 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.

⁴ Shona Robison MSP, in answer to Parliamentary Question S6W-03022, 01/10/21. See: <https://archive2021.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S6W-03022&ResultsPerPage=10>

STL 8

This could be delivered by a Code of Conduct for short-term let operators rather than being an additional condition.

STL 9

The ASSC would appreciate further details as to why this condition is necessary.

STL 10

The Council state the licence holder shall “ensure” – 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 the city for a holiday and who will not wish to spend a large amount of time familiarising themselves with waste management and recycling issues. Similarly, operators should of course provide the necessary materials and advice in regard to 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.

There is no business incentive for self-caterers to rent out properties strewn 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 the Council monitor compliance?

STL 11

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. Again, there is an inconsistency in the Council’s approach: why is this being asked of secondary letting only and not other forms of short-term let? 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.

Fiona Campbell, CEO of the Association of Scotland’s Self-Caterers

E: fiona@assc.co.uk