

## **Association of Scotland's Self-Caterers Briefing** **Short-Term Let Planning**

### **1. Executive Summary**

**Summary of Risk to Economy**

**UK Government Planning Consultation**

**ASSC Opinion**

**Key Recommendations**

### **2. Detailed Issues**

**2.1 Planning policies are leading to a near 'de-facto' ban in Edinburgh and Glasgow**

**2.2 Inconsistent and confusing planning guidance across council areas**

**2.3 Incorrect treatment of retrospective applications in control areas**

**2.4 Lack of data used to inform Planning Control Areas**

**2.5 Planning treatment of 'mid-term' or fixed duration rentals**

**2.6 Lack of policy or direction on treatment of NPF4 Policy 30 (e)**

**2.7 Planning circular fails to address points of uncertainty**

**2.8 Planning application fees and surcharges**

### **Executive Summary**

The Town and Country Planning (Scotland) Act 1997 requires planning permission where a material change of use occurs. However, there is no clear definition of "material change of use," and each application is assessed on a case-by-case basis.

Legal advice obtained by the Association of Scotland's Self-Caterers (ASSC) makes it clear that planning permission is not necessarily required for a change of use to short-term holiday accommodation<sup>1</sup>. In fact, the question of a change in material use depends on the individual circumstances of each premises.

Planning permission requirements for short-term letting depend on whether the premises are situated in a Short-Term Let Planning Control Area (PCA). A primary purpose of PCAs is to help manage high concentrations of secondary letting<sup>2</sup>.

In other areas, planning permission may not be necessary, and authorities must consider the specific circumstances of each case. Local planning authorities in Scotland have historically taken a supportive approach to self-catering properties, often advising that they do not require planning permission.

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<sup>1</sup> <https://www.assc.co.uk/legislation/brodies-llp-legal-opinion-requirement-for-planning-permission-2>

<sup>2</sup> <https://www.gov.scot/publications/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/pages/6/>

Central to the operation of the newly introduced Short-Term Let Licensing legislation is its interaction with the planning regime. The introduction of short-term let licensing legislation has created confusion among local authorities. Planning is concerned with the material change of use of a building where there has been a development or due to “its impact on local amenity and the character of a neighbourhood or area, safety and impact on immediate neighbours. How an individual property is advertised, managed or operated is a matter for the licensing scheme”<sup>3</sup>. The Policy Note accompanying the 2022 Order states that it establishes a licencing scheme to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area as well as to assist with the handling of complaints effectively.

In terms of planning, some councils have adopted blanket policies requiring planning permission for all flats used for short-term lets, regardless of whether a material change of use has occurred. Other authorities have based their requirement for planning permission on factors such as the number of bedrooms or capacity of the property. There are inconsistencies between councils, with some demanding planning permission for certain home-sharing situations, while others state that no planning permission is necessary. Many councils have been awaiting further guidance from the Scottish Government to clarify planning requirements for short-term lets and there is evidence that this has caused delays in licensing applications.

In addition to confusion over the need to apply for planning permission, heavily restrictive policies, particularly in Edinburgh and Glasgow, are causing significant hurdles and restrictions in terms of obtaining licensing approval. These planning policies are implemented without considering empirical data or the demand and supply requirements of short-term let accommodation that supports local economies and livelihoods.

City of Edinburgh Council’s (CEC) planning authority has refused the vast majority of applications for a change of use to short-term let accommodation over recent months. Despite the fact that a significant proportion of self-catering properties in Edinburgh operate from flatbed dwellings with common access, planning applications are being rejected based on criteria that would appear almost impossible to overcome. There appears to be inconsistency in decision-making, with even main door properties being refused planning permission under the same policy that were previously permissible. The implementation of NPF4 policy 30 (e) has further contributed to what is becoming a de facto ban on short-term let accommodation in Edinburgh, as evidenced by the high number of refusals and withdrawals of planning applications.

Glasgow City Council’s (GCC) planning policy is also highly restrictive, disallowing a change of use from residential flats to short-stay accommodation within existing blocks of residential flats that share a means of access. This policy claims to protect residential amenity but severely limits the operation of self-catering properties, and disregards those businesses operating with no negative impact on residential amenity. Only a few properties with dedicated private access and amenity space have been granted planning permission. The vast majority of flats fail the test due to shared doors or being located in restricted areas. These properties will not be able to apply for a licence.

The introduction of PCAs in Scotland further adds to confusion for planning and licence applicants, where guidance from council suggests that any new short-term let, regardless of its nature of use, requires planning permission. However, guidance from the Scottish Government clarifies that this requirement only applies to new uses once the area has been designated and not retrospectively. The guidance states that if a change of use to a short-term let occurred before the designation of the control area, the existing rules apply, requiring planning permission only for material changes of use. This information is supported by letters from the Scottish Government and legal opinion from Neil Collar, Head of Planning

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<sup>3</sup> <https://www.gov.scot/publications/short-term-lets-consultation-licensing-scheme-planning-control-areas-scotland/pages/6/>

Law, Brodies LLP<sup>4</sup>. The approach being taken by both Edinburgh and Highland Council (Ward 20) is inconsistent with guidance from the Scottish Government and independent legal advice obtained by the ASSC.

There is concern regarding the disconnect between planning policies and the reality of various uses defined as "short-term let" for planning purposes. Examples include situations where properties are used by the owner for several months per year and let out for the remaining months as STLs, which are now being denied planning permission due to perceived loss of residential accommodation. Similarly, properties exclusively let to corporate guests for extended periods as 'mid-term rentals' are still subject to planning permission requirements in PCAs, and defined as STLs.

The National Planning Framework 4 (NPF4) was recently adopted and provides a planning policy framework for Scotland. The ASSC concurs with the statement in NPF4 that tourism can "bring a wealth of economic, social and cultural benefits to our communities, cities and regions, supporting resilience and stimulating job creation", but believes the sector needs to be supported for its recovery from the impact of Covid-19, and that an appropriate balance in the regulatory framework is required. Policy 30 (Tourism) under NPF4 includes section [e], which states that development proposals for the reuse of existing buildings for short-term holiday letting will not be supported if they result in an unacceptable impact on local amenity or the loss of residential accommodation without sufficient local economic benefits. There is inadequate guidance on how to apply NPF4 Policy 30 (e) and local authorities have failed to provide economic impact assessments which assess the economic benefits of short-term lets, leading to uncertainty about the criteria used for decision-making.

Planning Circular 1/2023: Short-Term Lets and Planning<sup>5</sup> was published on 17<sup>th</sup> May 2023. Regrettably, this guidance does not provide the clarity required, and may further confuse and lead to fragmented interpretation and implementation. The ASSC contends that this guidance is confusing and contradictory.

### Summary of risk to economy

The current pattern of planning decisions regarding short-term lets in Edinburgh and Glasgow suggests that most commercial self-catering units will not be granted planning permission or provided the opportunity to apply for a licence. An alarming lack of demand planning and forecasting of supply requirements poses a significant risk of a major shortfall in self-catering properties in both cities. The ASSC believes that the volume of approvals will fall far short of satisfying the demand for short-term let accommodation and the diverse range of use requirements in our cities.

Edinburgh Festival Fringe Society has had significant press coverage recently regarding the impact of STL legislation on availability and affordability of accommodation: "*Earlier this year, Festivals Edinburgh, which brings together the bosses of the city's various festivals, warned they were facing an "economic shock" as a result of new short-term letting regulations*"<sup>6</sup>. This view is supported by Fringe Edinburgh's report: '*Edinburgh Accommodation Supply and Affordability - A Red Risk for The Edinburgh Festival Fringe and major challenge for The Festival City and Edinburgh's reputation as a welcome, accessible, open cultural capital – 2023*', which has been shared with CEC.

The impact to local economies reaches far wider than our major cities, with evidence of existing businesses throughout the country being asked to evidence planning permission as part of a licence application, where it was not needed historically, being served enforcement notices and planning decisions being made retrospectively based on new policies.

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<sup>4</sup> <https://www.assc.co.uk/legislation/brodies-llp-legal-opinion-requirement-for-planning-permission-2>

<sup>5</sup> <https://www.gov.scot/publications/short-term-lets-planning/pages/2/>

<sup>6</sup> [https://www.insider.co.uk/news/rising-accommodation-costs-grim-reaper-29988624?utm\\_source=business\\_insider\\_newsletter&utm\\_campaign=daily\\_newsletter2&utm\\_medium=email](https://www.insider.co.uk/news/rising-accommodation-costs-grim-reaper-29988624?utm_source=business_insider_newsletter&utm_campaign=daily_newsletter2&utm_medium=email)

The consequence of these planning policies will include limited accommodation options for visitors, price increases for other forms of accommodation, difficulties in finding short-term accommodation for corporate, academic, and healthcare needs, higher costs for high-profile events like the Edinburgh Festival, potential job losses, and the emergence of an unregulated black market for short-term lets. In addition, the ASSC contends that it will drive an increase in second homes that lie empty for much of the year, and visitors being displaced into using campervans in our rural economies and islands.

There is a real concern that the wider needs for short-term or flexible accommodation has been overlooked in the development of current planning policies. Examples of such needs include medical support, additional accommodation capacity, work contractors, business visitors, educational purposes, and home movers. These types of short-term let may not necessarily be 'short' in duration.

The implementation of NPF4 further increases the risk that a considerable number of self-catering properties are being forced to close without sufficient evidence to support the policy objectives of NPF4 regarding the economic benefits of short-term lets. This may undermine the overall policy objectives and fail to strike a balance between amenity concerns and economic benefits.

A lack of clear and consistent guidance on planning requirements has become a major hindrance to the successful implementation of the short-term let licencing scheme. Conflicting information on planning and licensing requirements complicates the process. The absence of clear guidance may result in legal implications if individuals are now required to submit retrospective planning applications at significant cost, where it was not initially necessary.

## UK Government Planning Consultation

The UK Government is currently consulting on proposed changes to planning legislation<sup>7</sup>. It seeks views on the introduction of a new use class for short-term lets, the potential introduction of a new permitted development right for the change of use from a dwellinghouse to a short-term let and vice versa, amongst other issues. In short, they propose to introduce a new use class for short-term lets. It is noteworthy that there is no intention to apply the new policy retrospectively.

The UK Government intends to introduce this alongside a registration scheme for short-term lets<sup>8</sup>. The Department for Culture, Media and Sport (DCMS) and Department for Levelling Up, Housing and Communities (DLUHC) are *“working closely together to ensure that different measures being considered across government that apply to the short term lets sector are proportionate, complementary and easy to understand.”*

The ASSC contends that this approach is reasonable, rational and justifiable, whilst protecting existing legitimate businesses<sup>9</sup>. An inconsistent approach in Scotland would render our businesses at a disadvantage compared to our nearest neighbours.

## ASSC Opinion

**Uncertainty and ambiguity over the planning process are causing distractions from implementing licensing schemes. Clarity must be provided going forward, rather than applying policy changes retrospectively to those businesses that have already made significant financial investment and operated for some considerable time, in some cases for decades, without issue.**

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<sup>7</sup> <https://www.gov.uk/government/consultations/introduction-of-a-use-class-for-short-term-lets-and-associated-permitted-development-rights/introduction-of-a-use-class-for-short-term-lets-and-associated-permitted-development-rights>

<sup>8</sup> <https://www.gov.uk/government/consultations/consultation-on-a-registration-scheme-for-short-term-lets-in-england>

<sup>9</sup> <https://www.assc.co.uk/regulations/uk-government-planning-consultation>

Operators who require to conduct their businesses in a professional manner, and rely on advance bookings, and who will have to advise clients about their ability to let individual properties, are left in a state of substantial uncertainty. To introduce a policy exercising one function (licensing) whilst the same activity will be regulated through the exercise of a different function (planning) and when the nature of the combined effect is unknown is disproportionate, illogical and perverse.

It also sets an alarming precedent that an entire sector (self-catering) can be largely closed down due to the retrospective application of planning regulations where there is clear evidence of differing and inconsistent treatment of planning status in the past. The imposition of further planning policies, in particular NPF4, which is being applied retrospectively to existing operators who were operating prior to this policy being implemented, further adds to business uncertainty and confusion.

Moreover, in our opinion, the lack of clarity in relation to planning for short-term lets is now a critical challenge for the successful and timely implementation of the Short-Term Let Licensing scheme. It is now highly unlikely that local authorities will be able to understand and implement newly published guidance, communicate relevant changes, and allow sufficient time for operators to prepare planning applications in time for the licence deadline of 1 October 2023. For this reason, alongside the significant number of outstanding issues<sup>10</sup> in relation to the short-term let licensing scheme presented to the Scottish Government earlier in May 2023, a further delay to the implementation of licencing is required.

**The dual requirement of planning and licensing in various licensing authority policies, the ASSC argues, is oppressive and disproportionate. It is irrational to apply national policies regulating the same activity in inconsistent ways. Separately, it imposes unnecessary hardship to require operators to subject themselves to parallel processes for materially identical purposes and to pay repeat fees.**

The ASSC has previously argued that there is a lack of data showing an empirical link between short-term lets and housing shortages and that a more holistic approach needs to be taken to the issue. Housing challenges are multifaceted and the growth of short-term lets should not be used as a convenient scapegoat for wider policy failures; namely the failure to build more homes or bring empty homes back into use. Thus far, no evidence has been published in Scotland that demonstrates a concrete link between short-term letting and the Scottish housing supply.

City of Edinburgh Council appears to be using a combination of planning powers and STL Licensing to introduce a de facto ban of self-catering, including long standing legitimate businesses. Despite assurances, the reality that there is no protection for these businesses which benefit the Edinburgh economy to a tune of £71m per annum, underpin the viability of the festivals, and support accommodation needs far beyond tourism alone. Livelihoods are being taken away from professional business operators and the local economy will suffer. There is no evidence whatsoever to indicate that these policies will ameliorate the housing crisis.

The traditional self-catering sector is dealing with an increased regulatory burden through the introduction of a mandatory licensing system as well as planning considerations, in what are already challenging circumstances for Scottish tourism. Taken collectively, these policies will entail a materially negative impact for Scotland's tourism sector, will cost jobs and livelihoods, and will reduce the number of short-term lets available without increasing housing provision.

We endorse the former First Minister's comment in Scotland's Outlook 2030 that "an innovative, resilient and welcoming [tourism] industry is vital, not only for Scotland's future prosperity, but for Scotland's place in the world"<sup>11</sup>. Scotland's self-catering sector wants to play our full part in achieving this objective.

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<sup>10</sup> <https://www.assc.co.uk/industry-news/short-term-let-licensing-outstanding-issues-recommendations>

<sup>11</sup> <https://scottishtourismalliance.co.uk/wp-content/uploads/2020/03/Scotland-Outlook-2030.pdf>

## Key Recommendations

- Existing operators with no history of complaints should be protected in planning terms to allow them to apply for a licence. This can be achieved by, as far as possible, providing 'grandfather rights' for existing operators operating prior to 1 October 2022 with no history of enforcement action or complaints, or where there has been no material change of use, including those operating in newly introduced Planning Control Areas, prior to designation.
- No further short-term let regulation should be considered in Scotland until the cumulative effect of licensing and control areas has been fully analysed to ensure there are no unintended consequences and that the schemes are clearly meeting policy objectives.
- Empirical evidence must illustrate that existing planning law, including control areas and local development plans, has improved access to affordable housing to justify new policies.

Moving forward, planning policies should be:

- Proportionate in nature, balanced, and rely on a firm evidence base;
- Appreciate tourism related economy at a time when it should be supported to recover, and understand that short-term lets are a key source of accommodation that is imperative to the viability of local communities and international events; and
- Consider the economic impact of any planning policy, which will cost jobs and livelihoods in a sector that provides a £876m to the Scottish economy.

Scottish Government Comments:

Responsibility:

Remediation Date:

## 2. Detailed Issues

### 2.1 Planning policies are leading to a near 'de-facto' ban in Edinburgh and Glasgow

#### Issue:

The self-catering industry is facing a number of planning hurdles to achieve licensing approval. While these issues are becoming more and more evident across all local authority areas in Scotland, it is clear that self-catering operators in both Edinburgh and Glasgow will have particular challenges due to highly restrictive planning policies and planning application decisions which are introducing what amounts to a de-facto ban for the vast majority of existing self-catering properties in these locations.

Planning policies appear to be applied without any reference to well-founded empirical data or estimates of demand or supply requirements of short-term let accommodation required to support local economies.

#### **City of Edinburgh Council**

It is clear, based on recent evidence, that CEC will now refuse the vast majority of applications for a change of use to a 'short-term let'. Approximately 90% of those operating self-catering properties in Edinburgh are doing so from a 'flatted dwelling'. Within this, you have a mix of types of properties, including size and access, with the majority having some form of common access via a shared stairwell or access to a shared garden area. This is consistent with the nature of residential properties in central Edinburgh.

However, most planning applications for a 'change of use' from residential to short-term let are being refused based on: "Local Development Plan Policy Hou 7 - including changes of use, which would have a materially

detrimental effect on the living conditions of nearby residents will not be permitted." This includes properties that are not part of 'shared stair' environments, with their own separate entrance, including main door and basement properties.

Very few properties are successful in receiving planning consent under LDP Hou 7. FOI data supports this with evidence that only 2 applications have been granted in 2023.

It is worth noting that since February 2022, there appears to have been a shift in CEC's decision-making process, where previously some main door properties were granted planning permission under Hou 7, they are now being refused, demonstrating inconsistency of decisions with the same policy. Individual applications for 'shared stair' properties are largely being withdrawn after the submission of the application, following advice by Edinburgh's planning authority that they will not be successful.

In addition to this, the recent implementation of NPF 4 policy 30 (e) (see also issue 2.6) appears to be supporting a de facto ban. Recent planning decisions approved through CEC delegated powers since NPF4 was implemented (as of 28 April 2023):

- 1 Granted (on appeal)
- 65 Refused 65
- 15 Withdrawn

Detailed analysis on the status of planning applications has been undertaken by the ASSC<sup>12</sup>.

Separately, a number of properties have received 'Certificates of Lawfulness' (CLUD) as they have been operating as short-term lets for more than 10 years. It is worth noting that this is only due to Edinburgh Council being unable to take any enforcement action against these properties, not due to any obvious willingness or desire to grant planning permission.

It is worth noting that in addition to their planning policy, CEC's licensing policy includes a rebuttable presumption against granting a licence to a flatted dwelling even if a CLUD has been granted.

### **Glasgow City Council**

Glasgow has also introduced extremely restrictive planning policies which will lead to very few existing self-catering properties being able to continue to operate.

Glasgow's policy on short-term let originates from their City Development Plan 2017<sup>13</sup>, which includes:

*4.16 – "To protect residential amenity, planning permission will not be granted for a change of use from a residential flat to short-stay accommodation within existing blocks of residential flats, resulting in a mix of mainstream residential flats and short-stay accommodation within a single building sharing a means of access."*

The ASSC is aware of just one planning application having been granted lately to a property which "has a dedicated private access and private amenity space to the front, meaning there is no conflict between it and residential uses that are accessed via the main close door adjacent".

### **Risk:**

- Planning criteria and policies implemented in Edinburgh will amount to de-facto ban on secondary letting, despite assurances made to the ASSC to the contrary. GCC has also essentially introduced what could be viewed as a Planning Control Area without going through due process, introducing what amounts to a de facto ban on short-term lets in flats, even in homeletting and homesharing circumstances.
- By only identifying a small number of limited circumstances where short-term lets are to be permitted, for example those with a main door in an area that is "commercial" in character, this will mean that

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<sup>12</sup> <https://www.assc.co.uk/regulations/edinburgh-data-on-planning-extracted-from-the-planning-portal>

<sup>13</sup> <https://www.glasgow.gov.uk/cdp#:~:text=Glasgow%27s%20City%20Development%20Plan%20was,with%20its%20associated%20Supplementary%20Guidance.>

the vast majority of short-term let planning applications will be refused, leading to a cessation of small tourist accommodation businesses, severely impacting the local economy which depends on tourism<sup>14</sup>.

- Without any demand planning or forecasting of supply requirements, there is a significant risk that there will be a major shortfall of self-catering properties in both of Scotland's major cities, Edinburgh and Glasgow.
- It is the ASSC view, that volume of approvals will be nowhere near the number required to satisfy both the quantity of demand for short-term accommodation and the full range of types of use requirements of self-catering properties in Edinburgh.
- It is estimated that up to 40% of the use of self-catering property is either for non-tourism purposes or to meet demand for particular needs that cannot be met by other accommodation types. Analysis of the drivers of demand has been undertaken by the ASSC, and should be considered by policymakers<sup>15</sup>.

**Root causes:**

- Lack of supply and demand analysis to balance planning decisions with amenity / housing impact.
- Lack of empirical data to support planning decisions and concentrations of short-term lets.
- Overstatement of the number of full-time short term lets used as basis to determine designation of control area
- Lack of data to demonstrate impact on housing supply versus impact on economic benefits of short-term lets (see 2.5)

**Impact:**

- Tourists, in particular families, that require self-catering facilities will be unable to find accommodation to suit their requirements;
- Price increases on all other forms of accommodation, including hotels, due to reduced overall supply;
- Corporates, contractors, health care providers, academics unable to find suitable short-term accommodation;
- Inability to meet accommodation needs for high profile events such as Edinburgh Festival and high-profile concerts or sporting events, resulting in large events becoming prohibitively expensive;
- Job losses through closure of self-catering properties, including related service industries (cleaners, management companies, etc); and
- A 'black market' for underregulated short term let properties.

**Recommendation 1:**

- As a matter of priority, the Scottish Government, along with local authorities, should initiate an impact assessment (BRIA) on highly restrictive policies impacting self-catering businesses and short-term lets. This assessment should be data-led, considering:
- Drivers of demand for short-term let accommodation.
- Forecasted impact on demand and supply as a result of short-term let planning policies.
- Plans to mitigate any impacts on restriction on short-term let accommodation, including changes or delays to the implementation of short-term let licensing legislation.

**Recommendation 2:**

- Working with local authorities, the Scottish Government should undertake an urgent analysis to quantify the number of short-term let properties that will be impacted by planning policies.

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<sup>14</sup> <https://www.assc.co.uk/wp-content/uploads/2022/12/ECC-STL-Planning-Guidance-consultation-response-12.12.22.pdf>

<sup>15</sup> <https://www.assc.co.uk/representation/why-do-people-stay-in-short-term-lets-self-catering-units-in-edinburgh>

Scottish Government Comments:

Responsibility:

Remediation Date:

## 2.2 Inconsistent and confusing planning guidance across council areas

### Issue:

The Town and Country Planning (Scotland) Act 1997 requires planning permission for "development", which includes physical changes and material changes of use. The Planning Authority determines whether a change in use is material and requires planning permission, based on the fact and degree of each case.

Short-term let properties may require planning permission if the change in use is material. However, there is no clear definition of "material change of use", and each case must be considered on a case-by-case basis.

Legal advice obtained by the ASSC on the requirement for planning permission for self-catering properties was supplied by Neil Collar, Head of Planning Law at Brodies LLP in March 2018<sup>16</sup>. Some of the main points from the legal advice obtained by the ASSC include the statement that:

*"...the commercial element (in self-catering use) is broadly similar to a residential property being occupied by a tenant paying rent...The question is therefore whether short stay occupation necessarily has different planning considerations/impacts. Short stay occupation involves people living in the property, just for shorter periods. However, that does not necessarily mean the nature/impacts of the occupation are different."*

The advice goes on to discuss how permanent residents can have different movements depending on a variety of issues, including employment, leisure interests, family circumstances, health. For instance, a family with teenage children might enter and leave the property many times during the day and night.

Therefore, the advice maintains that:

*"Users of a self-catering property are therefore unlikely to exhibit markedly different characteristics to more permanent residents. Disruptive or anti-social behaviour is just as likely in residential use as self-catering use."*

The need to assess the facts and circumstances of the individual cases is illustrated by the decision in the enforcement notice appeal for Flat 2, 5 Castle Wynd South, Edinburgh (ENA-230-2193 9 November 2021). The Reporter concluded the change of use from residential dwelling to short stay commercial visitor accommodation was not a material change of use:

*"Taking all of these matters together, I consider that in this instance, on balance, the number and nature of arrivals and departures to and from the flat, the likelihood of increased noisy activity for neighbouring properties and activity as a result of servicing would not be at a level materially different to the property in long term use. In my view this does not constitute a material change*

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<sup>16</sup> <https://www.assc.co.uk/representation/legal-opinion-on-planning-in-edinburgh-2018>

*in use which would require planning permission. Accordingly, I conclude that a breach of planning control has not taken place. The appeal therefore succeeds on appeal ground c)."*

This appeal decision is a reminder that, in law, planning permission is not necessarily required for a change of use to short-term holiday accommodation, as it depends on the facts and circumstances of each individual premises.

In November 2022, Brodies LLP prepared a further legal opinion for the ASSC regarding planning requirements for self-catering properties and short-term holiday letting<sup>17</sup>. The paper opines that the requirement for planning permission for short-term holiday letting depends on whether the premises are situated within a short-term let control area:

1. *The requirement for planning permission for short term holiday letting depends on whether the premises are situated in a short-term let control area.*
2. *The licensing requirements are not made under the planning legislation and are not relevant to determining whether planning permission is required.*
3. *The requirement for planning permission only applies to secondary letting, where the property is not the owner/ operator's main residence.*

In all other areas, planning permission is not necessarily required for a change of use to short-term holiday accommodation. In fact, the question of a change in material use depends on the individual circumstances of each premises and planning authorities must take this into account.

### **Council planning policies**

Local planning authorities have traditionally taken a 'light touch' approach to self-catering properties and have often advised that self-catering properties do not require planning permission. On many occasions, planning authorities have previously provided advice that short-term lets do not require planning permission. Examples of this include advice from Edinburgh Council in 2017 when requested by an applicant to confirm no material change of use had occurred:

*"The premises will be used as a 2-person commercial visitor accommodation for just over half of the year and is located within an area where a mix of commercial and residential uses currently exist. This does not constitute a change of use. The proposal is lawful."*

However, the introduction of short-term let licensing legislation has led to confusion among local authorities, with some councils adopting policies that conflate licensing and planning considerations. Examples of the confusion include:

- Many local authorities have recently adopted an approach where a 'flat' would always require planning permission as a blanket approach. This is currently included within policies for GCC and Perth & Kinross and it is understood that other local authorities such as South Ayrshire are providing similar advice. For example, in response to a request for planning advice for a flat in East Lothian, the response was – *'as you use the flat property as holiday let accommodation, this is considered a change of use from a domestic flat to holiday let accommodation.'*
- Local Authorities are advising that planning permission is required based on the number of bedrooms or capacity of the property used, despite the fact that no material change of use may have occurred.
- Some local authorities, for example GCC, now appear to demand planning permission in certain 'home-sharing' situations with people using their own properties. Other councils expressly state that home-sharing does not require planning permission.

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<sup>17</sup> <https://www.assc.co.uk/legislation/brodies-llp-legal-opinion-requirement-for-planning-permission-2>

- Items such as guests arriving at unsociable hours, stag parties, communal parking areas, access to shared stairwells, and the use of a hot tub have been listed as reasons that would necessitate planning permission for Perth & Kinross.

**Risk:**

- In the absence of clear and consistent guidance across local authorities, there will continue to be confusion amongst both planning and licensing authorities as well as applicants for short-term let licences. Conflicting information on planning complicates the planning and also the short-term let licence application process. We have concerns that the newly published planning guidance is not clear enough to prevent different interpretation and subsequent implementation.
- The lack of clear and consistent guidance on planning requirements will lead to delays in licence applications, causing problems for businesses that have invested significantly in their businesses. There may also be legal implications if individuals are asked to submit a retrospective planning application, at significant cost, if no such application was previously required. This would represent an unexpected administrative and financial burden which is unsupportive of small businesses.

**Root causes:**

- Lack of awareness of legal context regarding the requirement for a 'material change of use' for all short-term let planning applications.
- Lack of clear guidance from the Scottish Government to assist in the development of local planning policies.

**Impact:**

- Operators submitting unnecessary retrospective planning applications.
- Confusion amongst applicants resulting in delays to the successful implementation of the licensing scheme.

**Recommendation 3:**

Newly released Scottish Government guidance should be made clearer to avoid misinterpretation. See also Finding 2.6

**Recommendation 4:**

The definition of an 'established short-term secondary let property' should apply to protect those who have made significant investment in their short-term let business prior to the implementation of the licensing scheme (1 October 2022). This can be achieved by providing a Certificate of Lawfulness for existing operators who have no history of complaint, or where there has been no material change of use. This will protect the livelihoods of existing operators and legitimate businesses via 'grandfather rights.'

Scottish Government Comments:

Responsibility:

Remediation Date:

## 2.3 Incorrect treatment of retrospective applications in Planning Control Areas

### Issue:

The introduction of a PCA means that instead of a requirement to consider each short-term let on a case-by-case basis, any short-term let, regardless of nature of use, requires planning permission. However, guidance from the Scottish Government makes clear that this requirement only applies to new businesses and does not apply retrospectively. In decision letters from the Scottish Government to City of Edinburgh Council and Highland Council on 27<sup>th</sup> July 2022 and 20<sup>th</sup> December 2022 respectively, it is clearly stated that:

*“A change of use of a dwellinghouse to a short-term let after the designation of the control area will be deemed to be a material change of use by virtue of section 26B of the Act.*

*Where the change of a dwellinghouse to a short-term let took place before the designation of the control area the existing rules will apply. These require planning permission for a change of use of property where that change is a material change in the use of the property”.*

This indicates that CEC and The Highland Council (THC) should not be asking for planning permission in all cases for those properties that were already operating before the PCA was designated.

In March 2023, David Reekie, Planning and Architecture, Scottish Government, further confirmed by email to the ASSC that:

*“Section 26B applies to any new change of use from a dwellinghouse (which in this context includes a house or a flat) once the control area has been brought into effect. **It does not apply retrospectively.**”*

*“Retrospective planning permission for a change of use outwith an STL control area is required if the change of use is material and planning permission was not obtained prior to the change of use. If the change of use is not material, then planning permission is not required.”*

Brodies LLP prepared a further legal opinion for the ASSC in May 2023<sup>18</sup>, specifically around PCAs, which underlines that planning permission is only required post designation. He agrees with the positions above and concludes:

*“In my opinion, that is a correct statement of the law. A new planning permission is not required if, for example:*

*3.1 the existing short-term letting is authorised by a grant of planning permission issued prior to the establishment of the Control Area; or*

*3.2 the letting is lawful because it has been carried out for more than 10 years; or*

*3.3 planning permission was not required at the time the use was commenced - planning permission is required if there is a material change of use; the courts have held that whether a change of use is material is a question of the facts and circumstances of the individual situation; it is not appropriate to refer to new policies adopted after the use was commenced.”*

A recent DPEA decision in Feb 2023 confirmed this approach, overturning a CEC enforcement notice decision, determining that no material change of use had occurred for a flat operating prior to the control area designation (ENA-230-2237).

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<sup>18</sup> <https://www.assc.co.uk/legislation/brodies-llp-legal-opinion-requirement-for-planning-permission-2>

**This has been further clarified by Planning circular 1/2023: Short-Term Lets and Planning<sup>19</sup>:**

*4.3 Section 26B is not retrospective, meaning that the designation of a control area does not, in itself, retrospectively deem any previous change of use of a dwellinghouse to use for short-term lets within that area to be a material change of use. Section 26B applies where a change of use of a dwellinghouse occurs after designation of a control area. However, it is important to bear in mind that section 26B does replace the existing requirements of the 1997 Act in respect of the need for planning permission for a material change of use. This means that material changes of use to short-term letting whether before or after the designation of a control area would require planning permission.*

**Council approach**

Despite these clarifications from the Scottish Government, CEC has not clarified this in any of their guidance. Following a consultation, their guidance for businesses was finally updated in April 2023 (six months after licence applications opened), states:

*“The city-wide Edinburgh Short-term Let (STL) Control Area came into force on 5 September 2022, which means that the use of a residential property for short-term let accommodation will constitute a change of use requiring planning permission.”*

No reference is made to properties operating before 5 September 2022.

Furthermore, following the recent introduction of the PCA in Badenoch & Strathspey (designation date 18th June 2023), THC has issued the following policy statement:

*“Schedule 3.13 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, makes it a mandatory licence condition of a STL Licence that if the property is within a STL Control Area, the property must either: –*

- a) be subject to an application for planning permission under the 1997 Act and that application has not yet been determined: or*
- b) have planning permission in force under the 1997 Act*

*This STL licensing mandatory condition therefore necessitates all existing properties being utilised for Short-term Secondary Letting which fall within a Short-term Let Control Area to obtain planning permission to continue to operate, even if that property has been operating as a short-term secondary letting prior to the Control Area being established.”*

The approach that appears to be taken by both CEC and THC is inconsistent with Scottish Government guidance, as well as independent legal advice obtained by the ASSC.

Legal advice obtained by the ASSC also makes clear the interpretation of Section 3.13 licencing order by THC is incorrect, noting:

*“The licensing requirements are not made under the planning legislation and are not relevant to determining whether planning permission is required.”*

**Risk:**

- Many businesses which will not have previously required planning permission (as no material change of use occurred), are now being advised that planning permission is always required, which contradicts advice from the Scottish Government.

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<sup>19</sup> <https://www.gov.scot/publications/short-term-lets-planning/pages/4/>

- Operators in Edinburgh who have been operating legitimately for years have submitted planning applications under this advice, when they may have been able to demonstrate that no material change of use had occurred, and applied for a Certificate of Lawful Use. Given the opportunity, many of these operators may have instead been able to demonstrate that no material change of use had occurred under rules existing at the time when they originally commenced their short-term let activity.
- Fundamentally, the biggest concern facing the self-catering industry in Edinburgh and Glasgow, and now Badenoch and Strathspey is now planning, as this is the first hurdle to overcome on the way to achieving licensing approval.

**Root causes:**

- Lack of understanding of legal background and complication arising from duplication of regimes.
- Lack of guidance from Scottish Government to assist development of local planning policies and formal guidance on the retrospective nature of PCAs.

**Impact:**

- Operators submitting unnecessary planning retrospective planning applications.
- Confusion amongst planning and licensing authorities and applicants, resulting in delays to the successful implementation of the licencing scheme.

**Recommendation 5:**

The Scottish Government and planning authorities should facilitate Certificates of Lawfulness or 'grandfather rights' to properties operating before 1 October 2022 with no history of complaint, or where there has been no material change of use. This will protect the livelihoods of existing operators and legitimate businesses whilst allowing for a smoother implementation of the short-term let licencing scheme.

**Recommendation 6:**

Within a PCA, planning permission should be granted:

- Where extensive refurbishment of a long-term empty dwellinghouse is proposed to bring the building back into active use.
- The proposal is for the upper floor(s) above a commercial unit.
- It is an established short-term secondary let property in a long-established dwellinghouse.

Scottish Government Comments:

Responsibility:

Remediation Date:

## 2.4 Lack of data used to inform Planning Control Areas

Short-term lets are often presented as being a leading cause of Scotland's housing crisis. However, it is important to place the debate in a holistic context – for instance, noting the number of empty homes in Scotland, demographic changes, and the need to build more homes – while recognising the value of tourist accommodation to the Scottish economy and local communities.

The aim of establishing a PCA in Edinburgh was to enable management of “*the high concentration of secondary lettings which could potentially affect the availability of residential housing and the character of neighbourhoods*”<sup>20</sup>. The oft quoted number of STLs in Edinburgh by CEC remains 12,000.

According to CEC, the data relied upon to determine the establishment of the PCA was from ‘Inside Airbnb’ and the number of entire properties listed in Edinburgh was 7,970, with 4,439 being available for more than 90 days as at March 2020 in their ‘Background Report’. Recent equivalent data from Inside Airbnb in May 2023 shows a significant decrease in these figures, with only 2,635 listings showing under the filter for ‘recent and frequently booked’, thus excluding inactive and duplicate listings. This implies a reduction of over 41% in Edinburgh’s listings since 2020. It should be noted that according to the Scottish Assessors Association, there are 1,353 Self-Catering Units on Non-Domestic Rates in Edinburgh (21<sup>st</sup> May 2023)<sup>21</sup>.

The ASSC has analysed CEC’s reasoning and evidence base for introducing a PCA<sup>22</sup>. It is clear from this analysis that their data is fundamentally flawed and prejudiced. This should be read in conjunction with data drawn from the Planning Portal<sup>23</sup> illustrating that planning applications are being rejected on principal.

The ASSC has previously provided analysis of a housing evidence base in Edinburgh, including the number of empty homes, increase in the number of households, and houses built<sup>24</sup>.

In February 2022, Burness Paull wrote to CEC outlining the ASSC’s concerns around the proposed PCA and set out high level details of the legal grounds for opposing the Proposal<sup>25</sup>:

*“It is our client’s fear that the Proposal, if implemented, will inflict sweeping and onerous regulation on an entire sector to address perceived issues in certain parts of Scotland without due consideration as to proportionality and the detrimental impact on small businesses in an extremely fragile economy. The impact of the Proposal will ultimately drive many small businesses to close, without achieving the apparent purpose of the Proposal.”*

They continue:

*It is irrational under public law for CEC to take into account irrelevant factors, fail to consider relevant factors (which would include failure to consider robust, current and representative evidence) or to err in fact when decision making, for example by relying on faulty and inaccurate data. As raised in the response to the Consultation, there is a lack of evidence of the impact of STL on housing supply, which is clearly a relevant consideration for CEC in advancing this Proposal. The background documentation to the Consultation and Proposal fails to provide empirical and robust data to show a link between short-term letting and the housing market in Edinburgh.*

The ASSC contends that this is relevant to other planning authorities which are now requesting planning permission where they did not require it previously. These include (amongst others) Angus, Clackmannanshire and East Lothian.

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<sup>20</sup> [https://consultationhub.edinburgh.gov.uk/sfc/short-term-let-consultation/supporting\\_documents/Statement%20of%20Reasons.pdf](https://consultationhub.edinburgh.gov.uk/sfc/short-term-let-consultation/supporting_documents/Statement%20of%20Reasons.pdf)

<sup>21</sup> <https://www.assc.co.uk/regulations/data-used-to-inform-edinburghs-planning-control-area>

<sup>22</sup> <https://www.assc.co.uk/regulations/data-used-to-inform-edinburghs-planning-control-area>

<sup>23</sup> <https://www.assc.co.uk/regulations/edinburgh-data-on-planning-extracted-from-the-planning-portal>

<sup>24</sup> [https://www.assc.co.uk/legislation/the-facts-about-short-term-letting-in-edinburgh#\\_ftn1](https://www.assc.co.uk/legislation/the-facts-about-short-term-letting-in-edinburgh#_ftn1)

<sup>25</sup> <https://assc.mysites.io/wp-content/uploads/2022/02/2022.02.28-Letter-from-BP-to-CEC-on-behalf-of-ASSC.pdf>

There is no empirical data which demonstrates a link between self-catering units (short-term lets) and the housing market; moreover, we know that there are five times as many empty homes in Scotland than self-catering units. Underpinning any decision to regulate the short-term letting sector is the need for robust, empirical data. The ASSC has previously provided that data to assist policy makers<sup>26</sup>.

**Risks:**

- PCAs are implemented in such a manner that amounts to a ‘de facto-ban’ of self-catering accommodation,
- Local authorities (in particular Edinburgh and Glasgow) unable to provide the quantity and quality of accommodations required to meet demand arising from major events, including the Edinburgh Festivals.
- Inability to meet wider requirements for short-term or flexible residential requirements including medical support, additional accommodation capacity, work contractors, business visitors, educational and home movers<sup>27</sup>.

**Root causes:**

- Decisions being take on the basis of lack of robust data.
- Lack of analysis undertaken of the drivers of demand for short term let accommodation and supply requirements.

**Impact:**

- Significant damage to small tourism businesses and local economies
- Corporate guests, workers, health care providers, academics unable to find suitable short-term or medium-term accommodation having a knock-on impact on other accommodation types.

**Recommendation 7:**

The ASSC consistently called for CEC to undertake an economic impact assessment in terms of costs of introducing a city-wide Control Area. This is now having a material impact on the ability for Edinburgh to conduct business as already indicated by rising prices in the city due to a reduction in supply. A robust impact assessment is now vital.

**Recommendation 8:**

CEC should refine the PCA to local ward areas that can evidence high concentrations of short-term lets, recognising that the number of short-term let properties in Edinburgh may be considerably lower than figures previously uses as a basis for designating the control area.

**Recommendation 9:**

A wider impact assessment should be undertaken by the Scottish Government around the impact across Scotland of newly introduced planning policies.

Scottish Government Comments:

Responsibility:

Remediation Date:

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<sup>26</sup> <https://www.assc.co.uk/legislation/housing-and-short-term-lets-in-scotland-the-facts>

<sup>27</sup> <https://www.assc.co.uk/representation/why-do-people-stay-in-short-term-lets-self-catering-units-in-edinburgh>

## 2.5 Planning treatment of 'mid-term' or fixed duration rentals

### Issue:

For the purposes of section 26B of the Act, a 'short-term let' is defined as an accommodation where:

- Sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration.
- No person to whom sleeping accommodation is provided is an immediate family member of the person by whom the accommodation is being provided.
- The accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household.
- The accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties.
- The accommodation is not excluded accommodation.

A cause for concern for our sector is the disconnect between planning policies developed on the basis of this definition, and subsequent implementation, and the actual range of different uses that our members have for their properties that have been defined as 'short-term let' for planning purposes. This includes:

- A member who uses their property for 7 months per year, letting out for the other 4 months, will be judged under same planning criteria and denied planning permission due to 'loss of residential accommodation.' The applicant applied for change of use on the understanding planning permission was now required in a PCA. In this case the property will now be vacant for 4 months of the year as they have been denied the opportunity to offer short-term let accommodation, despite no intention to sell or rent out the property full time.
- Members who only let their property to corporate guests for 30 days, 60 days or even 6 months at a time will still require planning permission (and a licence) in a PCA. They will be judged on eg Hou7 and now NPF4 Policy 30(e) which appears to address 'short-term holiday lets' under a 'Tourism' policy and does not reflect 'mid-term rents'.

### Risk:

- There is a risk that in a desire to curtail social and amenity impacts (that may or may not occur) from badly operated 'short-term holiday lets', no recognition has been given to wider requirements for short-term or flexible residential requirements. Examples of this includes medical support, additional accommodation capacity, work contractors, business visitors, educational and home movers<sup>28</sup>.
- The nature of many of these 'short-term' lets mean that they are not necessarily short in duration, with many corporate workers choosing to extend for a number of weeks or even months depending on the nature of requirements. These stays do not meet the definition of a Private Residential Tenancy.

### Root causes:

- Lack of awareness amongst planning department that 'short-term' let accommodation policies will also impact contracts that are typically for a longer duration, including corporate workers.
- Lack of analysis undertaken of the drivers of demand for short term let accommodation.

### Impact:

- Corporates, workers, health care providers, academics unable to find suitable short term or medium-term accommodation having a knock-on impact on other accommodation types.

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<sup>28</sup> <https://www.assc.co.uk/representation/why-do-people-stay-in-short-term-lets-self-catering-units-in-edinburgh>

- Properties vacant that could otherwise be usefully used to support local flexible accommodation requirements.

#### Recommendation 10:

We recommend that the Scottish Government reconsiders the definition of ‘short-term let’ from a planning perspective to provide additional non-statutory guidance to ensure policies do not have unintended consequences on many essential accommodation types that could be potentially damaging to the local economies.

#### Scottish Government Comments:

Responsibility:

Remediation Date:

## 2.6 Lack of policy or direction on treatment of NPF4 Policy 30(e)

### Issue:

The National Planning Framework 4 (NPF4) was published and approved on 13 February 2023, providing a framework for planning policies across Scotland. The ASSC welcomed the opportunity to respond to the consultation on NPF4<sup>29</sup>.

This policy includes Policy 30 (Tourism), which includes under section [e]:

*Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- *An unacceptable impact on local amenity or the character of a neighbourhood or area; or*
- *The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

As addressed in Issue 2.1, this policy is now being adopted by planning authorities across Scotland. In particular, the policy is now widely applied in Edinburgh.

The policy has been used to refuse over 70 change of use applications for short-term lets in Edinburgh, with only one approval recorded since its adoption in February 2023. The intent of the policy is to promote sustainable tourism development that benefits local people. However, it is unclear why this policy is being applied to short-term let planning decisions for properties that cater to markets beyond tourism, such as corporate, contractors, academics, and others. This raises questions about the alignment of the policy with its intended objectives.

We note that the City of Edinburgh Council has not published any guidance or policy on how NPF 4 Policy 30 (e) should be applied. We note a recent discussion at the Planning Local Review Body<sup>30</sup> where the representative from CEC noted that they *'do not at this time have any study that weighs up the benefits...'* in relation to economic benefits for NPF4. There also appeared to be an acknowledgement that both local residents and short-term lets contribute to the local economy, but which is greater, the CEC planning representative acknowledges they *'we don't have anything definitive.'* It is therefore unclear what criteria is being applied by the City of Edinburgh Council, or for what reason.

<sup>29</sup> <https://www.assc.co.uk/legislation/npf4>

<sup>30</sup> [https://edinburgh.public-i.tv/core/portal/webcast\\_interactive/761068/start\\_time/2658000](https://edinburgh.public-i.tv/core/portal/webcast_interactive/761068/start_time/2658000), at 19 minutes

The intent of this policy is to *"encourage, promote and facilitate sustainable tourism development which benefits local people."*

Scottish Agritourism notes a significant concern with this policy as it may prohibit a farmer from reusing existing cottages or converting an unused stable or outbuilding for self-catering accommodation. Similarly, a family who inherit a relative's property may not be able to use it as a self-catering holiday let. In other EU destinations, contrary to Scotland, the use of existing buildings, either farm cottages or farm buildings is actively encouraged to make best use of existing resources and to sustain the culture of older buildings which are part of farming heritage. 60% of Scottish Agritourism members have what is now described to be short-term let accommodation: self-catering / glamping / huts / B&B or guest house. A dramatically increased regulatory burden on this sector will negatively impact Scotland's tourism, with no demonstrable benefit.

We are not aware of any clear policy or guidance being published to assist decision making for this policy from the Scottish Government.

**Risk:**

- There is a risk that a significant number of much needed short-term accommodation/self-catering properties will close without any evidence to support the policy objectives of NPF4 in relation to the relative economic benefits the sector contributes to the economy.
- There is a risk that this policy is being applied inappropriately, without taking into account the wider benefits of short-term let properties, such as providing temporary accommodation for workers carrying out economic activity in the local area.

**Impact:**

- Closure of a large number of short-term let properties that benefit the local economy.
- Corporate travellers, construction workers, health care providers, academics unable to find suitable short-term accommodation.
- Job losses through closure of self-catering properties, including related service industries (cleaners, management companies, etc).

**Recommendation 11:**

Given the wide adoption of NPF4, urgent clarification is required on how Policy 30 (e) should be applied. The policy should not be applied retrospectively for operators who commenced short term let activity before this policy was adopted (14 February 2023). This could include updated guidance from the Scottish Government or non-statutory guidance from the Chief Planner.

**Recommendation 12:**

NPF 4 Policy 30 (e) should not be applied to determine any further planning applications, particularly in the City of Edinburgh, until a full independent study is published to act as guidance to assess the relative economic benefits of short term lets relative to housing loss. No further short-term let regulations should be introduced in Scotland until the cumulative effect of licensing and control areas has been fully analysed to ensure there are no unintended consequences and that they are clearly meeting policy objectives. There needs should be clear evidence that existing planning law, including control areas and local development plans, has improved access to affordable housing.

Scottish Government Comments:

Responsibility:

Remediation Date:

## 2.7 Planning circular fails to address points of uncertainty

### Issue:

Schedule 3: 13 of the STL Licensing Order introduces a planning consideration. A lack of clarity and consistency of approach from different local authorities (from both planning and licensing departments) has led to a lack of understanding and certainty for businesses.

In an attempt to provide clarity in relation to these issues, the Scottish Government released Planning Circular 1/2023: Short-Term Lets and Planning on 17th May 2023. The ASSC has consulted with a number of planning consultants and solicitors who all consider that this guidance does not provide sufficient clarity to address key challenges experienced by our members, and will be open to interpretation by planning authorities.

Whilst we understand the intent of this Planning Circular may be to provide some clarity to local planning authorities, a large number of our members are looking for immediate clarity to assist them with licence decision making process and will therefore be referring to this guidance for clarity. The guidance is simply not clear, and worse, it is contradictory.

In particular, the circular contains the following paragraph:

*“4.3 Section 26B is not retrospective, meaning that the designation of a control area does not, in itself, retrospectively deem any previous change of use of a dwellinghouse to use for short-term lets within that area to be a material change of use. Section 26B applies where a change of use of a dwellinghouse occurs after designation of a control area. However, it is important to bear in mind that section 26B does replace the existing requirements of the 1997 Act in respect of the need for planning permission for a material change of use. This means that material changes of use to short-term letting whether before or after the designation of a control area would require planning permission.”*

The final sentence is confusing and contradictory. It may that planning permission is required in all cases if in a control area.

Moreover, the circular does not address conflicting advice provided by the Highland Council in relation to Schedule 3.13 of the Licensing order or clearly identify the process to obtain a CLUD in cases where there has not been a material change of use where the business has been operating for less than 10 years. We are aware of a number of appeal cases where these have been granted on appeal (e.g. CLUD-230-2004) and by local authorities (such as Edinburgh Council 17/00292/CLP).

There is ambiguity regarding Use Class Order 9 properties. For example, as recently as April 2023 advice from Glasgow Local Authority to an ASSC member stated that:

*“..provided no more than 5 (unrelated) individuals are staying within the property at once then no planning permission is required and the use of the property would still remain within the remit of Class 9 of the Town and country Planning (Use Classes) (Scotland) Order 1997.”*

They were advised that planning permission was not required. The member applied for, and was granted, a licence on this basis. Subsequently (in May) a planning enforcement query has been raised questioning the use of the property indicating that planning permission would now be required.

The Planning Circular is not written in plain English and is therefore open to interpretation and fragmented implementation. We conducted a poll of 40 self-catering operators who had read Planning Circular 1/2023 to ask for their feedback:

*“Today the Scottish Government provided guidance in the requirement for planning permission regarding short term lets. Please respond to the following poll. I find the guidance:*

- *Very helpful and provides clarity – 0%*
- *Mostly helpful but have some questions – 8% (3 votes)*
- *Mostly unhelpful and confusing – 15% (6 votes)*
- *Very unhelpful and confusing – 78% (31 votes)*

**Risk:**

- In the absence of clear and consistent guidance from the Scottish Government, across local authorities, there will continue to be confusion amongst both planning and licensing authorities as well as applicants for short-term let licences.
- We have concerns that the newly published planning guidance is not clear enough to prevent different interpretation and subsequent implementation.
- The lack of clear and consistent guidance on planning requirements will lead to delays in licence applications, causing problems for businesses that have invested significantly in their businesses. There may also be legal implications if individuals are asked to submit a retrospective planning application, at significant cost, if no such application was previously required. This would represent an unexpected administrative and financial burden which is un supportive of small businesses.

**Root causes:**

- Lack of clear guidance from the Scottish that addresses many of the most common issues to assist in the development of local planning guidance.

**Impact:**

- Confusion amongst applicants resulting in delays to the successful implementation of the licensing scheme.
- Operators submitting unnecessary retrospective planning applications.

**Recommendation 13:**

Whilst planning policies are written at a local authority level, principals in relation to the requirement (or not) to apply for planning permission and the interaction with the licensing process should be clear at a national level.

We recommend the Scottish Government work with the ASSC and local authorities to provide further guidance, written in a manner that can be easily understood by applicants and local authorities.

Scottish Government Comments:

Responsibility:

Remediation Date:

## 2.8 Planning application fees and surcharges

**Issue:**

Where licensing policies require planning permission, for most, it will be necessary for STL operators to apply for both planning permission and a STL licence concurrently. Depending on the timescale, it will be possible that may operators will be required to incur fees for a licence while they await the outcome of a

planning application. If planning permission is not granted, there is no provision for repayment of the application fee in respect of the STL licence.

As the application fee for a licence is non-refundable, obtaining accurate and clear advice on planning is crucial to provide certainty for businesses that have made significant investments into their business and are dependent on the income derived from this activity.

In addition, from 1 October 2022, Perth & Kinross, Edinburgh and Fife Councils<sup>31</sup> have added a surcharge to retrospective planning applications. Any application for planning permission will be subject to an additional charge equivalent to 25% of the normal application fee plus VAT.

In terms of transitional arrangements, any retrospective applications received from 1 October 2022 will be subject to the new charges. This will also include any applications submitted prior to 1 October 2022 which are invalid and remain invalid after 30 September 2022.

**Risk:**

- Dual non-refundable planning and licencing fees, in a state of uncertainty over planning rules, together with a surcharge for planning costs may make the overall process to apply for a short-term let licence prohibitively expensive.

**Impact:**

- Applicants may not apply for planning and / or a licence due to the total cumulative costs of fees and all non-refundable applications.

**Recommendation 13:**

Given the recent implementation of short-term let legislation and current uncertainty in relation to planning guidance, consideration should be given to easing the financial burden applying fees for both planning and licencing and retrospective surcharges for planning applications.

Scottish Government Comments:

Responsibility:

Remediation Date:

**Conclusion**

- Policymakers should not use holiday accommodation as a means to solve housing challenges in Scotland, instead focusing on building more affordable homes and tackling the scourge of empty properties.
- Small businesses like self-catering, present in communities for decades, should not be used as a convenient scapegoat for wider failures in housing policy.
- Policies taken forward, either at a national or local level, need to be informed by robust empirical data.
- The Scottish Government must back legitimate professional businesses and our renowned tourism sector as we recover from the effects of Covid-19, allowing visitors at home and abroad to benefit from our unique hospitality and world class range of accommodation.

**May 2023**

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<sup>31</sup> Fife Council guidance for reference: [Fees for Retrospective Planning Applications](#). Full details of the legislation can be viewed here [The Town and Country Planning \(Fees for Applications\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#)