



Cllr Cammy Day  
The City of Edinburgh Council  
City Chambers  
High Street  
Edinburgh EH1 1YJ

cc Paul Lawrence  
Peter Watton

17<sup>th</sup> January 2024

Dear Cllr Day,

The City of Edinburgh Council has agreed to request a report be considered by the Planning Committee to specifically address:

*The implications of the Judicial Review and what outcomes this will have on Short-Term Let Planning Policy and the assessment of Short-Term Let Planning applications, what implication this may have for the Council's Short-Term Let Licensing Scheme, and potential amendments to the 'Guidance for Businesses' which comply with the judgement. This report should also be sent to the Regulatory Committee and the Short-Term Lets Working Group for information.*

We understand that this report will be heard at the Planning Committee on 31/01, when the matter will be discussed in public. We understand that the Report may be an opportunity to deliver new guidance or update policies. We commend an appetite to amend guidance to reflect the outcome of the two Judicial Reviews and an understanding of the urgency to give clarity and reassurance to legitimate businesses that are vital to the city.

### **Successful Implementation**

You and other members of the Council committed to regulate and control short-term lets in the city. Despite challenges to the legality of parts of the legislation, we believe the Council has now delivered on these commitments. A robust regulatory regime is now in place with Short-Term Let Licensing, ensuring all operators are operating safely under the control of the Council. In addition, a Planning Control Area is in place that will require planning permission for all new STLs. This should be seen as a huge success in terms of the Council's aspirations to regulate the sector.

We further note that there have been just 1,842 secondary let short-term let licence applications (at 1<sup>st</sup> October 2023). This represents a dramatic 85% reduction in the 12,000 short-term lets claimed in Edinburgh, all now under the direct visibility of the Council as licenced operators. This should be seen as another quantifiable success in terms of the Council's policy objectives and commitment to regulating the sector.

Whether 1,800 entire property STLs is enough to reflect the many great events, workers and visiting relatives that require temporary residential accommodation remains to be seen. Taking the festivals as an example, there are an estimated 18,000 workers at festivals (excluding tourists) requiring 400,000 bed spaces.

Short-term let accommodation is vital for the city to thrive, not just for tourists, but for business professionals, corporate relocations, families being rehomed following flood or fire, people visiting relatives in hospital, festival production staff and performers, and many other reasons where a hotel does not provide the required home from home facilities and independence. 1,800 STLs represent just 0.7% of all residential accommodation in Edinburgh. This is already significantly lower than other comparable cities across Europe. This relatively small percentage of housing stock would appear to be an entirely reasonable allocation to meet the demand for temporary residential housing needs that will always exist in a thriving city like Edinburgh. This demand cannot be solely met by the planned development of hotels or 'apart hotels' for a variety of reasons. Any further reduction may lead to a 'black market' to meet this demand, which would undermine all attempts to regulate the sector.

### **Way Forward**

However, to allow the sector to move on from here, the judicial review leaves a legacy planning issue and a large degree of uncertainty for existing operators who are still unable to plan forward with their STL. (Those who commenced operating pre-PCA designation date of 5 September 2022). We understand that there are approximately 1,100 Planning / Certificate of Lawfulness Applications awaiting determination related to secondary let licences. The judicial review now put the requirement for these applications (and the related fees) into question. Processing each of these applications on their merit will be resource-intensive. Should they be rejected by the planning department, the only route of appeal for all Certificate of Lawfulness applications is directly to the DPEA. These appeals will be costly for the Council given the administration costs and the possibility of awarding expenses. In addition, regrettably, there is a growing appetite for compensation claims in light of the second judicial review.

This is a 'point in time' issue, that only affects the approximately 1,100 applications for existing operators. Going forward, any new operator will require a full planning application under the Planning Control Area. We believe that there is a workable, legally robust solution to safeguard City of Edinburgh Council's clear intention to robustly regulate STLs, whilst protecting the small number of professional operators that the city relies on to provide short-term accommodation.

We would therefore propose a mutually beneficial solution for both City of Edinburgh Council, and the professional self-catering community which serves the needs of our capital city.

To mitigate against further legal challenges, and to reduce the resource required to consider every existing property on a case-by-case basis, we set out the following recommendation to amend the planning policy to reflect that for properties operating pre-designation date of a PCA (5<sup>th</sup> September 2022):

*'as a matter of policy, any property in existing use that is not subject to complaint or enforcement is not considered to be a material change of use and therefore does not require planning permission and a certificate of lawful use can be granted.'*

We have sought legal advice from Neil Collar, Brodies LLP who advises that this is legally robust and sound and would limit any form of potential challenge. This allows the planning authority to take a different stance in exceptional circumstances but offers a general acceptance that existing operators pre-PCA can continue to operate and that their licence applications can progress unhindered. We note that South Ayrshire Council have adopted a similar approach through a policy statement, and we understand other councils are also taking a pragmatic approach for existing operators in relation to planning.

Should an existing operator fail to operate within best practices and/or a property negatively impacts on residential amenity, this can be addressed by the licensing regime and allows action to be taken. For example, we understand licencing has the power to limit the term of the initial award of a licence (such as 6 months) where there are concerns over potential amenity impacts.

This would offer a balanced, reasonable, proportionate and lawful solution to the current challenge and provide reassurance to legitimate businesses that find themselves in an impossible situation currently. We see this as an opportunity to draw a line in the sand and move forward with STL legislation, which can still be viewed as a success for all parties involved, whilst evidencing some much-needed reflection and pragmatism on achievements the Council has already made regulating the sector.

The ASSC believes that the Council now has the necessary tools to fairly and effectively regulate short-term lets and it should update its policies and guidance as soon as practically possible to reflect the recent legal judgements. As ever, the self-catering industry, which contributes so much to the local economy, stands ready to work with you in a constructive and positive manner and would welcome any further dialogue in preparation for upcoming meetings.

Yours faithfully

Fiona Campbell  
Chief Executive  
Association of Scotland's Self-Caterers