



Cllr Thomas MacLennan  
Cllr Jackie Hendry  
The Highland Council  
Council Headquarters  
Glenurquhart Road  
Inverness  
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25<sup>th</sup> January 2024

Dear Cllrs MacLennan and Hendry,

We understand that the Cairngorms National Park Authority will consider The Highland Council's Non-Statutory Short-Term Let Control Area Planning Policy V1.4 on 26<sup>th</sup> January 2024. We commend an appetite to review guidance to reflect the outcome of the recent Judicial Review against City of Edinburgh Council and an understanding of the urgency to give clarity and reassurance to legitimate businesses that are vital to the local economy and community of Ward 20.

### **Successful Implementation**

Members of The Highland Council committed to regulate and control short-term lets in the Badenoch & Strathspey Ward. We believe the Council has now delivered on these commitments. A robust regulatory regime is now in place with Short-Term Let (STL) Licensing, ensuring all operators are operating safely under the control of the Council. In addition, a Planning Control Area (PCA) is due to be designated in March 2024 that will require planning permission for all new Secondary Let STLs, as per the proposed policy.

We further note that there have been just 671 secondary let STL licence applications in Ward 20 (at 1<sup>st</sup> October 2023), all now under the direct visibility of the Council as licenced operators (or with licences pending determination). This should be seen as another quantifiable success in terms of the Council's policy objectives and commitment to regulating the sector.

671 secondary let STLs represents just 9% of all residential accommodation in Ward 20. These properties provide huge economic benefits to the area, as well as employment and opportunities for associated service providers, as well as visitors to hospitality venues, visitor attractions and activity providers. Short-term let accommodation is both increasingly popular and vital for the Highlands to thrive, not just for tourists, but for workers on infrastructure projects, families being rehomed following flood or fire, people visiting relatives, and many other reasons where a hotel does not provide the required home from home facilities and independence. Whether 671 entire property STLs is enough to reflect this demand for temporary residential accommodation remains to be seen.

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. In terms of Ward 20, with 7460 dwellings, 5% are vacant, 3% are long-term empty and 9% are classed as second homes. There will inevitably be some cross-over between second homes and those that have applied for STL licences, rendering this number largely inaccurate.

### **Way Forward**

The recent judicial review in Edinburgh leaves a legacy planning issue and a large degree of uncertainty for existing operators who are still unable to plan forward with their STL in Ward 20. We understand that there are approximately 121 Planning / Certificate of Lawfulness Applications awaiting determination related to secondary let licences, despite a Planning Control Area not having yet come into force. The judicial review now puts 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 authority, the only route of appeal for 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.

This is a 'point in time' issue, that only affects the approximately 121 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 The Highland Council's clear intention to robustly regulate STLs, whilst protecting the small number of professional operators that the Council relies on to provide short-term accommodation.

We would therefore propose a mutually beneficial solution for both The Highland Council, and the professional self-catering community which serves the needs of this incredibly popular part of Scotland.

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 (4<sup>th</sup> March 2024):

*'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 which 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.

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, confirming the commitment made by the Council to regulate the sector.

The ASSC believes that the Council now has the necessary tools to fairly and effectively regulate short-term lets and it should amend the proposed policy and guidance as soon as practically possible to reflect

the recent legal judgements and make the requirements of existing operators absolutely clear. 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 your upcoming meeting.

Yours faithfully

**Fiona Campbell**

Chief Executive

Association of Scotland's Self-Caterers

cc:

Cllr John Bruce

Cllr Muriel Cockburn

Cllr Russell Jones

Cllr Bill Lobban

Kate Forbes MSP

Grant Moir