

# Planning Committee

10am, Thursday, 6 October 2016

## Short Stay Commercial Leisure Apartments – Monitoring Report

Item number	6.1
Report number	
Executive/routine	Routine
Wards	All

### Executive Summary

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In 2013, the Planning Committee agreed to make changes to its non-statutory 'Guidance for Businesses', in order to make specific reference to the issue of short stay commercial leisure apartments – so called 'party flats'. This report provides an update on the Council's current position, following the last report submitted in August 2015. It is recommended that the next report is made in one year's time.

### Links

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Coalition Pledges	<a href="#">P28</a>
Council Priorities	<a href="#">CO8</a> <a href="#">CO16</a> <a href="#">CO19</a>
Single Outcome Agreement	<a href="#">SO1</a> <a href="#">SO4</a>

## Short Stay Commercial Leisure Apartments – Monitoring Report

### 1. Recommendations

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- 1.1 It is recommended that the Committee :
- a) notes the current position in respect of action by the planning enforcement service relating to short stay commercial leisure lets and that a further report on progress will be made in a year's time; and
  - b) refers the report to Health, Social Care and Housing Committee for information.

### 2. Background

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- 2.1 Since the Guidance for Businesses was approved in December 2012, the Planning Committee has considered whether short stay commercial leisure apartments or 'party flats' can constitute a material change of use in planning terms. The Planning Committee considered that in certain cases they could. Accordingly, the published version of the non-statutory Guidance for Businesses was amended to incorporate the relevant criteria for assessing whether a residential property had undergone a change of use to a short stay commercial leisure apartment, (SSCLA).
- 2.2 At its meeting on 6 August 2015, the Planning Committee considered a progress report and noted the current position in respect of action by the planning enforcement service relating to short stay commercial leisure lets. It also noted that a further review will be carried out in one year's time. This report fulfils that remit.

### 3. Main report

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- 3.1 Since the previous update, the planning authority has closed 14 enquiries into the alleged use of residential properties as SSCLAs and opened 10 new cases. A list of the cases closed together with the reasons for closing is at Appendix A.
- 3.2 There are currently a total of 10 SSCLA cases pending consideration. The progress of each of these cases is recorded in the table at Appendix B

- 3.3 In terms of the 14 cases that have been closed, three were the subject of enforcement notices (26 Old Tollbooth Wynd, 3F1 22 Learmonth Terrace and F5 2 Eyre Place). The notices at 26 Old Tolbooth Wynd and 3F1 22 Learmonth Terrace were not appealed and the use ceased in accordance with the notice. The case at 2 Eyre Place (15/00267/ECOU) is notable as it was the first SSCLA enforcement notice that has gone to appeal. The reporter gave general support to the Council's policy guidance, in as much as it was found to be relevant in assessing whether there was a change of use. The outcome was that the reporter agreed with the Council that a material change of use had occurred with the result that the notice was upheld and the use has ceased.
- 3.4 A separate outcome of the Eyre Place decision is that the terminology in the Guidance for Business has been changed from short term commercial leisure apartments to short term commercial visitor accommodation. This is to reflect the fact that this type of accommodation is not only used for leisure accommodation for holiday/tourism purposes but can also be used by other visitors in particular business travellers.
- 3.5 The planning service had not previously received an appeal against any of the SSCLA enforcement notices served. Consequently, there was no external measure of the robustness of the policy approach being taken. While the Eyre Place decision provides some useful pointers to what the reporters may look for in a change of use, each case must be considered on its own merits. Some factors may point to a change of use not being material. For example in the case of a small flat, the relatively small size of the premises increases the likelihood of its being occupied by single household rather than unrelated people, and limits the potential for anti-social behaviour to some extent. However other factors may indicate the change of use is material, for example, whether the flat shares a common access with permanent residents, which increases the likelihood of conflict with permanent residents. Other considerations include the nature of lets and frequency of turnover of residents. Until more appeal decisions are available, it is not possible to reach any definitive conclusion on whether the non-statutory guidance has resulted in an improvement to the situation in regard to such uses.
- 3.6 The difficulty for planning enforcement is having the evidence to show that the character of the premises has changed so substantially as to amount to a material change of use. In the majority of the cases that have been closed in the last year, there was usually some evidence that the flats were being used as short stay lets (i.e. advertised online), however there was no clear evidence that the character of the use of the flats for short term visitor accommodation was significantly different from the authorised use as flats for residential accommodation. Nevertheless in two cases (9 Featherhall Avenue and Flat 1 1 McEwan Square) the owners have chosen to put in place specific management measures to ensure the flats are not used as party flats in response to the enforcement enquiries.

- 3.7 In terms of new cases, there have been 10 SSCLA cases raised in the last year. This compares with 14 cases in 2014/2015 and 19 cases in 2013/2014.
- 3.8 Notwithstanding the relatively small number of new cases, it is evident from the growth of websites advertising short term lets that there are a large number of properties particularly in the City Centre and Leith that are being let out for short term lets. This has the potential to become a significant issue for the City. In this regard the Association of Scotland's Self-Caterers (ASSC) has advised that it has recently drafted a Code of Practice for short-term let operators to encourage best practice and promote a harmonious existence between short term let apartments and local residents. This proactive approach by the ASSC is welcomed but at this early stage it is not possible to say whether it is having any effect on how premises are used.

#### **4. Measures of success**

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- 4.1 That the Council's performance in dealing with cases of short stay commercial visitor lets results in a decline in the particular problems associated with such uses, in a decline in the number of complaints about such activity, and in successful outcomes for the Council in any appeal or court proceedings.

#### **5. Financial impact**

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- 5.1 There are no financial implications arising from this report.

#### **6. Risk, policy, compliance and governance impact**

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- 6.1 There is no impact on risk, policy, compliance and governance impact arising from this report.

#### **7. Equalities impact**

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- 7.1 There is no relationship between the matters described in this report and the public sector general equality duty. There is no direct equalities impact arising from this report.

#### **8. Sustainability impact**

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- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered. Relevant Council

sustainable development policies have been taken into account. This review of the operation of revised non statutory guidance will have no adverse impacts on carbon emissions, the city's resilience to climate change impacts, achieving a sustainable Edinburgh in respect of social justice, economic wellbeing or good environmental stewardship.

## 9. Consultation and engagement

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- 9.1 Consultation and community engagement have not been carried out in respect of this review of the operation within the guidelines. However, there is regular contact and communication with community groups and other interested parties through the work of the task group.

## 10. Background reading/external references

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- 10.1 [Annual Review of Guidance, report to Planning Committee, 28 February 2013](#)  
[Minutes of Planning Committee, 28 February 2013, Item 3](#)  
[Minutes of Planning Committee, 5 December 2013 Item 5.1](#)  
[Minutes of Development Management Sub Committee, 14 May 2014, Item 4.2](#)  
[Minutes of Planning Committee, 7 August 2014, Item 6.1](#)  
[Minutes of Planning Committee, 6 August 2015, Item 7.2](#)

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## 11. Links

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<b>Coalition Pledges</b>	P28 Further strengthen our links with the business community by developing and implementing strategies to promote and protect the economic well being of the city
<b>Council Priorities</b>	CP8 A vibrant, sustainable local economy CP10 A range of quality housing options C12 A built environment to match our ambitions
<b>Single Outcome Agreement</b>	SO1 Edinburgh's economy delivers increased investment, jobs, and opportunities for all SO4 Edinburgh's communities are safer and have improved

physical and social fabric.

**Appendices**

Appendix A – Table of SSCLA Cases Closed Aug 2015 – Aug 2016

Appendix B – Table of SSCLA Cases Pending Consideration at Aug 2016

Appendix A - SSCLA Cases Closed Aug 2015 – Aug 2016

SSCLA										
Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Reason for Closing
13/00384/ECOU	26 Old Tolbooth Wynd Edinburgh EH8 8EQ	Change of use to Short Stay Let Accommodation	ALLANS	CLOSED	02/07/2013	06/10/2015	06/10/2015	1,135.63	A11	Enforcement Notice was served 03/09/14. No appeal received. Complaints ceased and case was closed. However after a period of over a year without complaint, a complaint was received 09/08/16 alleging the use has recommenced. As a result a new case has been set up (See cases pending below).
13/00544/ECOU	1F2 61 Lothian Road Edinburgh EH1 2DJ	Change of use from residential flat to short stay commercial flat.	ALLANS	CLOSED	05/09/2013	30/10/2015	30/10/2015	1,070.50	A11	Based on the results of the site inspections undertaken, and no further reports of anti social behaviour; it was concluded that the primary use of the premises



## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Reason for Closing
										remained as a residential flat. No change of use had occurred.
14/00144/ECOU	2 Chessel's Court 240 Canongate Edinburgh	Alleged use of premises as a short stay commercial leisure apartment.	ALLANS	CLOSED	11/03/2014	06/11/2015	06/11/2015	883.39	A11	Several site inspections were undertaken. No unauthorised activity was witnessed occurring. No further reports of anti social behaviour in respect of this premises. On this basis concluded no change of use had occurred.
14/00331/ECOU	Flat 8 38 Barony Street Edinburgh EH3 6NY	Alleged change of use to short stay commercial leisure apartment	ALLANS	CLOSED	27/05/2014	06/10/2015	06/10/2015	806.52	A11	Several site inspections were undertaken. No unauthorised activity was witnessed occurring. the primary use of the premises remains as a residential flatted property. No breach in planning control had occurred.

## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Reason for Closing
14/00400/ECOU	9 Featherhall Avenue Edinburgh	Alleged unauthorised change of use to short stay commercial leisure apartments (SSCLA)	BJF	CLOSED	04/07/2014	01/06/2016	01/06/2016	768.68	A06	Several site inspections were undertaken. The owners have introduced measures to restrict the way the flats are used. In planning terms the primary use of the premises remains as a residential flatted property. No breach in planning control had occurred.
14/00492/ECOU	Flat 1 1 McEwan Square Edinburgh	Use of premises as short stay commercial premises	ALLANS	CLOSED	04/08/2014	29/09/2015	29/09/2015	737.36	A09	The premises no longer allow 'stag' and 'hen' parties on their premises, or permit guests to have parties in their flats. Community Safety has since confirmed that no complaints of anti social behaviour have been received, and there are no active investigations into

## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Reason for Closing
										the premises. Primary use of the premises is still a residential flat and no breach in planning control has occurred.
14/00530/ELBB	24 Queen Street Edinburgh	change of use from flatted accomodation to short stay commercial	ALLANS	CLOSED	14/08/2014	26/04/2016	26/04/2016	727.43	A11	The Council's Building Standards Section are currently undertaking separate enforcement action requiring the habitation of the unit by members of the public to cease.
14/00779/ECOU	26 Dublin Street Lane South Edinburgh EH1 3PX	Operation of a premises as an alleged SSCLA	ALLANS	CLOSED	03/12/2014	24/11/2015	24/11/2015	616.34	A11	Several site inspections were undertaken. No unauthorised activity was witnessed occurring. the primary use of the premises remains as a residential flatted property. No breach in planning control has

## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Reason for Closing
										occurred.
15/00199/ECOU	3F1 22 Learmonth Terrace Edinburgh EH4 1PG	Unauthorised change of use of a residential flatted dwelling to a short stay commercial leisure apartment.	MARTIP	CLOSED	16/04/2015	17/05/2016	17/05/2016	482.60	A05	Enforcement notice was issued in June 2015. Notice was not appealed and the use has since ceased.
15/00267/ECOU	Flat 5 2 Eyre Place Edinburgh EH3 5EP	Alleged unauthorised change of use from residential flat to short term holiday let /SSCLA	LOUDON	CLOSED	22/05/2015	27/04/2016	27/04/2016	446.40	A05	First enforcement notice involving an SSCLA that has gone to appeal. Appeal dismissed. The DPEA gave general support to the Council's policy guidance. The use has now ceased.
15/00280/ECOU	16 Lochend Close Edinburgh EH8 8BL	Short stay letting	BT	CLOSED	27/05/2015	24/11/2015	24/11/2015	441.30	A11	Community Safety has not received any reports of anti social behaviour relating to the premises, and do not have an active investigation into the property. No other

## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Reason for Closing
										evidence of a change of use. No action taken.
15/00471/ECOU	Flat 9 12 Constitution Place Edinburgh EH6 7DL	Alleged unauthorised use as short stay accommodation.	WEBSTE	CLOSED	21/08/2015	24/11/2015	11/04/2016	355.57	A13	Listings in web sites removed, and no further evidence of unauthorised use has been established. Notice complied with at present.
15/00565/ECOU	2F2 76 Grassmarket Edinburgh EH1 2JR	Short term let/ short stay commercial leisure apartments (SSCLA)	BT	CLOSED	14/10/2015	14/01/2016	14/01/2016	301.36	A11	Community Safety has not received any reports of anti social behaviour relating to the premises, and do not have an active investigation into the property. No other evidence of a change of use. No action taken.
15/00621/ECOU	1F2 61 Lothian Road Edinburgh	Alleged use of premises as an SSCLA	BJF	CLOSED	17/11/2015	11/02/2016	11/02/2016	267.52	A11	The enquirer requested that the case be closed on the basis that the original issues have been



## Appendix B – Cases Pending Consideration at Aug 2016

SSCLA										
Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Progress
14/00721/ECOU	2F1 5 Lauriston Park Edinburgh EH3 9JA	Alleged material change of use - use of the property as a short stay commercial leisure apartment.	MARTIP	PCO	06/11/2014			643.34	A10	Discussions with owner, but no progress as yet. Likely to go to notice.
15/00296/ECOU	83 Dundas Street Edinburgh EH3 6SD	Alleged use of premises as an SSCLA	BJF	PCO	08/06/2015			429.32	A11	Several site inspections were undertaken. No unauthorised activity was witnessed occurring. the primary use of the premises remains as a residential flatted property. Case to be closed.
15/00307/ECOU	1F2 56 Lochrin Buildings Edinburgh EH3 9ND	Unauthorised change of use - flat to short stay commercial leisure accommodation	VM	PCO	11/06/2015			426.28	A10	It would appear that notice has been complied with. No evidence of unauthorised use now

## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Progress
										being found. No further complaints from neighbours. Case to be closed.
15/00532/ECOU	3F2 19 Elgin Terrace Edinburgh EH7 5NW	Unauthorised use of flat as short stay accommodation.	WEBSTE	PCO	17/09/2015			328.29	A12	Site visit undertaken – no one there. No ‘party noise’ issues in initial enquiry. No breach identified as yet.
15/00640/ECOU	2F 17 Great Junction Street Edinburgh EH6 5HX	Alleged unauthorised use as short stay apartment (party flat).	WEBSTE	PCO	04/12/2015			250.47	A13	Site visit undertaken – no one there. Has been issues with noise – agreement made between owner and community safety and action taken under antisocial behaviour act.



## SSCLA

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Progress
16/00265/ECOU	Flat 7 14 East Parkside Edinburgh EH16 5XL	Alleged unauthorised use of flat as short stay accommodation.	WEBSTE	PCO	01/06/2016			70.60	A15	Been out once during office hours – no one there. Sent letter to owner asking about patterns of use, got response saying was let to families only for short lets. No 'party noise' issues in initial enquiry.
16/00285/ECOU	Flat 14 6 Drummond Street Edinburgh EH8 9TU	Party Flat	BT	PCO	08/06/2016			63.57	A15	Served Planning Contravention Notice to gather information regarding the current use. Further out of hours/weekend visits to be undertaken after the Fringe
16/00298/ECOU	Flat 11 51 Caledonian Crescent	Alleged Unauthorised Change of Use to	BJF	PCO	14/06/2016			57.50	A07	Site visit to be arranged with complainant due to the secure access to the

**SSCLA**

Case No	Address	Complaint	Officer	Status	Received date	Date of Decision	Date case closed	Number of days	Ward	Progress
	Edinburgh EH11 2AT	SSCLA								development. Although, recorded against one flat, the complainant mentions others within the development that are let on a short term basis.
16/00301/ECOU	3F1 28 Warrender Park Terrace Edinburgh EH9 1EE	Alleged unauthorised change of use - short stay commercial let.	WEBSTE	PCO	16/06/2016			55.52	A10	No 'party noise' issues in initial enquiry. Site visit undertaken but no evidence of breach so far.
16/00421/ECOU	26 Old Tolbooth Wynd Edinburgh EH8 8EQ	Alleged unauthorised change of use - short stay commercial let.	BJF	PCO	09/08/2016			03.00	A11	Site visit to be arranged. Should action need to be taken the enforcement notice from previous case (13/00384/ECOU) remains in effect.