

Policy and Sustainability Committee

10.00am, Tuesday, 1 December 2020

Short Term Lets: Scottish Government consultation on a licensing scheme and planning control areas in Scotland

Executive/Routine Wards Council Commitments	Executive All 12
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1. Recommendations

- 1.1 It is recommended that committee notes the response submitted to the Scottish Government's consultation and the next stages in implementing licensing and planning controls.

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Report

Short Term Lets: Scottish Government consultation on a licensing scheme and planning control areas in Scotland

2. Executive Summary

- 2.1 This report provides an update on the response submitted to the consultation on the regulation of short term lets by the Scottish Government and a summary of the next stages.
- 2.2 The consultation put forward a proposed system for regulating short term lets through a mandatory licensing system along with the introduction of planning control areas.
- 2.3 The proposals set out by the Scottish Government broadly align with the approach that the Council intends to take in order to tackle the issues caused by short term lets in Edinburgh. The report highlights key aspects of the consultation proposals and identifies how this fits the Council's intended approach.

3. Background

- 3.1 The consultation sought views on the Scottish Government's detailed proposals for the regulation of short-term lets which will form the basis for secondary legislation to be laid in Parliament in December 2020. The target date for implementation of regulations is April 2021. Comments on the proposals were submitted by the closing date of 16 October 2020.
- 3.2 The submitted comments have been shared for their respective interests through business bulletins for the Housing, Homelessness and Fair Work Committee, Planning Committee and Regulatory Committee.

4. Main report

Scope

- 4.1 The Scottish Government's consultation paper set out three key areas of proposal:
 - 4.1.1 the definition of short-term lets;
 - 4.1.2 the establishment of control areas under the Planning (Scotland) Act 2019;
and

4.1.3 the establishment of a licensing scheme under the Civic Government (Scotland) Act 1982.

- 4.2 It should be noted that the third element of the Scottish Government's actions to address short-term lets issues - the review of tax treatment - is being progressed separately and was outside the scope of this consultation.

Definition

- 4.3 In its liaison with the Scottish Government, the Council has encouraged the use of a common definition for Planning and Licensing purposes and sought a criteria-based approach. The sharing of information and experience had identified particular loopholes and the need to be clear about the definition of house and flats. The Scottish Government's proposed definition addresses these points.
- 4.4 The definition of a "primary residence" has been an important factor in enforcement activity to date and the Council's response has sought further clarity on this issue.

Short Term Lets Control Areas (STLCA)

- 4.5 The proposed STLCA regulations would allow planning authorities to designate all or part(s) of their area as a control area. Within such a designated area, the use of a dwelling house for secondary letting will always be deemed to involve a material change of use and requires planning permission. Outside such areas, the current case-by-case consideration would continue to apply. This is consistent with the Council's desire to have a method of managing high locational concentrations of short-term let properties and clarifying the planning process for such changes of use to bring a simpler approach.
- 4.6 The Council's response has sought further clarity on, and made suggestions about, certain technical aspects of the planning permission process proposed by the Scottish Government, the use of permitted development rights and encourages the early publication of procedural guidance on the designation of a STLCA to allow the Council to progress with its own proposals.

Licensing Order

- 4.7 The Scottish Government's proposals largely address the Council's previous requests for regulatory powers to identify where and how short-term lets can operate and to regulate their operation to address safety issues. The Scottish Government proposes that the licensing system be delivered by local authorities, but the regulations will specify the mandatory and other possible conditions for the licence. Local authorities will have the power to introduce licensing conditions from a menu of options to address local issues of concern.
- 4.8 However, it should be noted that the Scottish Government's proposals do not allow the licensing system to control the numbers of short-term let properties by imposing a cap or limit. Rather, it is the STLCA which is the tool for managing high concentration of short-term let properties. It is the Scottish Government's view that to introduce a specific power in licensing to cap numbers of short-term lets could lead to unintended consequences.

- 4.9 The proposals also address a key Council principle about ensuring a joined-up Planning and Licensing approach by including a mandatory condition for licence applications which would require the host to confirm that they have applied for, or obtained planning permission (if required), that it remains current and that they are complying with any planning conditions.
- 4.10 The Council's response has sought further clarity on, and made suggestions about, certain potential operational issues, including whether the licensing authority can refuse to consider a licence application until the result of a planning permission application is approved and the impact on a licence granted if planning permission is subsequently refused.

5. Next Steps

- 5.1 The next steps in Planning terms will be to consider the identification of an area or areas in the city to be proposed for designation as Short Term Lets Control Area and to consider the planning policy basis to support the assessment of proposals to change the use of properties for short-term let purposes. The proposal for this was included in the consultation on the City Plan 2030 Choices Report which took place earlier in 2020.
- 5.2 The next steps in preparing a Licensing scheme for the city will be to consider the discretionary conditions which would supplement mandatory conditions to address local issues of concern and to identify a timescale for implementing the licensing scheme. This needs to be in line with the Scottish Government's proposal that all local authorities must have a live licensing scheme open to receive licensing applications by 1 April 2022.
- 5.3 It is proposed that the existing Member-Officer Working Group on Short Term Lets be used to develop a joined-up approach for the implementation of proposals.

6. Financial impact

- 6.1 There is no immediate financial impact arising from the response to the Scottish Government's consultation paper.
- 6.2 The costs arising from processing licence and planning applications would normally be expected to be contained within the income from application fees.
- 6.3 Planning application fee rates are set nationally by the Scottish Government and are currently under review.
- 6.4 It is expected that Licence fee rates for short term lets will be determined locally by the licensing authority and set on a cost recovery basis for the licensing system.

- 6.5 Alongside a programme to implement a new licensing system for short term lets, the Council will need to give detailed consideration of the resources required to effectively implement these changes. The assessment of this will set out whether the likely implications of this can be contained within existing budgets or if there is likely to be a revenue impact of the changes. The outcome of this will be reported to Committee in Spring 2021.

7. Stakeholder/Community Impact

- 7.1 Members of the Member-Officer Working Group on Short Term Lets were consulted on the draft response to the Consultation Paper.
- 7.2 Using social media, the Planning and Licensing services have promoted the Scottish Government's consultation to encourage community input direct to Scottish Government.

8. Background reading/external references

- 8.1 The consultation paper is available online at <https://consult.gov.scot/housing-services-policy-unit/short-term-lets-licensing-scheme/>

9. Appendices

- 9.1 Appendix 1 – City of Edinburgh Council response to the Consultation Paper

Questions

1 Please identify any issues with the proposed definition as set out in chapter 4, and how to resolve them.

Question 1:

CEC approach to date is that we have

- encouraged the use of a common definition for Planning and Licensing purposes,
- sought a criteria based approach,
- identified particular loopholes,
- sought clarification of definition of house and flats
- asked that there is a focus on defining a "primary residence" .

This consultation paper

- addresses all these points apart from definition of "primary residence" .

CEC therefore

- supports the proposed definition and asks that the Glossary of terms includes definition of a primary residence.

2 Please identify any issues with the proposed control area regulations as set out in chapter 5, and how to resolve them.

Question 2:

a) CEC approach to date is that we have

- sought the principle that all STLs in a defined area will require a change of use to overcome the current burden of a case-by-case basis
- sought a way of managing high concentrations of STLs
- highlighted where "seasonal" use of property to support events could be an exception.

This consultation paper proposes

- in a designated STLCA all secondary letting will be a change of use and require planning permission
- that the primary purpose of STLCA is to manage high concentrations
- discretion for planning authorities to apply a flexible approach around one-off events.

CEC therefore

- supports this approach. Further local decisions will be required by CEC on designated STLCA (or Areas) and any flexibility for specific events.

b) CEC approach to date is that we have

- sought simple way of linking planning permission to licensing of properties.

This consultation paper proposes

- in a manner similar to advertising hoardings, any planning permission which is granted would be valid for a default period of ten years (unless a longer or shorter period is set by the authority) but that local authorities should have the power to revoke planning permission after that time.

CEC therefore suggests an alternative:

- revocation of planning applications is a complex process and would be onerous for an authority potentially handling thousands of cases. Instead of the onus being on the planning authority to revoke the consent, the consents should be temporary and lapse. The period of planning permission could be linked to the length of the licence to keep it simple and easy for neighbours to follow.

c) CEC approach to date is that we have

- sought clarity about permitted development rights and the general allowance of a use for up to 28 days in a calendar year.

This consultation paper proposes

- to remove this permitted development right within control areas because it is considered this undermines the purpose of establishing a control area, adds to the complexities of enforcement and is confusing for neighbours.

CEC therefore supports this approach

- but seeks explicit clarification in relation to existing limitations of General Permitted Development Order Class 15.

d) CEC approach to date is that we have

- sought details of the process of establishing a STLCA
- shared information about existing extent of STL in Edinburgh and how transitional arrangements might work.

This consultation paper proposes

- using a similar process to that used to establish conservation areas (they have a similar effect in making planning permission mandatory within them). The conservation area process requires some form of consultation (not specified in legislation) and notification to Ministers for approval
- that local authorities have the power to set a grace period during which a host may submit a planning application for an existing secondary let and during which

no enforcement action would be taken against them.

CEC therefore supports the approach

- but seek early publication of guidance alongside the regulations to allow proposals in Edinburgh to be prepared and planning policies clarified.

e) in Annex B - Planning Legislation

The proposed legislation states: (2) In a short-term let control area, the use of a dwellinghouse for the purpose of providing short-term lets is deemed to involve a material change of use of the dwellinghouse.

This does not appear compatible with what is set out in the consultation paper. The paper states it will be secondary lettings (a form of short term lets) which will involve a material change of use in control areas. Home sharing and home letting shouldn't, but they would under this wording.

CEC proposed revision:

Revise this section so that the legislation reflects secondary lettings as automatic change of use in control areas (if that is approach intended).

3 Please identify any issues with the proposed licensing order as set out in chapter 6, and how to resolve them.

Question 3:

a) CEC approach to date is that we have

- sought a licensing regime to identify where and how STLs are operating and to regulate their operation to address safety issues
- sought to implement a licensing scheme at the earliest opportunity after regulations are in place.

This consultation paper proposes

- that the licensing system is to be delivered by local authorities but the Scottish Government will specify the mandatory and other possible conditions for the licence. Local authorities will have the power to introduce licensing conditions from a menu of options to address local issues of concern
- a target for local authorities to be able to implement a licensing scheme from 1 April 2021 and give local authorities discretion as to when they bring the provisions into force in their area. However, all local authorities must have a live licensing scheme open to receive licensing applications by 1 April 2022.

CEC therefore

- supports these proposals

b) CEC approach to date is that we have

- sought to ensure that it is a requirement of applying for a licence that planning permission is granted for the property.

This consultation paper proposes

- a mandatory condition that the host must confirm they have applied for, or obtained planning permission (if required), that it remains current and that they are complying with any planning conditions.

CEC therefore supports this

- but seeks clarification on 1) whether the licensing authority can refuse to consider a licence application until the result of a planning permission application is approved and 2) the impact on a licence granted if planning permission is subsequently refused.

c) CEC approach to date is that we have

- sought to allow comments to be received from neighbours when STL uses are proposed in a manner which is easier to address in both Planning and Licensing.

This consultation paper proposes

- that the applicant for a licence needs to notify neighbours within a 20 metre distance of the property, including all residents on a tenement stair and neighbouring tenement stairs and where planning permission is also required, propose to give local authorities the power to combine the notification requirements so that neighbours are not notified twice about the same proposal.

CEC therefore supports the approach

- but seeks further detail is required of how this will be delivered in a joined-up process.

d) CEC approach to date is that we have sought a licensing regime

- that sets a maximum occupancy for a STL based on size of property
- where local conditions can be applied within the local authority area
- which has appropriate transitional arrangements to allow the Council to manage a large volume of applications

This consultation paper proposes

- that local authorities will specify a maximum occupancy capacity condition with each licence. Local authorities must do this but may use their own criteria to set appropriate occupancy limits
- that local authorities will have discretionary powers to add licence conditions to address local needs & concerns
- to make appropriate transitional arrangements to allow operators to continue operating until a licence has been granted or refused
- to include grace periods which will allow hosts already operating to submit an application & afford local authorities time to consider them.

CEC therefore supports these proposals

- but notes that the proposals do not allow for the licensing system to control the numbers by imposing a cap or limit (but rather through the STLCA planning designation).

e) in Annex C - Licence requirements

Under Planning permission and conditions:

Indicates that where planning permission is required, that this will be self-declaratory and will not need to be verified. Would it not be appropriate at least in control areas, where planning permission is required by legislation, for this to be verified before a licence can be issued? Otherwise operators may well get their licence and potentially not apply for planning permission. This is likely to lead to continued instances of ESHORT investigations and a potential conflict whereby the local authority under the powers of the planning authority say it is not acceptable but under other powers grant a licence to operate anyway, and potentially take additional tax revenue. Surely this will undermine the planning system and integrity of planning enforcement.

CEC proposed revision:

Make verification of planning permission a mandatory requirement as part of licence application.