

Planning Committee

2.00pm, Wednesday, 7 August 2019

Short Term Letting in Edinburgh Update – referral from the Corporate Policy and Strategy Committee

Item number
Executive/routine
Wards
Council Commitments

1. For Decision/Action

- 1.1 The Planning Committee is asked to review the Planning Guidance for Businesses, referred to in paragraph 4.16 of Appendix 1.

Laurence Rockey

Head of Strategy and Communications

Contact: Natalie Le Couteur, Committee Services

E-mail: natalie.le.couteur@edinburgh.gov.uk | Tel: 0131 529 6160

Referral Report

Short Term Letting in Edinburgh Update – referral from the Corporate Policy and Strategy Committee

2. Terms of Referral

- 2.1 The Council had previously called for additional regulation of the short term lets sector, either through changes to planning classifications or the introductions of a licensing system. To achieve the objective of additional regulation, the Scottish Government would be required to introduce legislation
- 2.2 Any legislative process could take months to deliver additional powers. Therefore, there remained an urgent imperative to ensure that existing powers available to the Council were being used to maximum effect.
- 2.3 Complaints regarding short term lets covered a number of broad types and included:
 - 2.3.1 the impact on available housing supply within the city.
 - 2.3.2 the erosion of sense of community in areas with dense concentrations of short term lets.
 - 2.3.3 short term letting was generally not suitable for tenement properties.
 - 2.3.4 properties which were used as short term lets might not reach the same safety standards as other types of visitor accommodation.
 - 2.3.5 the noise and antisocial behaviour created by guests using short term lets.
 - 2.3.6 short terms lets which operated on a commercial basis might not be paying rates or other council charges required.
- 2.4 Given the diverse nature of these broad types, the Council had been exploring data available to further evidence the extent of concerns. Different regulatory regimes defined short terms lets in different ways. Breaches of planning legislation and antisocial behaviour complaints were the most commonly recorded and provided the most reliable data.
- 2.5 The Corporate Policy and Strategy Committee agreed:
 - 2.5.1 To note the enforcement action taken by the Council and the decisions of the Scottish Government Reporter.

- 2.5.2 To note the ongoing work with the Scottish Government that requested the introduction of a licensing system and policy changes at a national level.
- 2.5.3 To refer the report to the Planning Committee to review the Planning Guidance for Businesses as referred to in paragraph 4.16 of the report.

3. Background Reading/ External References

- 3.1 Minute of the Corporate Policy and Strategy Committee of 14 May 2019.

4. Appendices

- 4.1 Appendix 1 – Report by the Executive Director of Place

Corporate Policy and Strategy Committee

10.00am, Tuesday, 14 May 2019

Short Term Letting in Edinburgh Update

Executive/routine

Wards

Citywide

Council Commitments

[12](#)

1. Recommendations

- 1.1 It is recommended that the committee:
- 1.1.1 notes the enforcement action taken by the Council and the decisions of the Scottish Government Reporter;
 - 1.1.2 notes the ongoing work with the Scottish Government requesting the introduction of a licensing system and policy changes at a national level; and
 - 1.1.3 to refer the report to the Planning Committee to review the Planning Guidance for Businesses as referred to in paragraph 4.16.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Regulatory Services Manager

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 469 5822

Short Term Letting in Edinburgh Update

2. Executive Summary

- 2.1 This report provides an update on the current situation regarding short term lets and their impact on the city, following a previous report on [7 August 2018](#) and further research on the issue being conducted. It updates the Committee on the various actions taken by the Council through the powers currently available. Furthermore, the report informs Committee on the work carried out with the Scottish Government in response to the Council's concerns.

3. Background

- 3.1 The Council has previously called for additional regulation of the sector, either through changes to planning classifications or the introduction of a licensing system. To achieve the objective of additional regulation, the Scottish Government would be required to introduce legislation.
- 3.2 Any legislative process may take many months to deliver additional powers. Therefore, there remains an urgent imperative to ensure that existing powers available to the Council are being used to maximum effect.
- 3.3 Complaints regarding short terms lets cover a number of broad types and include:
- 3.3.1 impact on available housing supply within the city;
 - 3.3.2 erosion of sense of community in areas with dense concentrations of short term lets;
 - 3.3.3 short term letting is generally not suitable for tenement properties;
 - 3.3.4 properties which are used as short term lets may not reach the same safety standards as other types of visitor accommodation;
 - 3.3.5 noise and antisocial behaviour created by guests using short term lets; and
 - 3.3.6 short term lets which operate on a commercial basis may not be paying rates or other council charges required.

- 3.4 Given the diverse nature of these broad types, the Council has been exploring data available to further evidence the extent of concerns. Different regulatory regimes define short term lets in different ways. Breaches of planning legislation and antisocial behaviour complaints are the most commonly recorded and provide the most reliable data.

4. Main report

Impact of short term lets on supply and housing costs

- 4.1 Recent analysis (using Airbnb data) published in April 2019 by the Scottish Parliament Information Centre (SPICe) has shown that there were over 12,000 registered Airbnb properties in Edinburgh in 2018. This figure is a significant increase from research available to the Council where the overall number was calculated at approximately 9,000 registered properties in 2017. The number of Airbnb properties has continued to grow each year from 2009 when there was a total of eight registered properties in the city. Airbnb reports that 21% of the 9,000 properties (1,890) registered in 2017, operated in excess of 90 days, which would indicate they are no longer being used on a residential basis
- 4.2 The research available indicates that short term lets are predominately located within the city centre and adjoining areas. An analysis from the Chartered Institute of Housing points out that there are two Airbnb lets for every 13 homes within City Centre Ward (11).
- 4.3 Analysis of the housing market impacts in Edinburgh carried out in 2018 showed that the rapid growth in short term lets over a short period was having an impact on both supply and rent levels. There are over 60,000 private rented sector (PRS) homes in Edinburgh, which represent a quarter of the city's housing. Presently there is an estimated loss of 10% of the PRS sector attributed to short term lets. The loss of traditional PRS properties is more prevalent in the city centre and in the north of the city, with the loss of stock running at up to 30% in some northern parts of Edinburgh.
- 4.4 Across the city, PRS stock levels fell c.5-6% between 2014-2017 which may be attributable to a number of factors including changes in taxation and regulation of PRS. However, it should be noted that over the same period the city saw 2,700 more properties per year listed as available on Airbnb, while PRS stock fell 560 per annum. Research continues to take place to better quantify the loss of PRS properties to short term lets.
- 4.5 The speed and size of rent increases within the city continues to be a substantial issue. Research indicates rising rents occurring in those areas bordering a high concentration of Airbnb, suggesting a displacement of demand. In those areas bordering the city centre, rents have increased around 20-27% over the period 2014-17.

Existing powers available to the Council

- 4.6 A Short Term Lets Virtual Team has been created to co-ordinate action using existing powers across several services. The Regulatory Services Manager leads this team, with a team leader from Planning acting as a day to day manager. The following teams contribute to this work:
- 4.6.1 Trading Standards;
 - 4.6.2 Environmental Health;
 - 4.6.3 Private Rented Services;
 - 4.6.4 Planning; and
 - 4.6.5 Community Safety.
- 4.7 The virtual team review all complaints received about short term lets and, where possible, identify and implement a response to address poor practice through any powers available to the Council. The team also encourage good practice and assist in collecting intelligence on how the short term lets industry responds to this approach.
- 4.8 The team prioritises enforcement activity in relation to those short term lets believed to be operating on a commercial basis.
- 4.9 Most of the cases investigated by the team have involved consideration of planning enforcement action. Since July 2018, 126 new cases have been opened and while 71 are ongoing, 22 have been subject to enforcement action. When investigating the cases, it must be established whether the use of a residential premises for short term holiday lets is a material change of use. The question of materiality is one of fact and degree having regard to a number of factors such as the character of the property, the frequency of arrivals and departures, the number of people occupying the property, disturbance to neighbouring residential amenity. Evidence gathering can be a very difficult process. Case officers must consider each of the above factors. This can involve a number of visits to check levels of occupation and to collect corroborative evidence to support any claims of noise and nuisance.
- 4.10 Since 2018, 22 enforcement notices have been served, eight have been appealed and all eight have been upheld by Scottish Government reporters. There has been legal challenges in respect of the reporters' decisions at Chancelot Terrace and Baxter's Place. Chancelot Terrace was withdrawn and Baxter's Place is due to be heard in the Court of Session. During this period there has also been planning appeal decisions against refusals to grant planning permission and certificates of lawfulness for short stay let uses. These decisions have typically allowed short term let uses in main door properties.

- 4.11 The reporters' decisions have informed an understanding of when a change of use may be material but, also through the planning appeal decisions, when a short stay let use may be acceptable. This makes it easier to know when to take action moving forward and should lead to action being taken more quickly. This is reflected in the fact that 11 notices have already been served in the first three months of this year, the same number for the whole of 2018. In addition in-house training is being put in place to ensure that the officers take a more consistent and robust approach to investigations moving forward.
- 4.12 The virtual team is looking at new ways of working in response to the growth of short stay lets. It is trialling the use of impact warning letters to tackle a large concentration of short stay lets at Western Harbour. Working with residents and the property factor, over 40 letters have been sent out to the owners of the flats in question to highlight the permissions and other various legal requirements they may be breaching and requiring that the use cease. The owners were given until 30 April 2019 to reply but early indications are that the trial may be worth continuing.
- 4.13 A checklist of Best Practice has also been produced to inform owners of their legal obligations in terms of permissions, safety at the property and managing visitors. This guidance is aimed at educating owners and prospective operators to their obligations to not only their tenants but also the wider community. This form of self-regulation can have an important role to play in limiting the growth of inappropriate forms of short term let uses. Following review by the Short Term Let Member Officer Group this will be slightly amended.
- 4.14 The planning service has also piloted taking enforcement action against key safes on listed buildings. This resulted in the enforcement notice for the removal of 11 key safes attached to a listed building at 1 Upper Bow being upheld on appeal. The success of this pilot highlights that in certain circumstances it can be appropriate to take action against multiple key safes on a single property.
- 4.15 Ahead of the summer period, the virtual team have been making arrangements to deal with an anticipated increase in the number of complaints. It is hoped this proactive approach will help to identify and tackle the most troublesome cases and provide residents with a satisfactory service.
- 4.16 Planning guidance for businesses was revised in February 2016 to include specific reference to changing the use of a residential property to a business use, including 'short stay commercial visitor accommodation'. Some activities within a residential property can be undertaken without requiring planning permission, but the guidance sets out issues which will be considered in deciding whether an application for a change of use is required (see Appendix 1). It is proposed that the Planning Committee is remitted the task of reviewing, and updating if necessary, the above mentioned guidance to identify ways in which it can be strengthened. Additionally, at present where cases come forward for planning permission they are not being dealt with under delegated powers but are instead being referred to the Development Management Sub-Committee for decision. The short term let working group recommends that this approach continues.

Proposals for further regulatory powers

- 4.17 Taking into account the issues and proposed actions outlined above, it remains clear that the Council lacks specific regulatory powers which would allow it to effectively respond to all the issues currently faced by the city. Previous research has been reported to a number of committees offering comparison with how other major cities and tourist destinations have dealt with similar issues.
- 4.18 It is clear that as pressures from the operation of short term lets mount on a city or region, the vast majority of major destinations have resorted to new or additional statutory powers. These powers typically impose a cap on the total number of properties used as short term lets, and/or a cap on the number of days that an individual property can be used as a short term let. The motivating factors are very similar to the issues faced by this council, namely a desire to protect the supply of residential homes and to minimise the disruption to local communities.
- 4.19 The Council has therefore requested that the Scottish Government introduces a discretionary licensing system for operators of short term lets. The Council would expect that each individual local authority could consider the relevance of the licensing system and choose whether to adopt the scheme in its area. At a minimum the licensing system must be capable of the following:
- 4.18.1 a licence will be for both the individual property and the owner or operator of that property;
 - 4.18.2 any owner or operator shall be fit and proper;
 - 4.18.3 the local authority shall have the discretion within the licensing system to control or otherwise cap the number of properties licensed either across the local authority area or in specific areas of the local authority;
 - 4.18.4 a licensed property must meet certain safety standards, e.g. gas appliances must be safety checked;
 - 4.18.5 the location, character and suitability of properties will be relevant; and
 - 4.18.6 a licence will be required for anyone either operating a property on a commercial basis or in excess of 45 days.
- 4.19 The exact scope of any licensing system would ultimately be the decision of the local authority, and after consultation it is anticipated that a policy would be adopted to set out a local position. It is recommended that the preferred method of introducing a licensing system is by means of regulations introduced by Scottish Government under Section 44 of the Civic Government (Scotland) Act 1982. Amending the licensing system for house in multiple occupancy (HMOs) under the Housing (Scotland) Act 2006 is the least preferred option, as this could have wider implications for unrelated housing matters, and the licensing scheme under the Act applies Scotland-wide. Failing this the Council would ask for fresh legislation as an alternative.

Scottish Government Consultation

- 4.20 Following a speech by the First Minister to the SNP Conference in April, the Scottish Government has published a consultation paper on the regulation of short term lets which will be open until 19 July 2019. Through officer dialogue with government officials, it is understood that the Scottish Government is considering the introduction of measures to regulate short term lets and is seeking evidence on the need for such measures. This takes forward the commitment in the 2018-19 Programme for Government “to ensure that local authorities have the appropriate regulatory powers [in relation to short term lets]”.
- 4.21 Council Officers will work with the Member/Officer Working Group and will draw on a range of services in order to shape a response to the consultation. Officers are also aware that the government may hold evidence sessions with key stakeholders. Additionally, the Council’s Communications Team will be widely publicising the consultation in order that the general public, community councils and other bodies can contribute. It is anticipated that the Scottish Government may announce detailed proposals in September as part of the Programme for Government.

5. Measures of success

- 5.1 The volume of concerns about short term letting in the city decreases.
- 5.2 Using the above measures and through further engagement, the Council is able to strengthen its request to the Scottish Government for additional powers.
- 5.3 Positive aspects of short term letting such as hosts sharing their home are protected.

6. Financial impact

- 6.1 None directly as the costs will be contained within existing budgets with priority given to this work.

7. Risk, policy, compliance and governance impact

- 7.1 The measures set out in this report will be reported to the relevant committee of the Council for formal oversight and approval.

8. Equalities impact

- 8.1 None.

9. Sustainability impact

9.1 None.

10. Consultation and engagement

- 10.1 There have been a series of meetings held with Airbnb and the UK Short Term Accommodation Association (STAA) including a meeting on 21 January 2018 with this working group.
- 10.2 Council officers have also met with Scottish Government civil servants as recently as 3 April 2019 in order to discuss possible licensing solutions to dealing with short term lets.

11. Background reading/external references

- 11.1 [Scottish Expert Advisory Panel on the Collaborative Economy Report 2017](#)
- 11.2 [Scottish Government response to report of the Scottish Expert Advisory Panel on the Collaborative Economy](#)
- 11.3 [Item 7.2 - Short Term Letting in Edinburgh - 7 August 2018](#)
- 11.4 [Scottish Government Planning & Environmental Appeals Division - 1 Upper Bow](#)
- 11.5 [Rettie and Co – Analysis of the Impact of the Edinburgh Short Term Rental Market – 16 July 2018](#)

12. Appendices

- 12.1 Extract from Planning Guidance for Businesses

Appendix 1: Extract from Planning Guidance for Businesses (February 2016)

Changing a Residential Property to a Commercial Use (pages 6-7 of guidance) What does this chapter cover?

Changes of use to:

- guest houses
- short term commercial visitor accommodation
- house in multiple occupation (HMOs)
- private day nurseries
- running a business from home

Short Term Commercial Visitor Accommodation

The change of use from a residential property to short term commercial visitor accommodation may require planning permission. In deciding whether this is the case, regard will be had to:

- The character of the new use and of the wider area
- The size of the property
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand, and
- The nature and character of any services provided.

What to consider if planning permission is required

Policy Hou 5 of the Edinburgh Local Development Plan

Sets out the exceptional circumstances when a use can be changed from housing.

Policy Hou 7 of the Edinburgh Local Development Plan

Sets out when uses will not be permitted in predominately residential or mixed use areas i.e. uses which would have a materially detrimental effect on the living conditions of nearby residents