

Planning Committee

2.00pm, Wednesday, 31 August 2022

Proposed Changes to Short-Term Let Guidance

Executive/routine	Executive
Wards	City Wide
Council Commitments	<u>15</u>

1. Recommendations

1.1 It is recommended that Committee:

- 1.1.1 Agrees changes to the non-statutory Guidance for Business with respect to Short-Term Lets (STL); and
- 1.1.2 Notes the Edinburgh Short-Term Let Control Area designation has been approved by Scottish Ministers, a notice of the designation was published by the Council on 5 August 2022 and the Control Area will come into effect on 5 September 2022.

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Proposed Changes to Short-Term Let Guidance

2. Executive Summary

- 2.1 This report seeks approval for changes to the existing Guidance for Business to augment and further clarify the guidance with respect to Short-Term Lets (STL) following approval of the Edinburgh Short-Term Let Control Area by Scottish Ministers.
- 2.2 As part of these changes, guidance requires to have regard to legislative changes brought about by the introduction of a city wide STL control area.

3. Background

- 3.1 The provision of STL accommodation in Edinburgh has grown significantly in the last ten years. Edinburgh is recognised as an area that has been subject to far greater pressures than other parts of the country. This has resulted in a loss of residential and societal cohesion, particularly within areas such as the Old Town and locations on the periphery of the city centre.
- 3.2 The change of residential units to STL has created issues for residents and the Council. The Council receives a large number of complaints in respect of STL use, with members of the public concerned at the loss of amenity and security for long term residents. Experience from enforcement investigations has shown that people on holiday display different behaviours to those who live in an area, and whilst not intentionally behaving in an anti-social manner, they often create problems through noise and disturbance, particularly late at night. Enforcement notices have been served on properties where it has been demonstrated that the use has adversely affected neighbouring residential amenity.
- 3.3 On [23 February 2022](#), the Planning Committee agreed, under the Town and Country Planning (STL Let Control Areas) (Scotland) Regulations 2021 (the Regulations), to the establishment of a STL control area over the Council's entire geographical area. Following approval by Scottish Ministers on 27 July 2022, the Control Area has been publicised on 5 August 2022 and will come into force on 5 September 2022.
- 3.4 On 1 October 2022, the licensing scheme under the Civic Government (Scotland) Act 1982 (Licensing of STL) Order 2022 will open to receive applications. Where the Council decides to grant a licence for secondary letting within a Short Term Let

Control Area, it must be subject to a mandatory condition regarding the requirement for the licence holder to ultimately obtain planning permission to lawfully operate the STL premises, unless the planning authority has determined it is not required.

- 3.5 Following an initial consultation that concluded on 10 June 2022, a [second consultation](#) on the Council's [draft Short Term Let Licensing Policy](#) is currently underway and will conclude on 5 September 2022 and will be reported to the Council's Regulatory Committee on 29 September 2022. The aspects of the draft policy pertaining to planning are principally found at paragraphs 4.2, and 4.26 - 4.28 of it.
- 3.6 Those operating an STL prior to 1 October 2022 will need to apply for a licence by 1 April 2023. Where operations start after 1 October 2022, a licence will need to be in place before guests are received. Due to the STL Control area, all STL secondary letting Licence applicants will, when they submit their licence application in terms of the Council's draft Licensing Policy, be required to provide proof that either they have:
- made an application for planning permission; or
 - planning permission; or
 - confirmation that planning permission is not required.
- 3.7 The Planning and Regulatory Services will work closely with Licensing Services to ensure the efficient processing of applications and the necessary exchange of information.
- 3.8 As a result of the STL Control Area and the new licensing requirements, it is expected that there will be a significant increase in the number of applications for STL received.
- 3.9 The existing Planning Guidance for Businesses 2021 sets out the following guidance in relation to 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.*
- 3.10 The guidance does not set out how each of the bullet points will be assessed.

4. Main report

4.1 There is a need to update the Guidance for Business to state the STL Control Area is now in force requiring planning permission for use of property as short term let and explain further how each of the current criteria currently set out will be considered by the Planning service when assessing an STL application.

4.2 The quoted paragraph of the Planning Guidance for Businesses 2021 at 3.9 requires to be removed and the following replacement text inserted:

The city-wide Edinburgh Short-term Let (STL) Control Area came into force on 5 September 2022, which means that the use of a residential property for short term commercial visitor accommodation will constitute a change of use requiring planning permission provided that:

- *It is not a private tenancy under Section 1 of the Private Housing (Tenancies) (Scotland) Act 2016;*
- *It is not a tenancy of a dwellinghouse (or part of one) where all or part of the dwellinghouse is the principal home of the landlord or occupier;*
- *Sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration (i.e. an exchange of money);*
- *No person to whom sleeping accommodation is provided is an immediate family member of the person by whom the accommodation is being provided;*
- *The accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household;*
- *The accommodation is not provided by an employer to an employee in terms of a contract of employment for the better performance of the employee's duties; and*
- *The accommodation is not a hotel, boarding house, guest house, hostel, residential accommodation where care is provided to people in need of care, hospital or nursing home, residential school, college or training centre, secure residential accommodation (including a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks), a refuge, student accommodation or an aparthotel.*

These legal requirements are set out in the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021. Further detail is contained in Annex B of the Scottish Government's Planning Circular 1 of 2021 – Establishing a Short-term Let Control Area.

On 1 October 2022, the licensing scheme under the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (the STL Licensing Order) will

open to receive applications for short-term let licenses. The requirement to have an STL licence is separate from any need to have planning permission.

In Edinburgh due to the STL Control Area, to lawfully operate a secondary let STL under an STL licence, there will be a need to either have planning permission in place, or an ongoing application for planning permission, or have it in place confirmation from the Council that planning permission is not required. In the event that the planning application and any related appeal is refused, the STL licence holder cannot lawfully continue to operate the secondary let STL in terms of their licence.

“Secondary letting” means a short-term let consisting of the entering into an agreement for the use of accommodation, which is not, or not part of, the licence holder’s only or principal home.

Further [guidance on licensing](#) can be found on the Council’s website.

- 4.3 Having regard to the existing policy, the experience of assessing applications and the investigation of enforcement cases relating to STL use, and having regard to a significant number of appeal decisions, the guidance requires to be updated to provide further guidance on each of the existing criteria to set out how the Planning service will assess and determine STL applications. It is therefore proposed that the guidance will also include the following:

Applications will be assessed against whether they accord with the development plan that is in force at the time an application is determined. Currently the Edinburgh Local Development Plan Policy Env 7 – Inappropriate Uses in a Residential Area – is a key consideration. Once National Planning Framework 4 is adopted, this will become part of the development plan and applications will be assessed against relevant policies within it. The following guidance will be considered when determining STL applications.

<p><i>The character of the new use and of the wider area.</i></p>	<p><i>Where the location is wholly commercial in character and there are no residential properties nearby, adverse impacts on amenity are less likely. This means it is more likely short-term lets (STLs) can be supported in such locations.</i></p> <p><i>Where the location is mixed in character (residential / commercial) regard will be had to those residential properties nearby and therefore there is a presumption against granting planning permission.</i></p> <p><i>Where the street has a quiet nature or low ambient noise levels (particularly at night-time), STL will not generally be supported.</i></p> <p><i>No weight will be given to the existence of neighbouring unlawful STLs as justification for the grant of planning permission for an STL. The Planning service will assess the merits of any proposal against its impact on the lawful planning use of nearby properties.</i></p>
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	<p><i>Where the area is wholly residential, it is unlikely that short-term let proposals will be supported.</i></p>
<p><i>The size of the property.</i></p>	<p><i>Larger properties can have a greater capacity for guests. Where there are greater numbers of guests, there is increased potential for noise and disturbance. Both the number and size of rooms will be taken into account when considering this.</i></p>
<p><i>The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand.</i></p>	<p><i>If the property is accessed off a stair where there are other flats off that stair, it is very unlikely that a change of use will be supported. This is because it has been found that existing residents of flats within stairs are particularly affected by the pattern of activity which often results from STL. Guests of the short-term let properties can arrive late at night and make noise and cause disturbance in a way which residents of that stair would not, given they will know of the impacts that they have on one another and be able to manage those impacts in a neighbourly way. Examples of disturbance include bumping suitcases up stair and using washing machines in the middle of the night.</i></p> <p><i>If the property does have its own main door access regard must be had to the other criteria within this table.</i></p> <p><i>It should be noted, once a short-term let is granted planning permission, the Council cannot control how it is used, for example by restricting numbers of occupants, or by setting limits on how a property is let. Planning permission is granted to property rather than individuals, which means that property can change hands and be operated in a different way than was intended by the applicant for planning permission. Because of this, when considering the pattern activity associated with a use, only limited regard can be had to how an applicant intends to manage that.</i></p>
<p><i>The nature and character of any services provided.</i></p>	<p><i>Where there is access to a communal garden which can be used by existing residential properties, or where there is a garden that would form part of the curtilage of an STL and would be in close proximity to residential gardens, STLs will generally not be supported.</i></p> <p><i>Where parking is provided, this will be considered within the context of the Council's parking policies and guidance.</i></p>

- 4.4 Any future planning applications for will be required to demonstrate compliance with the development plan along with the approved updated guidance and other relevant material considerations.

5. Next Steps

- 5.1 If Committee accepts the recommendations in this report, the Guidance for Businesses will be updated to include the proposed changes.
- 5.2 If the Scottish Government brings forward a policy in respect of STL in National Planning Framework 4, once this is part of the adopted development plan, the Council may bring forward additional guidance to explain how the policy should be applied in Edinburgh.

6. Financial impact

- 6.1 There are no immediate financial implications for the Council arising from this report.

7. Stakeholder/Community Impact

- 7.1 Stakeholders / the Community were previously consulted on the Guidance for Businesses. Given the update to the guidance recommended in this report further clarifies the guidance set out in the existing Guidance for Businesses 2021, it is not considered necessary to consult on the update.

8. Background reading/external references

- 8.1 Report to Planning Committee of [23 February 2022](#) on Short Term Let Control Area Designation.
- 8.2 [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022.](#)
- 8.3 [Section 26B of the Town and Country Planning \(Scotland\) Act 1997.](#)
- 8.4 [The Town and Country Planning \(Short-Term Let Control Areas\) \(Scotland\) Regulations 2021.](#)
- 8.5 [Guidance for Businesses November 2021.](#)
- 8.6 Council's webpage on the [Short-term let control area.](#)
- 8.7 Scottish Government [Planning Circular 1 of 2021 – Establishing a Short-term Let Control Area.](#)
- 8.8 [Draft Short Term Let Licensing Policy](#)
- 8.9 [Licensing of Short-Term Lets 2022 – Second Consultation](#)

9. Appendices

- 9.1 None.