

# Planning Committee

2.00pm, Wednesday, 19 April 2023

## Proposed Changes to Short Term Let Guidance in the Non-Statutory Guidance for Businesses

Executive/routine Wards Council Commitments	Executive All
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### 1. Recommendations

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- 1.1 It is recommended that Committee:
  - 1.1.1 Note that the Council has now concluded the consultation on the proposed changes to the Short Term Let guidance in the non-statutory Guidance for Businesses;
  - 1.1.2 Note the level of response to, and the key findings of, the consultation as summarised in this report and set out in Appendix 1;
  - 1.1.3 Acknowledge that analysis and consideration of feedback from the consultation has informed the amended proposed guidance; and
  - 1.1.4 Agree the proposed amended guidance detailed in 4.29 and Appendix 2.

**Paul Lawrence**

Executive Director of Place

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## Proposed Changes to Short Term Let Guidance in the Non-Statutory Guidance for Businesses

### 2. Executive Summary

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- 2.1 The purpose of this report is to set out responses to the consultation on proposed changes to existing non-statutory Guidance for Businesses to augment and further clarify the guidance with respect to Short Term Lets (STLs) in relation to assessing proposals against Local Development Plan policy Hou 7 – Inappropriate Uses in Residential Areas.
- 2.2 The analysis of responses and data indicated that the proposed further guidance update is broadly supported by most respondents. However, there is opposition to the guidance primarily from operators/hosts and those organisations which have a level of reliance upon or are directly involved in STL accommodation.
- 2.3 A full analysis of the consultation is contained within Appendix 1 – Report of Consultation. Findings from the consultation analysis have informed amendments to the proposed guidance, these are detailed in table 4.30 of this report.

### 3. Background

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- 3.1 The provision of STL accommodation in Edinburgh has grown significantly in the last 10 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. In respect of STL use, the Council received an increasing number of complaints between 2016 – 2019 (pre-Covid), and the number of complaints being received since lockdown measures ended has been on the increase. Members of the public are concerned at the loss of amenity and security for long term residents.
- 3.3 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.

- 3.4 On [23 February 2022](#), Planning Committee agreed, under the Town and Country Planning (STL 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 was publicised on 5 August 2022 and came into force on 5 September 2022.
- 3.5 Within the STL Control Area, the use of an entire dwelling as a STL which is not an individual's principal home, is deemed to be a material change of use requiring planning permission. On [31 August 2022](#), Planning Committee agreed to insert explanatory text in relation to the STL Control Area within the Guidance for Businesses.
- 3.6 With regards to the letting of a principal home when absent from the property (home letting) or letting rooms within a principal home (home sharing), these situations are considered under section 26B of the Town and Country Planning (Scotland) Act 1997. This requires a fact and degree assessment to determine whether the level of use results in a material change of use requiring planning permission.
- 3.7 On [29 September 2022](#), Regulatory Committee agreed the Council's Short Term Let Licensing Policy. On 1 October 2022, the licensing scheme (under the Civic Government (Scotland) Act 1982 (Licensing of STL) Order 2022) opened for applications:
  - 3.7.1 Where the Council decides to grant a licence for secondary letting within a STL control area, it must be subject to a mandatory condition regarding the requirement for planning permission, unless the planning authority has determined it is not required; and
  - 3.7.2 Those operating an STL prior to 1 October 2022 will need to apply for a licence by 1 October 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, the Council requires all STL secondary letting Licence applicants to provide proof that they have:
    - Made an application for planning permission; or
    - Planning permission; or
    - Confirmation that planning permission is not required.
- 3.8 Council officers in Planning and Regulatory Services will work closely to ensure the efficient processing of applications and the necessary exchange of information.
- 3.9 The implementation of the STL control area and the new licensing requirements has resulted in a significant increase in the number of planning applications for STL use.
- 3.10 The existing non-statutory Guidance for Businesses 2021 contains a section on STLs which was approved in February 2013 and pre-dates the STL Control Area. This section sets out the factors taken into consideration when determining whether

a material change of use has occurred. Below is the following guidance in relation to short-term commercial visitor accommodation:

3.10.1 *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.*

3.11 Having regard to the existing policy, the experience of assessing applications and the investigation of enforcement cases relating to STL use and having regard also 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 with respect to LDP policy Hou 7. This was approved for consultation by Planning Committee on [31 August 2022](#).

3.12 It should be noted that on 8 November 2022, during the consultation, the [Revised Draft National Planning Framework 4 \(NPF4\)](#) was laid in the Scottish Parliament. NPF4 became part of the statutory development plan on 13 February 2023. NPF 4 contains a specific policy on STLs. Policy 30 (e) states:

3.12.1 Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- (i) An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- (ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

3.13 The Planning service will therefore now assess and determine STL applications against the development plan, both with respect to LDP policy Hou 7 and NPF4 policy 30(e). As stated above, the purpose of the update to the guidance is to provide further guidance on how LDP policy Hou 7 will be assessed. NPF 4 policy 30(e)(i) is broadly consistent with policy Hou 7 in terms of amenity and character of the area.

3.14 However, criterion (ii) of policy 30(e) introduces new considerations. This guidance update does not address these new considerations, nor were they included as part of the consultation. The Planning Authority may consider providing further guidance to address these considerations in the future. However, there is no statutory duty or requirement on the Planning Authority to do so.

## 4. Main report

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### Consultation

- 4.1 The consultation ran for a period of 12 weeks, from 30 September 2022 to 22 December 2022. The consultation was available on the Council Consultation Hub and asked respondents to provide feedback on the further guidance details set out in the report to the Planning Committee for its meeting on 31 August 2022.
- 4.2 The following activities were used to raise awareness and encourage people to have their say during the consultation:
- Direct email notification to all individuals who had responded to the Short Term Let Control Area Designation consultation;
  - Article on the Planning Blog at start of consultation and towards end;
  - Facebook, Twitter and LinkedIn;
  - Adverts on nextdoor.co.uk; and
  - Notification on the Council's website.
- 4.3 Three focus groups took place to explore the questions set out in the online consultation. These provided a presentation on the proposal, with the opportunity for questions and discussion in break out groups. One session was held for STL operators and hosts. The second session was for residents' groups and amenity bodies. The third session was for organisations involved with festivals.
- 4.4 In addition, a drop-in 'in-person' session was held and open to anyone. Whilst this session was not targeting a particular stakeholder, most attendees were STL operators or involved with the industry. Feedback from the events is reported in the Report of Consultation in Appendix 1.
- 4.5 A summary of views expressed is given below.

### Consultation Responses

- 4.6 A total of 1,210 respondents took part in the online consultation. The vast majority of respondents were private individuals (95%). 54 organisations responded, including 14 community organisations, five out of which were community councils. A list of respondents is contained in Appendix 1.
- 4.7 In addition to the responses received, a petition submitted by Living Rent Edinburgh in support of their response. It was in the form of an excel spreadsheet with 2,066 names and postcode details. Living Rent Edinburgh response can be viewed in Appendix A of Appendix 1. Given the limited information contained in petition, Living Rent's response has been treated as one response for the purposes of the analysis. Issues raised have been summarised and addressed in Appendix 1.
- 4.8 A summary of consultation responses and the response to these is set out in Appendix 1.

## **Focus Groups**

- 4.9 Focus groups explored the questions set out in the online consultation. There was a strength of feeling of views in support of, and views not in support of the guidance update. The discussions across the focus groups were reflective of the comments received in the online consultation. Community groups and residents generally expressed support for the guidance, highlighting negative impacts of STL use on residential amenity, the impact on housing stock and the difficulties in maintaining balanced communities. Operators expressed concern that the proposed guidance would effectively ban STLs, that the impact on tourism and the economy were not being considered and that the guidance did not take into account that the licensing scheme could resolve issues relating to the management of STL use.

## **Analysis of comments**

- 4.10 A Report of Consultation, including a summary of comments received and a response, is provided in Appendix 1. Many comments received were related to the principle of STL, and to the impact of the STL Control Area and the licensing scheme on the industry; but did not specifically relate to the update to existing guidance on amenity within the non-statutory Guidance for Businesses.

## **Key Themes from comments**

- 4.11 Overarching themes from the consultation were:
- Lack of clarity on when planning permission is required;
  - The impact of STL regulations on visitor accommodation and existing businesses;
  - Concern that guidance would result in a ban on STLs;
  - The extent of planning controls;
  - The interplay between Planning and Licensing; and
  - Effective enforcement.
- 4.12 In relation to clarity on when planning permission is required, the designation of Edinburgh as an STL Control Area clarifies that all STL secondary letting requires planning permission. It remains the case that planning permission may be required for STL home letting or home sharing. Information will be put on the Council's website to further assist the public on this.
- 4.13 In relation to the impact of regulations, this is not a matter for this consultation as the regulations and the Edinburgh STL control area have previously come into force. However, it is recognised that the regulations in combination with planning policy and guidance may result in existing uses having to cease operation where these are incompatible with policy and guidance.
- 4.14 The non-statutory Guidance for Businesses is a material planning consideration and will not result in a ban on STLs. Each planning application must be assessed on its own merits, having regard to the development plan policy and material considerations. It is for the decision maker to judge how much weight to place on

each consideration in line with the statutory tests for determining a planning application. Non-statutory guidance cannot act as a ban on certain developments. Planning and Licensing are two separate and distinct regulatory regimes. With regards to STL applications, the planning application process is required to assess the change of use of the property against development plan policy and any other material planning considerations. Licensing for STLs seeks to regulate the use of premises as STLs to ensure (among other things) proper management, the prevention of undue public nuisance, and the preservation of safety. The Policy Note issued by the Scottish Government with its 2022 STL Licensing Order, states:

“The Scottish Government’s purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.”

- 4.15 Given the nature of STL use, there is information in relation to the use that is taken into account in the consideration of planning proposals and licensing applications against their distinct regulatory regimes. For instance, maximum occupancy numbers are controlled through Licensing but the size of the property and the impacts of that are considered in the planning process to determine whether the proposal complies with policy.
- 4.16 With respect to enforcement, mandatory condition 13 of the Council’s STL Licensing Policy requires licence holders within Control Areas to ensure that where planning permission is required, either (i) planning permission is in force or (ii) planning permission has been applied for and the application not yet determined. Planning will share Information with Licensing to inform them where properties have been refused planning permission or a certificate of lawfulness. Checks will be carried out on properties which have applied for planning permission in retrospect and have been refused permission to ensure the STL use has ceased.

#### **Proposed amendments to the further guidance update**

- 4.17 Having regard to the consultation feedback set out in the consultation report in Appendix 1, the following amendments to the guidance are proposed and explained below.

#### **The character of the new use and wider area**

- 4.18 The consultation responses identified a need to clarify what ‘wholly’ commercial means within an Edinburgh context. Feedback from respondents highlighted that Edinburgh has a ‘lived in’ city centre and wholly commercial areas are likely to be in locations such as industrial estates. Similarly, in relation to mixed areas, comments highlighted that there are more mixed areas than ‘wholly’ commercial in the city and the need to assess each case on its own merits taking into account the nature of the surrounding area.
- 4.19 This point is noted and the guidance has been amended to ‘predominantly’ commercial areas recognising that Edinburgh has few ‘wholly’ commercial locations. With regards to mixed areas, ‘the nature of surrounding uses and the

proximity of the proposal site to residential properties' has been added for consistency in how applications will be considered.

- 4.20 As identified earlier in the report, the consultation identified a lack of clarity for when planning permission is required, with several respondents assuming an automatic requirement to obtain planning permission for home letting or home sharing. For the avoidance of doubt 'permanent' has been inserted before STLs to make clear the guidance is specifically related to change of use proposals to STLs and not the occasional STL use within a principal home.

#### **The size of property**

- 4.21 There are no proposed amendments relating to the size of property. Respondents opposing the guidance commented that larger properties are being assumed to be 'party flats' and also highlighting larger properties provide accommodation to families.
- 4.22 The feedback has been considered. However, the size of the STL operation has to be considered when determining whether the use complies with policy. Larger properties do have a greater capacity for a higher number of guests and in turn a greater potential for noise and disturbances. The guidance highlights this consideration for applicants to be aware of when make an application:

#### **The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise and disturbance, and parking demand.**

- 4.23 The consultation feedback in relation to this criterion mainly raised issues addressed in the overarching themes discussed earlier in this report. There were concerns raised regarding the characterisation of STL guests, the guidance acting as a ban on STLs and the impact on visitor accommodation and the economy which have been addressed.
- 4.24 Amendments proposed to this section are the insertion of 'permanent' for consistency and 'STL use where multiple sets of guests stay for short periods of time throughout the year' for clarity in explaining the pattern of activity. The examples of impacts have been removed.
- 4.25 Respondents to the consultation raised that the paragraph regarding what the Council can control was misleading as there is a licensing scheme in place to control occupancy. This has been noted and this section is proposed to be removed.

#### **The nature and character of any services provided**

- 4.26 There are no proposed amendments relating to this criterion. Respondents opposing the guidance were generally of the view that shared gardens should not be a consideration or that operators could restrict access to shared gardens.
- 4.27 Where a property has access to a shared garden, it is unlikely that a planning condition could be used to restrict access and as the planning permission goes with the land rather than the individual operator, there would be no other mechanism in



planning to ensure that the potential use of shared gardens does not negatively impact on neighbouring amenity.

**Clarification on the purpose of the table within the guidance**

4.28 As noted above in paragraphs 3.11 – 3.13, NPF4 became part of the statutory development plan on 13 February 2023 and contains a specific policy on STLs, Policy 30 (e). For clarity within the guidance document, the following text is proposed to be inserted:

*“Applications for a change of use to short term let accommodation will be assessed and determined against the development plan, both with respect to LDP policy Hou 7 and National Planning Framework 4 (NPF 4) policy 30(e), and material considerations. The table below principally provides guidance in respect of LDP Policy Hou 7. It may also provide some assistance in considering NPF 4 Policy 30 (e) (i). This table is not relevant to the consideration of NPF 4 Policy 30 (e) (ii).”*

4.29 **Proposed amended guidance**

<p><i>The character of the new use and of the wider area.</i></p>	<p>Where the location is <del>wholly</del>—<b>predominantly</b> commercial in character and there are no residential properties in <b>close proximity</b> <del>nearby</del>, adverse impacts on amenity are less likely. This means it is more likely <b>permanent</b> short-term lets (STLs) can be supported in such locations.</p> <p>Where the location is mixed in character (residential / commercial) regard will be had to <b>the nature of surrounding uses and the proximity of the proposal site to residential properties</b>. <del>those residential properties nearby and therefore there is a presumption against granting planning permission.</del></p> <p>Where the street has a quiet nature or low ambient noise levels (particularly at night-time), <b>permanent</b> STL will not generally be supported. No weight will be given to the existence of neighbouring unlawful STLs as justification for the grant of planning permission for an STL.</p> <p>The Planning service will assess the merits of any proposal against its impact on the lawful planning use of nearby properties. Where the area is wholly residential, it is unlikely that short-term let proposals will be supported.</p>
<p>The size of the property.</p>	<p>Larger properties can have a greater capacity for guests. Where there are greater numbers of guests, there is increased potential for noise and disturbance.</p>

	Both the number and size of rooms will be taken into account when considering this.
The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand.	<p>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 <b>permanent STL use where multiple sets of guests stay for short periods of time throughout the year</b>. <del>Guests of the short term let properties</del> 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. <del>Examples of disturbance include bumping suitcases up stair and using washing machines in the middle of the night.</del></p> <p>If the property does have its own main door access regard must be had to the other criteria within this table.</p> <p><del>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.</del></p> <p>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 of activity associated with a use, only limited regard can be had to how an applicant intends to manage that.</p>
The nature and character of any services provided.	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. Where parking is provided, this will be considered within the context of the Council's parking policies and guidance.

## Conclusion

- 4.30 The proposed further guidance update to the non-statutory 'Guidance for Businesses' has been the subject of a consultation where key stakeholders have been encouraged to comment on. The consultation responses and a response to them is provided in Appendix 1.

- 4.31 As a result of the consultation feedback, amendments to the guidance are proposed and set out in 4.30 above. NPF4 became part of the statutory development plan on 13 February 2023 and includes a policy relating to STLs. A statement clarifying the scope of the guidance is proposed to be added (as set out at 4.29 above).

## **5. Next Steps**

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- 5.1 If Committee accepts the recommendations in the report, the Guidance for Businesses will be updated to include the proposed changes.
- 5.2 The Council will consider if additional guidance is required to explain how National Planning Framework 4 policy relating to STLs should be applied in Edinburgh.

## **6. Financial impact**

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- 6.1 There are no financial impacts for the Council identified.

## **7. Stakeholder/Community Impact**

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- 7.1 A review of stakeholder and community involvement is outlined in section 4 and a report of consultation is provided at Appendix 1.
- 7.2 An Integrated Impact Assessment (IIA) has been carried out as part of the consultation process. It found that the proposed update will have a positive impact on equality, health and wellbeing and human rights.
- 7.3 Negative economic impacts on specific groups have also been identified in the IIA. It is recognised that there are STL properties in operation without the benefit of planning permission and are unlikely to be supported when assessed against planning policy and guidance. However, this does not outweigh the overall positive impacts identified in the IIA.
- 7.4 There are no direct sustainability impacts arising from this report.

## **8. Background reading/external references**

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- 8.1 Report to Planning Committee of [23 February 2022](#) on Short Term Let Control Area Designation.
- 8.2 Report to Planning Committee of [31 August 2023](#) on Proposed Changes to Short-Term Let Guidance.
- 8.3 [Guidance for Businesses, November 2021](#)
- 8.4 [Edinburgh Local Development Plan](#)
- 8.5 [Revised Draft National Planning Framework 4](#)

- 8.6 [Policy Note – The Civic Government \(Scotland\) Act 1982 \(Licensing of Short Term Lets\) Order 2022 – SSI 2022/32](#)

## **9. Appendices**

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- 9.1 Appendix 1 – Report of Consultation.
- 9.2 Appendix 2 – Proposed Updated Guidance for Business 2023.

## **Appendix 1**

### **Proposed Changes to the Non-Statutory Guidance for Business with respect to Short-Term Lets (STLs).**

#### **Report of Consultation**

**March 2023**

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# PART 1 Report

## 1. Introduction

- 1.1. Following approval of the Short Term Let (STL) Control Area by Scottish Ministers on 27 July 2022 and it coming into force on 5 September 2022, a report was approved by Planning Committee on 31 August 2022 setting out a proposed update to the non-statutory Guidance for Business.
- 1.2. The update included a statement on the STL Control Area, the requirement for planning permission and further guidance on each of the existing criteria within the Guidance to set out how the Planning service will assess and determine STL applications.
- 1.3. The statement on the STL Control Area and the requirement for planning permission are statements of fact based on legislation.
- 1.4. The further guidance proposed for each of the existing criteria was developed using experience of assessing applications, investigation of enforcement cases relating to STL use and having regard to a significant number of appeal decisions.
- 1.5. This document sets out how the further guidance for each of the existing criteria was consulted upon and explains how the final proposal has had regard to the points raised in the consultation.

## 2. Consultation

- 2.1. The consultation ran for a period of 12 weeks from 29 September to 22 December 2022. Three focus groups with hosts/operators, community groups and amenity bodies, operators of Edinburgh Fringe Festival were held during this period in addition to an 'in-person' drop-in session and an online survey made available of the Council Consultation Hub.

## 3. Publicity

- 3.1. The following activities were carried out to raise awareness and encourage people to have their say during the consultation:
  - Publicity to raise awareness of consultation on Facebook, Twitter and LinkedIn.
  - Articles on the Planning Blog- at start of consultation and towards end.
  - Notification to key stakeholders by e-mail – detailed in Part 4

#### 4. Respondents

4.1. 1210 responses were received. 95% of responses were received from private individuals. 5% of responses were received from organisations including community councils, residents/amenity associations and organisations involved in the STL industry. Part 5 contains a list of organisations who responded.

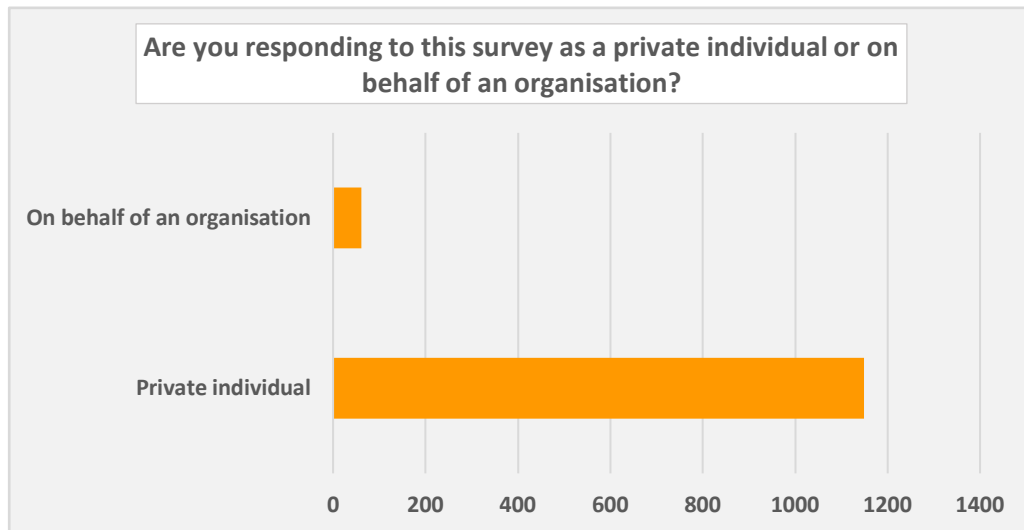


Figure 1 Breakdown of responses

4.2. In addition to the responses received, a petition submitted by Living Rent Edinburgh containing in support of their response. It was in the form of an excel spreadsheet with 2066 names and postcode details. Living Rent Edinburgh response can be viewed in Appendix A of Appendix 1. Given the limited information contained in petition, Living Rent's response has been treated as one response for the purposes of the analysis.

#### Respondent type



Figure 2 Respondent type



## 5. Responses

5.1. The consultation set out the four existing criteria and the proposed further guidance on each criterion. These are set out below with a summary of the responses.

### 5.2. Criterion 1

<b>The character of the new use and of the wider area.</b>
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.
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.
Where the street has a quiet nature or low ambient noise levels (particularly at night-time), STL will not generally be supported.
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. Where the area is wholly residential, it is unlikely that short-term let proposals will be supported.

5.3. Approximately 58% of respondents strongly agree or agree with the guidance. Approximately 38% of respondents strongly disagree or disagree with the guidance. Approximately 3% neither agree nor disagree.

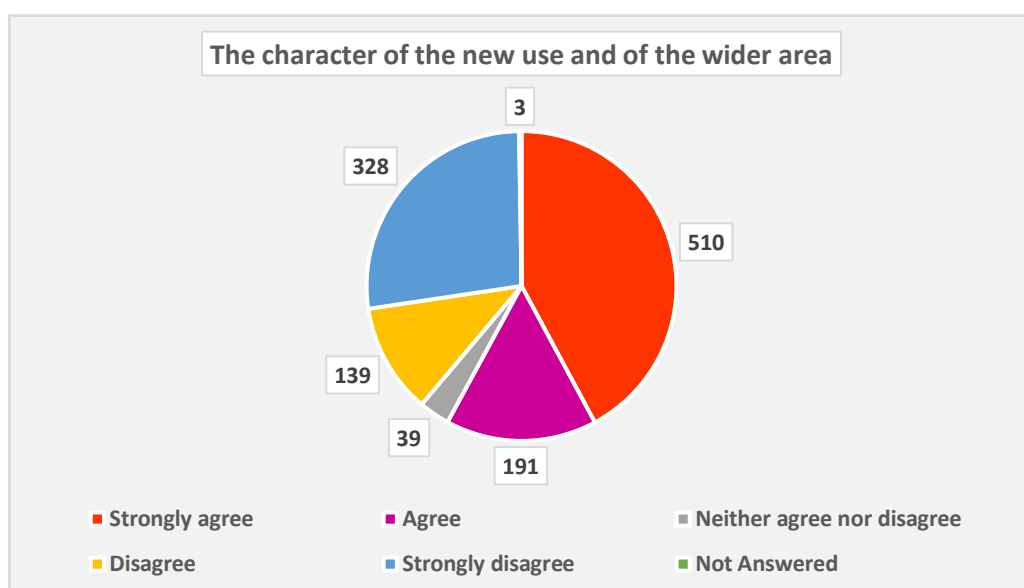


Figure 3 Character of the new use and wider area response

#### 5.4. Criterion 2

**The size of the property**

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.

5.5. Approximately 66% of respondents strongly agree or agree with the guidance. Approximately 21% of respondents strongly disagree or disagree with the guidance. Approximately 12% neither agree nor disagree.

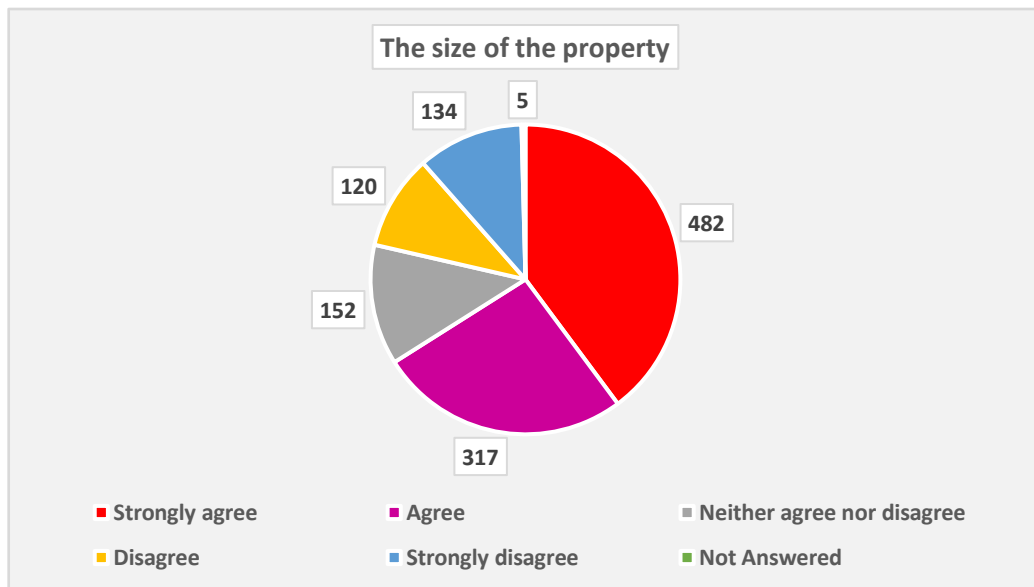


Figure 4 Size of the property

### 5.6. Criterion 3

**The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand.**

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 upstairs and using washing machines in the middle of the night.

If the property does have its own main door access, regard must be had to the other criteria within this table.

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.

5.7. Approximately 54% of respondents strongly agree or agree with the guidance. 38% of respondents strongly disagree or disagree with the guidance. Approximately 7% neither agree nor disagree nor disagree.

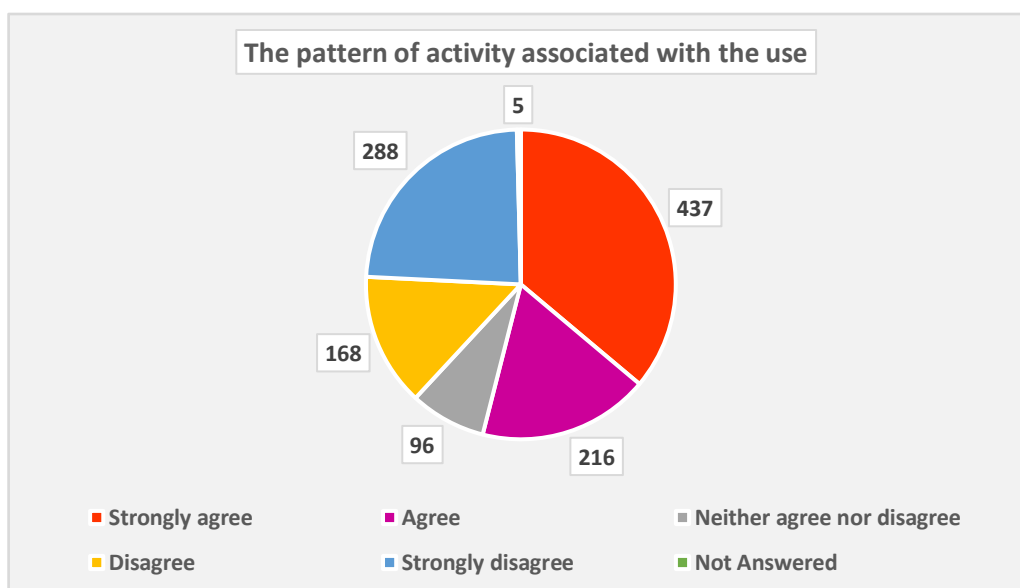


Figure 5 The pattern of the activity associated with the use

#### 5.8. Criteria 4

**The nature and character of any services provided.**

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. Where parking is provided, this will be considered within the context of the Council's parking policies and guidance.

5.9. Approximately 59% of respondents strongly agree or agree with the guidance. Approximately 28% of respondents strongly disagree or disagree with the guidance. Approximately 12% neither agree nor disagree.

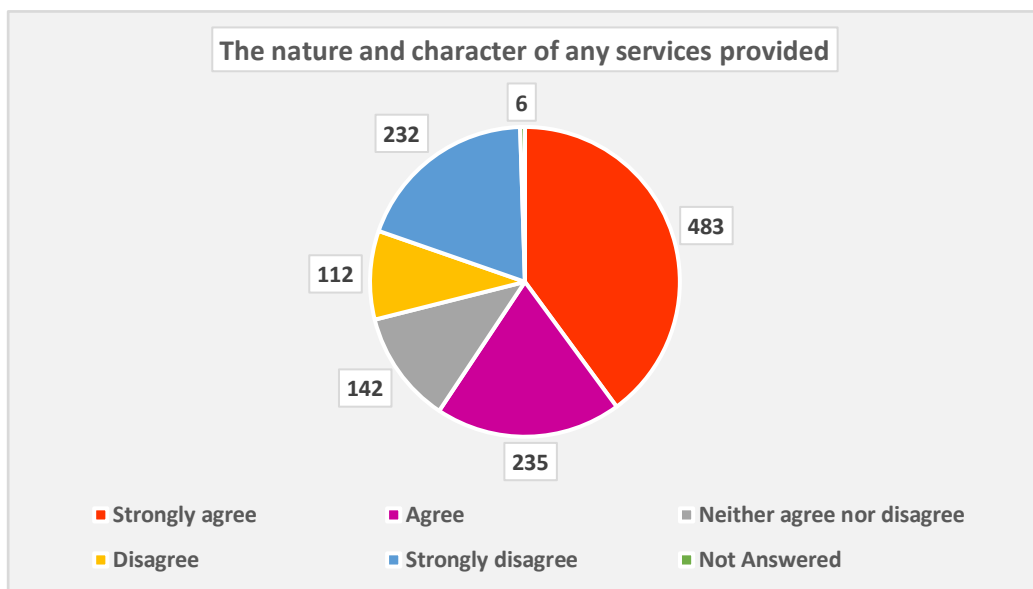


Figure 6 The nature and character of any services provided

## **6. Summary of comments**

6.1. There were a number of representations expressing views both in support and objection to the further guidance update. A brief overview of representations is set out below. A more detailed summary is provided in Part 2.

### **6.2. The character of the new use and of the wider area – Reasons for support**

- STLs have a negative impact in residential areas or near residential properties
- Guidance will preserve residential areas for residents
- Guidance will protect homes and communities

### **6.3. The character of the new use and of the wider area – Reasons for objecting**

- STL guests prefer to stay in quieter areas
- There is a demand for self-catering accommodation outside of the city centre
- Not all STL guests are tourists. Some require STL accommodation for employment purposes or when between homes/ having work carried out on their home
- STLs in mixed areas and residential areas help support local shops and hospitality
- Meaning of what 'wholly' commercial areas needs to be clarified

### **6.4. The size of the property – Reasons for support**

- Larger properties are more attractive to groups as 'party flats'
- Larger properties hold more people which is likely to result in more disturbances

### **6.5. The size of the property – Reasons for objecting**

- Larger properties provide accommodation for families visiting the city
- Assumptions made regarding larger properties will be used as 'party flats' without any evidence

### **6.6. The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand – Reasons for support**

- STLs not compatible with tenemental living - impacts on amenity and security
- STLs cause damage to shared areas
- Main door properties are often accessible and more suitable for families so should be retained as home

**6.7. The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand – Reasons for objecting**

- Guidance acts as a ban on STLs in flatted properties
- Assertions made regarding STL guests have not been evidenced
- Matters raised are controlled through the licensing scheme
- Main door properties should be considered acceptable as there will be no impacts on neighbouring amenity

**6.8. The nature and character of any services provided – Reasons for support**

- Shared gardens are private gardens for residents and should be protected from STL guests
- STL guests using outdoor private spaces often results in noise issues
- STL guests should be encouraged not to drive to the city

**6.9. The nature and character of any services provided – Reasons for objecting**

- There should not be restrictions on STL guests using shared gardens
- Proximity to private gardens should not be considered
- Many guests do not require parking

**6.10. Other comments - support**

- Support protection of residential amenity
- Residential homes should be retained as homes
- Protection against further erosion of communities/ ability to maintain balance communities

**6.11. Other comments – object**

- Restrictive blanket ban approach in the guidance/ true policy intention is to ban STLS
- Negative impact on visitor accommodation and associated businesses in the city
- Existing STL operations should be allowed to continue
- Timing of the guidance does not allow operators sufficient time to plan

## PART 2 Full Summary

### 7. Introduction

- 7.1. Tables 1 - 4 below provide a summary of the comments received grouped by the criterion they relate to.
- 7.2. Many comments received were related to the principle of short term lets, the impact of the short term let control area and the licensing scheme on the industry and did not specifically relate to the update to existing guidance within the non-statutory Guidance for Businesses.
- 7.3. There were some overarching themes identified in the consultation responses which are addressed in sections 8-14 below.

### 8. Overarching themes

#### **Lack of clarity on when planning permission is required**

- 8.1. Prior to the introduction of the STL Control Area, there was a lack of clarity for all parties on when planning permission was required to use a residential property for STLs. An assessment on whether the use of a residential property as a STL resulted in a material change of use was required. 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, and disturbance to neighbouring residential amenity.
- 8.2. Prior to the control area, in most cases the use of a dwelling predominantly for secondary short-term letting would constitute a change of use requiring planning permission.
- 8.3. The introduction of the control area, in terms of Section 26B of the Town and Country Planning (Scotland) Act 1997 (the “1997 Act”), makes clear that the use of a property as a STL, which is not a principal home, is deemed to be a change of use requiring planning permission. The automatic requirement for planning permission applies only to letting of a dwelling that is not a principal home, it does not apply to home sharing or home letting.
- 8.4. Where an individual lets rooms within their principal home or lets their whole property whilst absent from their principal home, this may result in a material change of use, in terms of Section 26 of the 1997 Act, requiring planning permission. Again, 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, and disturbance to neighbouring residential amenity.
- 8.5. The Council will provide further information on when planning permission is likely to be required for using a principal home for home letting and home sharing. This will help individuals to determine whether their intended use is likely to require planning permission or not. In these situations, proof of planning is not a requirement for the licensing scheme.

## 9. The impact of STL regulations on visitor accommodation and existing STL businesses

- 9.1. The STL control area regulations have been set nationally and they do not provide any scope to distinguish between different business operations. The impacts of the control area designation, on both businesses and individual operators, was considered in a business and regulatory impact assessment, prepared by the Scottish Government, of the regulations prior to introduction of the legislation. The potential impacts on the economy and protected groups have been considered within the IIA process.
- 9.2. The planning application process is defined in legislation and guidance and is subject to due process. The introduction of the control area, in terms of Section 26B of the 1997 Act, does not retrospectively apply to any STL property that has already obtained planning permission or a certificate of lawfulness. In addition, where the change of use of a property to short term let can be demonstrated to have been operating for at least 10 years with no enforcement action then that use is lawful in planning terms, and a certificate of lawfulness can be obtained under Section 150 and 124 of the 1997 Act. The introduction of the control area, in terms of Section 26B of the 1997 Act, is only retrospective to the extent it removes any dubiety that planning permission is required for any dwelling currently being used for STL, which is not a principal home.
- 9.3. The [Statement for Reasons Background report](#) which accompanied the Short Term Let Control Area Designation report to Planning Committee on 23 February 2022 contains analysis of visitor accommodation in Edinburgh. A study carried out on behalf of the Council, Edinburgh Visitor Accommodation Sector Commercial Needs Study, January 2019, Ryden identified almost 16,000 rooms within 422 properties within hotels, B&Bs, guesthouses and aparthotels. These other forms of commercial visitor accommodation are subject to planning regulation and where development or change of use occur these require planning permission. The requirement for planning permission brings STLs in line with this requirement.
- 9.4. Concerns have been raised regarding an alleged lack of consideration of the economic benefits that STLs bring to the economy of the city. The proposal contains an update providing further guidance on the assessment of STL applications in relation to Local Development Plan (LDP) policy Hou 7 – Inappropriate uses in Residential Areas. This policy does not consider the economic benefits of STLs and as such no guidance has been proposed in relation to this.
- 9.5. However, the economic impact of STLs is a planning consideration which will be taken into account when assessing planning applications. There are no legislative requirements on the Planning Authority to produce guidance for each individual plan policy or development type.
- 9.6. It should also be noted that on 8 November 2022, during the consultation, the [Revised Draft National Planning Framework 4 \(NPF4\)](#) was laid in the Scottish Parliament. NPF4 became part of the statutory development plan on 13 February 2023. NPF4 contains a specific policy on STLs, policy 30 (e) states:

Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- (i) An unacceptable impact on local amenity or the character of a neighbourhood or area; or



- (ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

9.7. Accordingly, consideration of the demonstrable local economic benefits of an STL will form part of the development plan assessment where the STL application involves the loss of residential accommodation.

#### **10. Guidance will result in a ban on short term lets**

- 10.1. The proposed amendments to the non-statutory Guidance for Businesses does not amount to a ban on short term lets.
- 10.2. When assessing a planning application, each application must be assessed on its own merit and the relevant development plan policy is the primary consideration. Where proposals comply with the development plan they should be approved unless other material planning considerations indicate otherwise.
- 10.3. In relation to planning applications for a change of use to a STL, the non-statutory Guidance for Businesses is a material consideration in the determination of the planning application. The update to the guidance provides further information on how proposals will be considered.
- 10.4. This further information has been developed using experience of assessing applications, investigation of enforcement cases relating to STL use and having regard to a significant number of appeal decisions.
- 10.5. Each planning application must be assessed on its own merits, having regard to the development plan policy and material considerations. It is for the decision maker to judge how much weight to place on each consideration in line with the statutory tests for determining a planning application.

#### **11. Planning controls**

- 11.1. Concerns were raised regarding the extent of planning controls, in particular the fact that permission is given to the planning unit and not the owner or operator. Section 3ZA of the 1997 Act states: "The purpose of planning is to manage the development and use of land in the long-term public interest." Accordingly, in almost all circumstances, planning permission runs with the land. Planning conditions or obligations limiting the permission to a specific owner/ operator are unlikely to be justified.
- 11.2. However, and more broadly, each application is assessed on its own merits, and it is for the applicant to demonstrate how the use of planning conditions restricting the permission to a specific owner/operator would make the proposals acceptable.
- 11.3. As part of an application process, Planning may consider conditions relating to allowing STLs for a limited period where this is appropriate and justified to make the proposals acceptable.

- 11.4. Planning cannot consider restrictions within Title Deeds. Any restrictive covenants on Title Deeds are a separate legal matter and planning permission does not override these restrictions. Issues relating to Title Deeds, land ownership or rights are civil matters.

## **12. Licensing controls**

- 12.1. On 29 September 2022, the Regulatory Committee agreed the Council's Short Term Lets Licensing Policy. On 1 October 2022, the licensing scheme under the Civic Government (Scotland) Act 1982 (Licensing of STL) Order 2022 opened for applications.

- 12.2. The licensing scheme for STLs seeks to regulate the use of premises as STLs to ensure, among other things, proper management, the preservation of undue public nuisance, and the preservation of safety. A specific licensing regime for STL allows the Council to take into account local circumstances when setting out its licensing policy and to exercise appropriate control and regulation to ensure that any STL premises that is licensed is properly managed, meets the requisite safety standards and avoids undue public nuisance. The Policy Note issued by the Scottish Government with its 2022 STL Licensing Order, states:

“The Scottish Government’s purpose in the regulation of short-term lets is to ensure that local authorities have appropriate regulatory powers to balance the needs and concerns of their communities with wider economic and tourism interests.”

- 12.3. The Council can grant or renew a STL licence on such terms and conditions as it considers appropriate. This will take the form of the mandatory conditions, applicable to all STL accommodation by way of the 2022 Order, and in most cases the additional conditions agreed by the Council's Regulatory Committee on 29 September 2022. Those additional conditions may be expressly varied or excluded according to the particular terms and circumstances of an individual licence application.

- 12.4. Mandatory conditions relate to named agents, type of licence, fire safety, gas safety, water safety, electrical safety, maximum occupancy, information to be displayed, planning permission (where required for secondary lets), listings and insurance. Additional conditions relate to advice in the case of an emergency, arrangements for quiet and orderly entry to and egress from the licensed property, reasonable steps to manage accommodation to prevent and deal effectively with anti-social behaviour by STL guests, notification of licence to neighbours in same building or adjoining neighbours, provide adequate facilities for refuse and advise on collections and for secondary lets only, ensure bedroom, living-room and hallway are covered by a suitable floor covering.

## **13. Interplay between Planning and Licensing**

- 13.1. Planning and Licensing are two separate and distinct regulatory regimes relevant to STLs. The planning application process is required to assess the change of use of the property against development plan policy and any other material planning considerations. The licensing application process seeks to regulate the use of premises as STLs to ensure, among other

things, proper management, the prevention of undue public nuisance, and the preservation of safety.

- 13.2. STL use of properties results in operators providing a form of temporary accommodation to guests who are visiting the city for a variety of reasons. The Council as planning authority must consider the nature of activities associated with the proposed use to assess whether the proposals comply with development plan policy. There may be areas of overlap in the consideration of planning proposals and licensing applications. For instance, whilst the planning authority would not seek to control the maximum occupancy in an STL property as this would be a matter for the licensing application, consideration is given to the size of the property in determining whether this is appropriate for the context of the area.
- 13.3. Concerns have been raised in relation to statements made regarding the behaviour of STL guests being assessed using 'worst case' scenarios of anti-social behaviour resulting in noise and disturbances impacting on neighbouring amenity. The [Statement of Reasons Background report](#) which accompanied Short Term Let Control Area Designation report to Planning Committee on 23 February 2022 contains analysis of the impacts of STL use on communities and residents. The negative impacts on residential amenity, as a result of the pattern of activity associated with STL use, have been well documented in appeal decisions handed down by Scottish Ministers in addition to experience of handling planning enforcement enquiries. These are material planning considerations in the assessment of a planning application for a change of use to STL use.

#### **14. Effective Enforcement**

- 14.1. Several comments raised the matter of enforcement against unlawful STL operations. Enquiries regarding unauthorised STL use are investigated by Planning Enforcement, this will continue. Checks will be carried out on properties which have applied for planning permission in retrospect and have been refused permission to ensure the STL use has ceased. For planning applications which have been refused and this decision is upheld at appeal, checks will be carried out to ensure the STL use has ceased.
- 14.2. Information will be shared between Planning and Licensing to ensure secondary let properties without the required planning permission or certificate of lawfulness are unable to obtain a licence. Licensing also has an enforcement function to address non-compliance with the licence scheme.

## 15. Summary Tables

**Table 1 The character of the new use and of the wider area comments**

<b>The character of the new use and of the wider area - Support</b>
<ul style="list-style-type: none"> <li>a) STLs in residential areas or shared stairs have a negative impact on residents</li> <li>b) Guidance will preserve the residential character of neighbourhoods and living conditions for residents</li> <li>c) Residents often disturbed by STL guests at unsociable hours and weekends</li> <li>d) STL guests do not appreciate how much sound can travel in older tenement buildings</li> <li>e) Residential amenity is being protected in the guidance</li> <li>f) STLs result in a loss of housing stock in areas which should be kept for residents</li> <li>g) STLs cause rents and prices of homes to increase and become unaffordable for residents</li> <li>h) There is no sense of community in areas where there is a proliferation of STLs</li> </ul>
<p><b><u>CEC Response to Supporting Comments</u></b></p> <p><b>Response to Supporting Comments (a) – (e)</b> See section 13 above.</p> <p>The negative impacts on residential amenity, as a result of the pattern of activity associated with STL use, have been well documented in appeal decisions handed down by Scottish Ministers in addition to experience of handling planning enforcement enquiries. These are material planning considerations in the assessment of a planning application for a change of use to STL use.</p> <p><b>Response to Supporting Comments (f) – (h)</b> This proposed guidance update provides further information on how amenity will be considered in respect of an application for change of use to STL.</p> <p>Comments raised above have been addressed in a report to Planning Committee on <a href="#">23 February 2022</a> which provides a Statement of Reasons for the STL Control Area Designation.</p>
<b>The character of the new use and of the wider area - Object</b>
<ul style="list-style-type: none"> <li>a) Guidance limits STLs to commercial areas only. This will have a negative impact on the amount of visitor accommodation in the city and the economy</li> <li>b) Many STLs are second homes providing visitor accommodation when not in use by owners. This will stop and properties will remain empty</li> <li>c) STLs in mixed areas and residential areas help support local shops and hospitality</li> <li>d) Not all STL guests are tourists, many guests have other reasons to visit the city. Examples being, visiting family, health care, employment or people between homes/ having work carried out on their home</li> <li>e) Edinburgh needs flexible accommodation</li> <li>f) There is a demand for self-catering accommodation outside of the city centre</li> <li>g) STLs should be considered the same as House in Multiple Occupation (HMO) applications</li> <li>h) STLs should be supported in buildings where there are HMO flats</li> <li>i) Issues of noise and disturbances arising from STL use should be controlled through the license scheme</li> </ul>

- j) Well-managed STL properties do not cause issues for neighbours. Therefore, the character of the area should not be a consideration, but the management of the property should be
- k) Clarity on what 'wholly' commercial means
- l) STLs are appropriate in mixed areas where there are lots of commercial uses as well as residential
- m) Many STLs have been operating in residential areas for several years without complaints or issues
- n) Families want self-catering accommodation in residential areas
- o) The residential amenity in mixed areas should be protected and an presumption against STL use
- p) There should be a presumption against STLs where there is an identified need for homes in the city regardless of the character of the location
- q) STLs should not be supported in commercial or mixed-areas, residential properties should be retained for residential use
- r) Edinburgh needs to promote a city centre which is 'lived in'. STLs should always have a presumption against

### **CEC Response to Objecting Comments**

#### **Response to Objecting Comments (a) – (c)**

See section 9 above.

This proposed guidance update provides further information on how amenity will be considered in respect of an application for change of use to STL.

#### **Response to Objecting Comments (d) – (f)**

This proposed guidance update provides further information on how amenity will be considered in respect of an application for change of use to STL.

Sections 9 and 10 above respond to comments in relation to visitor accommodation, economic considerations and the application process which requires case is assessed on its own merits.

Additionally, purpose-built tourist accommodation in the form of hotels, hostels, apart hotels, guest houses and bed and breakfasts are readily available throughout the city. Along with student halls, which provide visitor accommodation at key times of the year, this accommodation meets the majority of tourism needs while balancing impacts on neighbourhoods.

#### **Response to Objecting Comments (g) – (j)**

See sections 10, 12 and 13 above.

HMO properties are materially different from STL use as they provide residential accommodation, whereas an STL will be available to guests to book and stay at the property. Furthermore, NPF 4 Development Plan policy 30(e) is specific on STLs.

### **Response to Objecting Comments (k) – (n)**

See sections 9 above.

The consultation responses identified a need to clarify what ‘wholly’ commercial means within an Edinburgh context. Feedback from respondents highlighted that Edinburgh has a ‘lived in’ city centre and wholly commercial areas are likely to be in locations such as industrial estates. Similarly, in relation to mixed areas, comments highlighted that there are more mixed areas than ‘wholly’ commercial in the city and the need to assess each case on its own merits taking into account the nature of the surrounding area.

This point is noted, and the guidance has been amended to ‘*predominantly*’ commercial areas recognising that Edinburgh has few ‘wholly’ commercial locations. With regards to mixed areas, ‘*the nature of surrounding uses and the proximity of the proposal site to residential properties*’ has been added for consistency in how applications will be considered.

### **Response to Objecting Comments (o) – (r) - [Objections on basis guidance doesn’t go far enough]**

See sections 9, 10, 11, 12 and 13 above.

Additionally, it should be noted that each planning application must be assessed on its own merits, having regard to the development plan policy and material considerations. It is for the decision maker to judge how much weight to place on each consideration in line with the statutory tests for determining a planning application.

**Table 2 Size of the property comments**

<p><b>Size of a property - Support</b></p>
<ul style="list-style-type: none"> <li>a) Larger properties likely to attract larger groups of people staying at the property.</li> <li>b) Larger properties likely to be attractive to groups as a 'party flat/house'</li> <li>c) The more guests in a property, the likelihood of more disturbances increases</li> <li>d) Number of guests exceeding the number of people who would live in a property normally will have more of an impact on shared areas of buildings</li> <li>e) Larger properties are more appropriate for family homes.</li> </ul>
<p><b><u>CEC Response to Supporting Comments</u></b></p> <p>Comments noted in support of the proposed guidance.</p>
<p><b>Size of Property – Object</b></p>
<ul style="list-style-type: none"> <li>a) Many older properties in Edinburgh have large floor plans and will be penalised for this.</li> <li>b) Number of guests staying in a property should be controlled through licensing rather than being a consideration for Planning.</li> <li>c) Size of the property should not be a consideration; it should be whether the location is appropriate.</li> <li>d) Larger detached properties are less likely to have issues with disturbances than properties with shared areas.</li> <li>e) Considerations should be the same as that for HMO properties.</li> <li>f) There is no evidence to support the statement.</li> <li>g) Larger properties also used by larger families visiting Edinburgh or for instance, moving house.</li> <li>h) Larger properties also used for employment purposes such as performers for the festivals or employees attending conferences in Edinburgh.</li> <li>i) Many operators vet guests and have set terms and conditions within the contract to minimise risk of disturbance or no stag or hen parties.</li> <li>j) This consideration is not proportionate and assumes larger properties will be used for parties.</li> <li>k) Capacity of room sizes need to be considered as bunkbeds and sofa beds can be used to allow for larger groups</li> <li>l) Restrictions should be placed on properties to limit the number of guests</li> <li>m) Overcrowding in STLs needs to be controlled and managed regardless of size of property</li> <li>n) Smaller properties should not be viewed as being more acceptable</li> </ul>
<p><b><u>CEC Response to Objecting Comments</u></b></p> <p><b>Response to Objecting Comments (a) – (j)</b></p> <p>See sections 9, 10 11, 12 and 13 above.</p>

The feedback has been considered. However, the size of the STL operation has to be considered when determining whether the use complies with policy. Larger properties do have a greater capacity for a higher number of guests and in turn a greater potential for noise and disturbances. The guidance highlights this consideration for applicants to be aware of when make an application.

**Response to Objecting Comments (k) – (n)**

See sections 11, 12 and 13 above.



**Table 3 The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand comments**

<p><b>The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand - Support</b></p>
<ul style="list-style-type: none"> <li>a) STLs are not compatible with tenemental living</li> <li>b) Presumption against granting permission for STL use in tenement/flatted buildings protects residents' amenity in those areas</li> <li>c) Terraced and colony properties also experience disturbance issues and should be considered as being unacceptable</li> <li>d) STL use in shared stairs reduces safety and security for other residents in the building</li> <li>e) Main door properties are often more accessible, have access to gardens and better for families. Therefore, should be retained as residential</li> <li>f) The intensity of STL use, resulting in a high number of changeovers causes an increase in instances of damage to shared areas.</li> </ul>
<p><b><u>CEC Response to Supporting Comments</u></b></p> <p>Comments noted in support of the proposed guidance.</p> <p>Additionally, it should be noted that each planning application must be assessed on its own merits, having regard to the development plan policy and material considerations. It is for the decision maker to judge how much weight to place on each consideration in line with the statutory tests for determining a planning application.</p>
<p><b>The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand - Object</b></p>
<ul style="list-style-type: none"> <li>a) Guidance criteria is a blanket ban on properties that share areas, i.e within tenement/ flatted buildings.</li> <li>b) Main door properties should be supported for STL use</li> <li>c) This criterion makes assumptions on how the property is managed which should be controlled through the licensing scheme</li> <li>d) This does not allow for HMO student properties to be used for the festivals when students leave the property</li> <li>e) Many STL operators ensure communal areas are well kept</li> <li>f) There is a demand for STL accommodation as visitors want to stay in residential areas</li> <li>g) The statement regarding pattern of activity can equally be applied to long-term residents</li> <li>h) Assertions made regarding STL guests have not been sufficiently studied and evidenced</li> <li>i) Guidance assumes worst case scenarios regarding the behaviour of guests</li> <li>j) Operator's rules should not form part of the planning considerations as the rules are not enforceable</li> <li>k) There should be no permission granted for STL use in flatted buildings because of the impacts on neighbours</li> <li>l) Planning should require a new permission when property is sold</li> </ul>

- m) Permission should be with the operator and not the property
- n) Planning permission should be given for a specified period of time i.e 5 years
- o) Planning conditions should be used to control the use
- p) Planning permission should be revoked if there are noise/disturbance complaints

### **CEC Response to Objecting Comments**

#### **Response to Objecting Comments (a) – (i)**

See sections 9, 10 11, 12 and 13 above.

The consultation feedback in relation to this criterion mainly raised issues addressed in the overarching themes discussed earlier in this report. There were concerns raised regarding the characterisation of STL guests, the guidance acting as a ban on STLs and the impact on visitor accommodation and the economy which have been addressed.

Amendments proposed to this section are the insertion of ‘permanent’ for consistency and ‘STL use where multiple sets of guests stay for short periods of time throughout the year’ for clarity in explaining the pattern of activity. The examples of impacts have been removed.

Respondents of the consultation raised that the paragraph regarding what the Council can control was misleading as there is a licensing scheme in place to control occupancy.

The Licensing Scheme had not been agreed at the time Planning Committee considered the proposed further guidance update for consultation. It has since been approved and opened for applications on 01 October 2022. Comments are noted and this section is proposed to be removed.

#### **Response to Objecting Comments (j) – (p)**

See sections 10, 11, 12, 13 and 14 above.

Section 3ZA of the 1997 Act states: “The purpose of planning is to manage the development and use of land in the long term public interest.” Accordingly, in almost all circumstances, planning permission runs with the land. Planning conditions or obligations limiting the permission to a specific owner/ operator are unlikely to be justified.

As part of an application process, Planning may consider conditions relating to allowing STLs for a limited period where this is appropriate and justified to make the proposals acceptable.

**Table 4 The nature and character of any services provided**

<p><b>The nature and character of any services provided – Support</b></p>
<ul style="list-style-type: none"> <li>a) Shared gardens are still private to the residents of the building and should be protected for residents’ health and wellbeing</li> <li>b) STL guests use gardens for smoking and also in good weather which can result in noise affecting residents</li> <li>c) Shared gardens often contain private belongings of other residents in the building, unknown STL guests using these spaces reduces the security of these belongings.</li> <li>d) Limited parking provision within the city, visitors should be encouraged not to bring cars. Therefore, not putting pressure on existing parking</li> </ul>
<p><b><u>CEC Response to Supporting Comments</u></b></p> <p>Comments noted in support of the proposed guidance.</p>
<p><b>The nature and character of any services provided – Object</b></p>
<ul style="list-style-type: none"> <li>a) Operators can restrict access to shared gardens through the management of the property</li> <li>b) Considering access to gardens and parking is disproportionate and assumes STL guests will be disrespectful</li> <li>c) STL guests should not be restricted from using gardens or parking pertaining to the property they are staying in</li> <li>d) Large proportion of STL guests do not use gardens or parking</li> <li>e) There are shared gardens which are rarely used by residents</li> <li>f) Considering proximity of other residential gardens is overly restrictive</li> <li>g) Many STL guests use public transport or taxis and do not bring private cars to the city</li> <li>h) There should be a ban on STLs where there is access to communal gardens</li> <li>i) STLs should not have access to shared gardens</li> </ul>
<p><b><u>CEC Response to Objecting Comments</u></b></p> <p><b>Response to Objecting Comments (a) – (g)</b></p> <p>See sections 11 and 13 above.</p> <p>Where a property has access to a shared garden, it is unlikely that a planning condition could be used to restrict access and as the planning permission goes with the land rather than the individual operator, there would be no other mechanism in planning to ensure the potential use of shared gardens does not negatively impact on neighbouring amenity.</p> <p><b>Response to Objecting Comments (h) – (i)</b></p> <p>See section 10 and response above.</p>

**Table 5 Other comments**

<b>Other comments – Support</b>
<ul style="list-style-type: none"><li>a) Support the protection of residential amenity from the impacts of STLs</li><li>b) Guidance will help retain residential properties as homes for residents</li><li>c) Guidance will help retain and foster communities</li><li>d) Regulating STLs will help rents and house prices from rising disproportionately</li><li>e) Guidance will help ensure the safety and security of people’s homes is maintained by regulating STLs</li></ul>
<b><u>CEC Response to Supporting Comments</u></b>
Comments noted.
<b>Other comments – Object (Guidance overly restrictive)</b>
<ul style="list-style-type: none"><li>a) Unnecessary restrictive blanket approach to regulating STLs</li><li>b) Proposals do not take account of the licensing scheme</li><li>c) All STLs are assumed to be disruptive ‘party flats’ when there are various different types of STLs</li><li>d) The policy intention to ban STLs in Edinburgh should be clearly stated</li><li>e) Timing of guidance consultation and licensing timeframe does not allow operators sufficient time to plan.</li><li>f) Guidance does not allow for secondary lets to be used as STLs during summer months when students have left the city</li><li>g) This will have a detrimental impact on the tourist economy and will stop many small businesses operating</li><li>h) There will be a negative impact on Edinburgh Festivals as there will be little to no STL accommodation to provide to visitors or performers/ workers associated with the festivals</li><li>i) Existing STL operations should be allowed to continue, and new regulation should only apply to new STL operations</li></ul>
<b><u>CEC Response to Objecting Comments (Guidance overly restrictive)</u></b>
<p>The consultation feedback mainly raised issues addressed in the overarching themes discussed in section 8 -14 above.</p> <p>Many comments received were related to the principle of short term lets, the impact of the short term let control area and the licensing scheme on the industry and did not specifically relate to the update to existing guidance within the non-statutory Guidance for Businesses.</p>

**Other comments – Object (Guidance needs to go further)**

- a) Guidance is too vague and needs to be strengthened
- b) Title deeds restricting commercial activity should be taken into consideration when assessing a planning application
- c) There should be higher taxation for STL properties

**CEC Response to Objecting Comments (Guidance needs to go further)**

The non-statutory Guidance for Businesses is a material consideration in the determination of the planning application. The update to the guidance provides further information on how proposals will be considered.

This further information has been developed using experience of assessing applications, investigation of enforcement cases relating to STL use and having regard to a significant number of appeal decisions.

Each planning application must be assessed on its own merits, having regard to the development plan policy and material considerations. It is for the decision maker to judge how much weight to place on each consideration in line with the statutory tests for determining a planning application.

Title deed restrictions and taxation are not material planning considerations. These are separate legal/regulatory regimes.

**Other comments – General**

- a) More clarity is required on the process of obtaining planning permission
- b) More clarity is required on home letting and home sharing
- c) There needs to be effective enforcement of refused applications and those STLs operating without permission

**CEC Response to Other Comments (General)**

As identified section 8 above, the consultation identified a lack of clarity for when planning permission is required with several respondents assuming an automatic requirement to obtain planning permission for home letting or home sharing. For the avoidance of doubt 'permanent' has been inserted before STLs to make clear the guidance is specifically related to change of use proposals to STLs and not the occasional STL use within a principal home.

The Council will provide further information on when planning permission is likely to be required for using a principal home for home letting and home sharing. This will allow individuals to determine whether their intended use is likely to require planning permission or not. In these situations, proof of planning is not a requirement for the licensing scheme.

See section 14 above regarding effective enforcement.

## PART 3 Focus Group Summary

### 1/ Short Term Let Operators, Tuesday 25<sup>th</sup> October 2022

A session was held for two hours via Microsoft Teams

- A presentation was made on the proposal
- Four breakout groups were held with facilitators
- A discussion was then held in groups and in a plenary session

#### **Participants**

##### **City of Edinburgh Council Planning Service**

David Givan

Alan Moonie

Elizabeth McCarrol

James Allanson

Lesley Porteous

Lynsey Townsend

James Armstrong

#### **Operators and Hosts**

David Hardy (Managing Director – Glory Days)

Angus Dodds (Contour Town Planning)

Craig Douglas (Reserve Apartments)

Sam Edwards (Ferguson Planning)

Matthew Niblet (Short Term Accommodation Association)

Harriet Mortimer (Edinburgh Chamber of Commerce)

Fiona Campbell (Association of Scotland's Self-Caterers)

21 Individual Operators

## **Themes**

### **General concerns over the content of the guidance and the timing of the introduction**

- Attendees acknowledged the rationale for some form of regulatory framework. However, concerns were raised about the timing of the guidance being introduced.
- Attendees were concerned about the impact of the licensing regime and the guidance coming into effect at the same time.
- The double effect of the restrictive nature of the guidance when assessing planning applications, and the equally restrictive nature of the secondary letting licence requirements will lead to a lot of STL's shutting down.

### **Lack of Consideration of Economic Benefits**

- Significant concerns were raised that the guidance was heavily weighted against STL properties.
- The guidance does not allow for a fully balanced assessment of the wider economic and cultural benefits which STL properties bring to the city.
- No consideration of the potential economic impact of the loss of a significant number of STL's and the knock-on impacts for associated employment.
- Generally felt that an economic impact assessment should have been undertaken before the changes were proposed.

### **Impact on Tourist industry**

- Proposed changes would have a significant detrimental impact on the tourism industry.
- Highlighted that many tourists coming to stay in Edinburgh prefer to stay in residential type accommodation, particularly if they are families with young children.
- Issues about whether there will be sufficient accommodation available for performers and attendees at the fringe.

### **STL's not Supported in a Shared Stair or Communal Garden Area**

- Significant concern over the inclusion of the criteria that it is 'very unlikely' that an STL will be supported if accessed of a shared stairwell
- It was felt that this amounted to a de facto ban on STL's in tenement buildings without the opportunity to fully assess the merits of an application.
- Was also felt that in the experience operators, guests rarely used communal gardens and that the existence of these gardens was not a significant issue.

### **Presumption of Increased Anti-Social Behaviour with Larger STL's**

- Attendees did not agree that more individuals residing in larger STL's created greater disturbance than permeant residents.
- Was highlighted that those properties which were causing issues would already have been reported to the Council's planning enforcement section.

### **Size of the Property**

- It was strongly felt that just because a property was larger in size and could accommodate more individuals, this did not mean it would create greater disturbance.

### **Vagueness Of Certain Terms in the Guidance**

- Several important terms in the guidance felt to be too vague.
- Phrases such as 'wholly commercial in character', 'mixed in character (residential/commercial)' and 'quiet nature or low ambient noise' were felt to be susceptible to widespread interpretation by officers
- Greater clarity and, if possible, formal definitions as to where the above noted areas are in the city.

### **Loss of Housing**

- It was questioned whether the real rationale for the restrictive nature of the guidance was to prevent a loss of housing.
- Claimed that requiring STL's to revert back to residential use will not have a significant impact on housing shortages.



## **2/ Residents/Neighbourhood Groups and Amenity Bodies, Thursday 27<sup>th</sup> October 2022**

A session was held for two hours via Microsoft Teams

- A presentation was made on the proposal
- Three breakout groups were held with facilitators
- A discussion was then held in groups and in a plenary session

### **Participants**

#### **City of Edinburgh Council Planning Service**

David Givan

Alan Moonie

Elizabeth McCarrol

James Allanson

Lesley Porteous

Lynsey Townsend

James Armstrong

#### **Residents/Neighbour Groups and Amenity Bodies**

Three Individual Representatives

Cockburn Association (Terry Levinthal)

Portobello Amenity Society (Doreen Parker)

New Town and Broughton Community Council (Richard)

Crammond and Barnton Community Council (Ian Williamson)

Place Edinburgh (Deirdre Henderson)

Leith Central Community Council (John Wilkinson)

Edinburgh Tenants Federation (Robyn Kane)

Old Town Community Council (Mike Wilson)

Annick Gaillard (New Town and Broughton Community Council)

Dale Finlayson (Waverley Park Feuars)

Mairianna Clyde (Merchiston Community Council)

## **Themes**

### **General support for guidance**

- Attendees were generally supportive of the proposed changes to the content of the guidance.
- Concerns highlighted which many residents have about rapid expansion in STL properties and resultant impacts on amenity of permanent residents, in particular in the city centre.

### **Problems caused by guests staying in STL properties**

- Was generally agreed that while not all guests staying at STL properties cause anti-social behaviour, the behaviour of such individuals can still differ from that of permanent residents and create disturbance within shared tenement blocks.
- Attendees highlighted that a point of concern for tenement residents is the lack of a sense of community and security which results from numerous different people coming and going through communal stairs, and not knowing who is personally residing in the property.
- Residents are often doorstepped by STL visitors. Guests can often buzz multiple flats if they can't get the entrance key to work, return home frequently out with normal hours and damage locks.
- As tenements are predominantly stone built, noise carries more easily, and residents are more easily disturbed by individuals who do not reside on a permanent basis.

### **Impact of STL's on Housing Stock**

- Attendees highlighted significant concerns regarding the impact which STL properties have on the available housing stock, property prices and rent levels.

### **Need to Create Balanced Communities**

- Attendees acknowledged that tourism is important to the economy of Edinburgh and that STL's have a role in this industry.
- Notwithstanding the above, attendees felt it was very important that tourism needs to be balanced against the requirement to create properly balanced communities and the needs of permanent residents.
- It was highlighted that permanent residents also contribute to the economy through expenditure, and that not only tourists provide economic benefits.

### **Size of the Property**

- It was generally agreed that larger STL's did cause more problems in terms of anti-social behaviour and disturbance. However, it was also highlighted that concentration of STL's is an equally important issue, particularly within the city centre.

### **Ability to Enforce**

- Issue of whether the retrospective application surcharge fee could be specifically ringfenced to relate to the enforcement of STL's. The Councils Planning Fees Charter advises that the planning authority endeavour to reinvest income received from the surcharge in enforcement as a whole service.

### **3/ Festival Organisations, Tuesday 1<sup>st</sup> November 2022**

A session was held for two hours via Microsoft Teams

- A presentation was made on the proposal
- One combined breakout group and discussion were held with facilitators

#### **Participants**

##### **City of Edinburgh Council Planning Service**

David Givan

Alan Moonie

Elizabeth McCarrol

James Allanson

Lesley Porteous

Lynsey Townsend

James Armstrong

#### **Festival Organisations/Operators**

Katy Taylor (Edinburgh International Festival)

Anna Morris (The Edinburgh Address)

Anne Diack (Edinburgh Festival Fringe Society)

Donald Emslie (Edinburgh Tourism Action Group)

David Hardy (Glory Days)

Fiona Campbell (Association of Scotland's Self Caterers)

Julia Armour (Edinburgh Festival City)

## **Themes**

### **Impact on the Future of the Edinburgh Festivals**

- Attendees highlighted significant concerns that the proposed changes would have a significant detrimental impact on the tourism industry and the Edinburgh Festivals.
- Issues were raised about whether there will be sufficient accommodation available for performers and attendees at the fringe. There is already a shortfall in terms of meeting demand for performers and attendees, and accommodation prices are high in August. The changes will exacerbate this problem.
- The double effect of the restrictive nature of the guidance when assessing planning applications, and the equally restrictive nature of the secondary letting licence requirements will lead to a lot of STL's shutting down.

### **Lack of Consideration of Economic Benefits**

- Significant concerns were raised that the guidance was heavily weighted against STL properties.
- The guidance does not allow for a fully balanced assessment of the wider economic and cultural benefits which STL properties bring to the city, in particular their contribution to the successful operation of the festivals.
- No consideration of the potential economic impact of the loss of a significant number of STL's and the knock on impacts for associated employment, or for the festivals.
- Generally felt that an economic impact assessment should have been undertaken before the changes were proposed.

### **Presumption of Increased Anti-Social Behaviour with Larger STL's**

- Attendees did not agree that more individuals residing in larger STL's created greater disturbance than permanent residents.
- It was highlighted that many larger STL flats are utilised by festival and fringe productions which involve multiple individuals. Such flats are useful as they allow individuals involved in productions to reside together.
- The Council should have greater recognition of the fact STL properties are not exclusively used for 'holiday' letting or as 'party flats'.

### **Vagueness Of Certain Terms in the Guidance**

- Several important terms in the guidance felt to be too vague.
- Phrases such as 'wholly commercial in character', 'mixed in character (residential/commercial)' and 'quiet nature or low ambient noise' were felt to be susceptible to widespread interpretation by officers.
- Greater clarity and, if possible, formal definitions as to where the above noted areas are in the city.

### **Character of the City Centre**

- Some attendees highlighted their view that the character of city centre living inevitably results in an environment where noise and disturbance will always exist to a certain degree, and that the impact on STL properties in this regard is not as detrimental as is sometimes made out.

### **Case Law Used for Planning Authority Decisions**

- Questions were raised over the case law decisions which the Council is using to justify its position in planning terms over STL properties. It was stated by planning authority personnel that the issue of length of tenure has been a material consideration in determining whether a change of use to a STL property for several years and that this has been supported by Scottish Government Reporters at Appeal.

#### **4/ Face to Face Drop In Session, Wednesday 9<sup>th</sup> November 2022**

##### **Participants**

##### **City of Edinburgh Council Planning Service**

David Givan

Alan Moonie

Elizabeth McCarrol

James Allanson

##### **Other Attendees**

40-50 individuals, predominantly STL operators

- A two and half hour drop-in session was held at Waverley Court. The session consisted of a presentation given by the Chief Planning Officer followed by an extensive question and answer session. While the session had not been specifically advertised towards any one particular interest group, the overwhelming majority of attendees were STL operators.
- The issues raised at this session were largely the same as those raised during the Short Term Let Operators Focus Group on Tuesday 25<sup>th</sup> October.
- Members of the planning service were able to provide general advice and guidance to attendees.

## **PART 4 Notified Organisations**

### **Organisations Notified Directly by Email**

Airbnb

Association of Community Council's

Association of Scotland's Self Caterers

Association of Serviced Apartment Providers

Balerno Community Council

Chamber of Commerce

Chartered Institute of Housing Scotland

Citizens Advice Edinburgh

Cockburn Association

Colinton Community Council

Corstorphine Community Council

Craigentinny/Meadowbank Community Council

Craigleith/Blackhall Community Council

Craiglockhart Community Council

Craigmillar Community Council

Crammond & Barnton Community Council

Culture Edinburgh

Currie Community Council

Duddingston Village Conservation Society

Drum Brae Community Council

Drylaw/Telford Community Council

EARN

Edinburgh Festival Fringe Society

Edinburgh Hotels Association

Edinburgh Old Town Association

Edinburgh Tenants Federation

Edinburgh Uni Students Association

Edinburgh University

ETAG



EWH

Fairmilehead Community Council

Firhill Community Council

Festivals Edinburgh

Gilmerton/ Inch Community Council

Gorgie/Dalry Community Council

Grange/Prestonfield Community Council

Granton & District Community Council

Grassmarket Resident Association

Historic Building Trust

Historic Environment Scotland

Hutchison/Chesser Community Council

Juniper Green Community Council

Kirkliston Community Council

Leith Harbour/Newhaven Community Council

Leith Central Community Council

Liberton & District Community Council

Longstone Community Council

Living Streets

Marchmont and Sciennes Community Council

Merchiston Community Council

Morningside Community Council

Muirhouse and Salvesen Community Council

Murrayfield Community Council

New Town/Broughton Community Council

Northfield/Willowbrae Community Council

Old Town Community Council

Old Town Residents association

PLACE Edinburgh

Portobello Community Council

Portobello Amenity Society

Queensferry and District Community Council  
Ratho and District Community Council  
Royal Institute of Chartered Surveyors (RICS)  
Royal Town Planning Institute (RTPI)  
Scottish Association of Landlords  
Scottish Bed and Breakfast Association  
Scottish Chambers of Commerce  
Scottish Civic Trust  
Scottish Enterprise  
Scottish Federation of Small Businesses  
Scottish Property Federation  
Scottish Federation of Housing Authorities (SFHA)  
Sighthill/Broomhouse & Parkhead Community Council  
Southside Community Council  
Stenhouse Community Council  
Stockbridge/Inverleith Community Council  
The Architectural Heritage Society of Scotland  
The Scottish Tourism Alliance  
Tollcross Community Council  
Trinity Community Council  
UK Hospitality  
UK Short term accommodation association (STAA)  
Visit Scotland  
West End Community Council  
West Pilton/West Granton Community Council

## PART 5 Respondent Organisations

### **Community Organisations**

The following respondents identified themselves as community groups

Appin Street Owners Association

Drum Brae Community Council

Edinburgh IWW

Grassmarket Residents Association

India Street Residents Association

Leith Central Community Council

Living Rent Tenants Union

New Town and Broughton Community Council

Paddockholm Residents Association

PLACE Edinburgh

Quartermile Management Committee

Southside Community Council

The Cockburn Association

Tollcross Community Council

### **Other Organisations**

Airbnb

Amazing Apartments Limited

AWG Laundry Limited

Blazing Grannies Drama Company

Bookster

Corrie McGuire Management Limited

Destination Edinburgh Limited

Edlets

Edinburgh Holiday Accommodation (N.B Three organisations who responded were named Edinburgh Holiday Accommodation)

Edinburgh Flats Company

Edinburgh Chamber of Commerce  
Festivals Edinburgh  
Glasgow City Flats Limited  
Glory Days  
Harpers Concierge Services  
Home Sweet Home Letting  
Linton Collection Limited  
Manse Estates Limited  
Mansley Serviced Apartments Limited  
McNeil Trust Limited  
Nestival Ltd  
National Trust for Scotland  
News Revue  
Porteous Properties Limited  
Port Seton Panda  
Rettie Short Lets  
Rettie & Co  
Refreshing Scotland Limited  
Theatre Digs Booker Limited  
The Edinburgh Address Limited  
TH Consulting Limited (Land Use Planning)  
Trigg Hair Studio  
Tuath Anam Ltd  
Scott Hobbs Planning  
Seabright Productions Limited  
Suzanne MacIntosh Planning Limited  
Sunrise Short Lets  
Stefano Smith Planning  
Visser and Co

## Background Reading

1. [Planning Committee Report: Short Term Let Control Area Designation](#)
2. [GVA Ryden: Edinburgh Visitor Accommodation Sector Commercial Needs Study 2019](#)

## Appendix A Living Rent Reponse

1. Are you responding to this survey as a private individual or on behalf of an organisation?

*On behalf of an organisation*

2. If responding on behalf of an organisation, please tell us its name.:

*Living Rent tenants union*

3. Which of the following best describes you?

*I am a resident, I represent a community organisation*

### **The character of the new use and of the wider area**

4. To what extent do you agree or disagree with this part of the proposed guidance?

*Strongly agree*

Please tell us why you have answered this way.:

*Living Rent strongly supports any measure which can reduce the number of homes converted into Short Term Lets. Research from the Scottish Government (1) indicates that loss of housing supply to Short Term Letting drives up rents and property prices in the city which are already unsustainable, and that this is the biggest concern that residents have about the negative effects of Short Term Lets. The link between high rents and the proliferation of Short Term Lets is well established (2). Between 2021 and 2022 Edinburgh rents have risen on average by 14.2% according to the CityLets report for 2022 Q3 (3). As we are primarily concerned with the effect on the rest of the housing market, we have little concern with the conversion of commercial premises into STLs as long as appropriate standards on safety and quality are met. We particularly welcome the inclusion of point 4 on unlawful STLs. A large proportion of STLs have not received planning permission for change of use despite this having been a requirement since 2011. The existence of these unlawful STLs should not be used to strengthen the argument for further change of use in the surrounding area. Indeed we believe any individual who has been operating an unlawful STL should be denied the change of use or a license under the new licensing scheme, on the basis that they have already failed to comply with necessary regulations.*

*(1) Chapter 5, Figure 10 <https://www.gov.scot/publications/research-impact-short-term-lets-communities-scotland/pages/6/>*

*(2) See discussion from Economic Policy Institute, citing 4 large US studies, pages 14-16 <https://files.epi.org/pdf/157766.pdf>*

*(3) Page 5 <https://www.citylets.co.uk/research/reports/pdf/Citylets-Quarterly-Report-Q3-2022.pdf>*

## **The size of the property**

5. To what extent do you agree or disagree with this part of the proposed guidance?

*Strongly agree*

Please tell us why you have answered this way.:

*Whilst we agree that STLs in larger properties create a particular inconvenience to nearby residents, and we support the restriction of STLs in larger properties, we are also concerned that the effect of this criterion on its own will be to concentrate STLs in areas which are densely populated with smaller properties, such as Gorgie, Leith Walk and the City Centre, which already have a high penetration rate of STLs, and not in wealthier areas of the city with larger properties such as Morningside and Inverleith. In addition, the city also has a persistent under-occupancy problem, where small numbers of people occupy larger properties for example after children have left home, and so bedrooms are poorly distributed and go unused. A 2014 report (1) found that 31% of Edinburgh households had an occupancy rate of +2 or more. This criterion may reduce the availability of smaller properties for such people to move into, and thus exacerbate this problem.*

*For these reasons we propose that as well as maintaining the proposed criterion on the size of the property, there should be additional criteria added to the guidance about maintaining the availability of certain types of home. In this case the criterion would also restrict Short Term Lets in smaller properties in the pursuit of the council's legitimate aim of reducing under-occupancy and distributing STLs more evenly across the city.*

(1) <https://www.edinburgh.gov.uk/downloads/file/24256/housing-topic-report-for-edinburgh>

## **The pattern of activity associated with the use**

6. To what extent do you agree or disagree with this part of the proposed guidance?

*Strongly agree*

Please tell us why you have answered this way.:

*Whilst we agree that STLs in common stairwells create particular nuisance for nearby residents, and support the restriction of STLs in those properties, we are also concerned that the effect of this criterion will be to reduce the availability of main door properties, which are often the only properties which can be made accessible for wheelchair users and people with other mobility impairments. Inclusion Scotland reports that there is a severe shortage of accessible housing in Scotland (1). We therefore propose that as well as maintaining the proposed criterion regarding properties in common stairwells, there should be additional criteria regarding the effect of STLs on the availability of housing in the area, in this case in pursuit of the council's legitimate aim to maintain the availability of accessible housing in the city.*

*We also strongly support the inclusion of the third criterion here on applicants' intentions to manage the pattern of activity associated with the use. The council can do little to enforce these promises if they are broken, and so such promises should not be taken into account when making decisions about the lawful use of the property.*

(1) <https://inclusionScotland.org/get-informed/our-policy-focus/housing>

## **The nature and character of any services provided**

7. To what extent do you agree or disagree with this part of the proposed guidance?

*Strongly agree*

Please tell us why you have answered this way.:

*We agree that Short Term Lets which include communal gardens or close proximity to residential gardens create particular nuisance for nearby residents. We also believe that parking should not be provided to the detriment of nearby residents. We note that in each of these cases it is likely that applicants would claim that they would manage the STL in such a way that they would not create a nuisance, for example by restricting the use of a garden by occupants of the STL. As noted above, these promises cannot be enforced by the council and so should not be taken into account when making decisions about change of use.*

## **Other comments**

8. Please use the space below for any further comments on the proposed guidance.

Enter comments here:

*The justification given for this guidance is nuisance caused for nearby residents. But whole-property STLs also cause a loss of housing which causes problems for everybody, not just immediate neighbours. We note that the City Plan 2030 (1) has much stronger language in its Housing Policy 7 on the loss of housing than the current local development plan. We urge the council to implement City Plan 2030 as quickly as possible, and for new planning guidance reflecting that wording to be brought in as quickly as possible following that.*

*The council should consider how this planning guidance and the new licensing scheme will be enforced. Only a small proportion of the Short Term Lets operating in Edinburgh currently have the required planning permission, despite this having been a requirement for several years. STL operators who have been operating without the required planning permission should be denied a license, since they have a history of failing to comply with regulations.*

*The council cannot rely on its usual practice to enforce planning decisions, since a Short Term Let is more difficult to differentiate from a residential property than other types of commercial property are. Nor should it rely on the public to report STLs without permission. Proper enforcement of these rules will likely require allocating more resources to the council's own enforcement team, as well as making it as easy as possible for the public to check on and report compliance in their own area. For example, we understand that in Barcelona STL hosts are required to publish their name and licence number on any advertisement for their property. If this were implemented in Edinburgh, council officials could check license numbers against its database. This could be combined with a portal on the council website which would allow the public to check whether a nearby property has planning permission and a license. The council could also check advertisements against the Scottish Assessors Association database to check whether a Short Term Let host is paying business rates, council tax, or neither.*

*We are aware that some landlords are threatening to leave the private rental sector to instead run STLs in order to avoid regulations such as the recent rent freeze and eviction ban, and the scrapping of no-fault evictions in 2016. We are also aware of landlords who have been struck off the landlord*



*register instead letting their properties as Short Term Lets and thereby avoiding regulation. The council should note that regulation of Short Term Lets such as this proposed planning guidance is essential not only to reduce the worst effects of STLs themselves, but also to close a large loophole in the regulation of the private rented housing sector.*

*We welcome the note in this guidance that Short Term Lets within the primary residence of the applicant will not require a change of use, and also welcome the fact that under the council's licensing policy such applicants will only need to renew a license every 3 years rather than annually. We agree that "home-sharing" and renting a property on a short term basis while the applicant is away temporarily has little to no effect on the availability of housing and so regulation of this should be light, and focused mainly on health and safety issues. However the council should consider how it can be sure that the property is in fact the applicant's primary residence.*

*Recent news reports state that the council has received a large number of applications for change of use to STLs before the rules change. The council should bring this guidance into effect as soon as possible in order to help ensure that applicants are not able to evade upcoming restrictions.*

*Whilst we understand that the legislation on STL Control Areas explicitly exempts Purpose Built Student Accommodation from restrictions, this exemption does give further incentive to developers to build PBSA rather than sorely needed social and affordable housing, as PBSA becomes even more profitable than housing if STLs are restricted in housing and not in PBSA. PBSA is very expensive for students, students have fewer rights than they do in regular housing, and they drive up rents for everyone else. The council should explore ways in which it can further restrict the development of PBSA, and restrict Short Term Lets within PBSA.*

*(1) <https://www.edinburgh.gov.uk/downloads/file/29997/proposed-plan-written-statement>*

*(2) <https://www.edinburghlive.co.uk/news/edinburgh-news/almost-100-edinburgh-short-term-24850435>*

# Guidance for Businesses

April 2023



# Guidance for Businesses



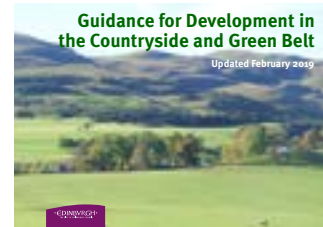
## Who is this guidance for?

This guidance is intended to assist businesses in preparing applications to change the use of a property or carry out alterations to a business premises.



## Policy Context

This document interprets policies in the *Edinburgh Local Development Plan*. Relevant policies are noted in each section and should be considered alongside this document.



**Misc:** Student Housing, Radio Telecommunications, Open Space Strategy etc.

This document and other non-statutory guidance can be viewed at: [www.edinburgh.gov.uk/planningguidelines](http://www.edinburgh.gov.uk/planningguidelines)

## Listed Buildings and Conservation Areas

If the building is listed or located within a Conservation Area, guidance on *Listed Buildings and Conservation Areas* must also be considered. Boxes throughout this guideline give specific information relating to Listed Buildings and Conservation Areas. You can check if your property is listed or located within a conservation area on the Council's website [www.edinburgh.gov.uk/planning](http://www.edinburgh.gov.uk/planning)

## Business Gateway

Business Gateway offers businesses free practical help and guidance. Whether you're starting up or already running a business, and provide access to business support and information services.

To get more information on help for your business, or to book an appointment with our experienced business advisers please contact our Edinburgh office.

Contact details:

**Business Gateway (Edinburgh Office)**  
**Waverley Court**  
**4 East Market Street**  
**Edinburgh**  
**EH8 8BG**  
**Tel: 0131 529 6644**

Email: [bglothian@bgateway.com](mailto:bglothian@bgateway.com)

[www.bgateway.com](http://www.bgateway.com)

This guidance was initially approved in December 2012 and incorporates additional text on short term commercial visitor accommodation approved in February 2013, and minor amendments approved in February 2014, February 2016, March 2018 and February 2019.

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# Do I need Planning Permission?

## Planning Permission

Planning permission is required for many alterations, and changes of use. However, some work can be carried out without planning permission; this is referred to as 'permitted development'. Permitted development is set out in legislation.

Common enquiries are set out in the relevant chapters of this document.

If you believe your building work is 'permitted development', you can apply for a [Certificate of Lawfulness](#) to confirm that the development is lawful and can go ahead. This can be applied for online at [www.eplanning.scot](http://www.eplanning.scot)

## What is a change of use?

Most properties are classified under categories known as a 'Use Class'. For example, shops are grouped under Class 1 and houses under Class 9. Some uses fall outwith these categories and are defined as 'sui generis', meaning 'of its own kind'. This is set out in The Use Classes (Scotland) Order 1997 (as amended).

Changing to a different use class is known as a change of use and may require planning permission, although some changes between use classes are allowed without planning permission. Planning permission is not required when both the present and proposed uses fall within the same 'class' unless there are specific restrictions imposed by the council. The Scottish Government Circular 1/1998 contains guidance on use classes.

## Listed Buildings and Conservation Areas

Fewer alterations are considered to be permitted development and most changes to the outside of a building, including changing the colour, require planning permission. More information on other consents which may be required is included on the next page.

## Listed Building Consent

Listed building consent is required for works affecting the character of listed buildings and also applies to the interior of the building and any buildings within the curtilage. Planning permission may also be required in addition to Listed Building Consent. If your building is listed, specific guidance on [Listed Buildings and Conservation Areas](#) must also be considered along with this document.

# What Other Consents Might Be Required?

## Advertisement Consent

Advertisements are defined as any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, and employed wholly or partly for the purpose of advertisement, announcement or direction.

While many advertisements require express consent, certain types do not need express consent as they have 'deemed consent'. You can check this by consulting [The Town and Country Planning \(Control of Advertisements\) \(Scotland\) Regulations 1984](#). Advertisements displayed in accordance with the advert regulations do not require advertisement consent.

Illuminated shopfront signage in a conservation area requires advertisement consent.

## Building Warrant

Converted, new or altered buildings may require a Building Warrant. There is more Building Standards information at [www.edinburgh.gov.uk/buildingwarrants](http://www.edinburgh.gov.uk/buildingwarrants). For detailed information please go to the [Scottish Government website](#).

## Road Permit

You must get a permit to the Council if you want to carry out work in or to occupy a public street. A [road permit](#) will be required if forming a new access or driveway or if placing a skip or excavation in a public road. It will also be required for scaffolding

or to occupy a portion of the road to place site huts, storage containers, cabins, materials or contractors plant, to put up a tower crane or to operate mobile cranes, hoists and cherry pickers from the public highway. For more information contact the Areas Roads Manager in your [Neighbourhood Team](#).

## Licensing

Some activities, such as the sale and supply of alcohol or late hours catering, require a licence. Please contact [Licensing](#) for more information on 0131 529 4208 or email [licensing@edinburgh.gov.uk](mailto:licensing@edinburgh.gov.uk).

[The Civic Government \(Scotland\) Act 1982 \(Licensing of houses in Multiple Occupation\) Order 2000](#), requires operators of HMOs to obtain a licence allowing permission to be given to occupy a house as a HMO where it is the only or principal residence of three or more unrelated people.

## Table and Chairs Permit

If your business sells food and drink you may be able to get a permit from the Council to put tables and chairs on the public pavement outside your business.

A [tables and chairs permit](#) allows you to put tables and chairs on the public pavement between 9am and 9pm, seven days a week and is issued for either six or twelve months. For more information please email [TablesChairsPermits@edinburgh.gov.uk](mailto:TablesChairsPermits@edinburgh.gov.uk) or phone 0131 529 3705.

## Biodiversity

Some species of animals and plants are protected

by law. Certain activities, such as killing, injuring or capturing the species or disturbing it in its place of shelter, are unlawful. It is also an offence to damage or destroy a breeding site or resting place (or obstruct access to).

If the presence of a European Protected Species (such as a bat, otter or great crested newt) is suspected, a survey of the site must be taken. If it is identified that an activity is going to be carried out that would be unlawful, a license may be required.

More information on European Protected Species, survey work and relevant licenses is available on the [Scottish Natural Heritage website](#).

## Trees

If there are any trees on the site or within 12 meters of the boundary, they should be identified in the application. Please refer to [the Edinburgh Design Guidance \(chapter 3.5\)](#) for advice.

All trees in a Conservation Area or with a Tree Preservation Order are protected by law, making it a criminal offence to lop, top, cut down, uproot wilfully, damage or destroy a tree unless carried out with the consent of the council. To apply for works to trees, go to [www.eplanning.scot](http://www.eplanning.scot).

## Trade Waste

Proposals for commercial use of a property should ensure that there will be sufficient storage space off street to store segregated waste containers, in line with the Council's Trade Waste policy.

# Changing a Residential Property to a Commercial Use

## What does this chapter cover?

### Changes of use to:

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

This guideline is not intended to address new hotel development which is covered by [Edinburgh Local Development Plan \(LDP\) Policy Emp 10 Hotel Development](#).

Where an extension to a residential property is required to then run a business from home, please refer to the [Guidance for Householders](#) to understand what permissions are required.

## When is planning permission required?

Some activities within a residential property can be undertaken without requiring planning permission. Some common enquiries are given below.

## What should I do if it is permitted development?

If you believe planning permission is not required, you can apply for a [Certificate of Lawfulness](#) for legal confirmation.

## Private day nurseries

The change of use from a residential property to a private day nursery requires planning permission.

Where child minding is undertaken from a residential property, whether a change to a private day nursery has occurred will be assessed on a case by case basis. Consideration will be given to the number of children, the frequency of activity and the duration of stay. The criteria under 'Running a business from home' should also be considered.

## Houses of Multiple Occupation (HMOs)

The sharing of accommodation by people who do not live together as a family is controlled at the point at which there is considered to be a material change of use. For houses, Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 considers this to be when more than 5 people are living together, other than people living together as a family. As with houses, the Council would also expect a material change of use to occur in flats when more than 5 unrelated people share accommodation. All planning applications for Houses in Multiple Occupation (HMOs) are assessed using LDP Policy Hou 7: Inappropriate Uses in Residential Areas, having regard to the advice below.

## Running a business from home

Proposals which comply with all the following may not need planning permission, but always check with the council first.

- There should be no change in the character of the dwelling or the primary use of the area. For example, signage, display of commercial goods, increased pedestrians and vehicular movements, noise etc.
- There should be no more than the parking of a small vehicle used for commercial and personal purposes within the curtilage of a dwelling house.
- Any ancillary business should not be detrimental to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, ash, dust, or grit.
- There should be no impact on the amenity or character of the area as a result of visitors or deliveries to the property.
- The primary use of the property must be domestic and any members of staff on the premises should have no impact on the amenity and character of the property.

## Using your home as a guest house

Planning permission will not be required for the use of a house as a bed and breakfast or guest house if:

- The house has less than four bedrooms and only one is used for a guest house or bed and breakfast purpose
- The house has four or more bedrooms and no more than two bedrooms are used for a guest house or bed and breakfast purpose.

Planning permission will always be required if a flat is being used as a guest house or bed and breakfast, regardless of the number of rooms.

## Short Term Let Accommodation

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 let 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](#).



## What to consider if planning permission is required

### Policy Hou 7

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.

### Amenity

Proposals for a change of use will be assessed in terms of their likely impact on neighbouring residential properties. Factors which will be considered include background noise in the area and proximity to nearby residents.

In the case of private day nurseries, whether nearby residential uses overlook the garden will also be considered. This is due to the potential for increased noise to those households.

### Road Safety and Parking

The *car parking standards* define the levels of parking that will be permitted for new development and depends on the scale, location, purpose of use and the number of staff. Parking levels will also be dependent on the change of use and proximity to public transport.

The existing on-street parking and traffic situation will be important considerations in this assessment. The location should be suitable to allow people and deliveries to be dropped-off and collected safely. This is especially important for children going to and from a private day nursery. The potential impact on vulnerable road users – cyclists and pedestrians – will also be a consideration.

### Parking in Gardens

The provision of new car parking should have regard to character and setting of the property and should normally preserve a reasonable amount of front garden. In a conservation area parking in the front garden would only be considered if there was an established pattern and it was part of the character of the area. Parking in the front garden of a listed building is not likely to be supported and there is normally a presumption against loss of original walling and railings and loss of gardens. Further information on the design of parking in gardens can be found in the *Guidance for Householders*.

### Flatted Properties

Change of use in flatted properties will generally only be acceptable where there is a private access from the street, except in the case of HMOs. Nurseries must also benefit from suitable garden space.

### Further information

If a proposal has the potential to result in impacts then these should be addressed at the outset so they can be considered by the case officer. Examples of information that may be required include:

- An acoustic report if there is potential for noise impact.
- Details of ventilation systems if the application has the potential to create odour problems, and details of the noise impact of any proposed ventilation system.
- Details of any plant and machinery
- Details of attenuation measures if structure-borne and air-borne vibrations will occur.

## Short Term Let Accommodation

Applications for a change of use to short term let accommodation will be assessed and determined against the development plan, both with respect to LDP policy Hou 7 and National Planning Framework 4 (NPF 4) policy 30(e), and material considerations. The table below principally provides guidance in respect of LDP Policy Hou 7. It may also provide some assistance in considering NPF 4 Policy 30 (e) (i). This table is not relevant to the consideration of NPF 4 Policy 30 (e) (ii).

<p>The character of the new use and of the wider area.</p>	<p>Where the location is predominantly commercial in character and there are no residential properties in close proximity, adverse impacts on amenity are less likely. This means it is more likely permanent short-term lets (STLs) can be supported in such locations.</p> <p>Where the location is mixed in character (residential / commercial) regard will be had to the nature of surrounding uses and the proximity of the proposal site to residential properties.</p> <p>Where the street has a quiet nature or low ambient noise levels (particularly at night-time), permanent STL will not generally be supported. No weight will be given to the existence of neighbouring unlawful STLs as justification for the grant of planning permission for an STL.</p> <p>The Planning service will assess the merits of any proposal against its impact on the lawful planning use of nearby properties. Where the area is wholly residential, it is unlikely that short-term let proposals will be supported.</p>
<p>The size of the property.</p>	<p>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.</p>
<p>The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand.</p>	<p>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 permanent STL use where multiple sets of guests stay for short periods of time throughout the year. Guests 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.</p> <p>If the property does have its own main door access regard must be had to the other criteria within this table.</p> <p>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 of activity associated with a use, only limited regard can be had to how an applicant intends to manage that.</p>
<p>The nature and character of any services provided.</p>	<p>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. Where parking is provided, this will be considered within the context of the Council’s parking policies and guidance.</p>

# Changing to a Food or Drink Use

## What does this chapter cover?

Uses such as:

- Restaurants, cafes and snack bars (Class 3)
- Hot food takeaways (Sui Generis)
- Cold food takeaways which are classed as a shop (Class 1)
- Public houses and bars (Sui Generis)
- Class 7 uses (hotels and hostels) licensed or intending to be licensed for the sale of alcohol to persons other than residents or persons other than those consuming meals on the premises. i.e. with a public bar.

### It does not include:

- Class 7 uses (hotels and hostels) without a public bar.

## When is planning permission required?

Some food and drink uses do not require planning permission. Information on some common enquiries is given on this page.

## Changing a shop to Class 3 use or hot food takeaway

Planning permission is required for a change of use from a shop to a hot food takeaway or to a Class 3 use, such as a café or restaurant. Whether this change has, or will occur will be determined on a case by case basis. Regard will be given to:

- Concentration of such uses in the locality
- The scale of the activities and character and appearance of the property
- Other considerations are the impact on vitality and viability, the effect on amenity and potential road safety and parking problems.

## What should I do if it is permitted development?

If you believe planning permission is not required, you can apply for a [Certificate of Lawfulness](#) for legal confirmation.

## Selling cold food for consumption off the premises

Businesses selling cold food for consumption off the premises, such as sandwich bars, fall within Class 1 shop use. If the building is already in use as a shop then permission is not required.

Some secondary uses alongside the main uses also do not need permission; this is dependant on the scale of the activity.

Ancillary uses which are not likely to require planning permission in addition to a Class 1 shop use are:

- The sale of hot drinks
- The provision of microwaves, soup tureens and/or toasted sandwich machines.  
*Note: hotplates for the cooking of food will generally not be acceptable in a class 1 establishment*
- Seating constituting a very minor element to the overall use. The limit will vary according to the size and layout of the premises
- An appropriately sized café in a larger unit, such as a department store, if it is a relatively minor proportion of the overall floorspace and operates primarily to service the shop's customers.

## What to consider if planning permission is required

### Protecting Shops

#### Policies Ret 9-11

Set out which locations a non-shop use is acceptable. These policies should be considered if a shop will be lost as part of the changes. In some areas of the City, the loss of a shop use will not be permitted. In other areas, certain criteria must be met.

#### Policy Hou 7

sets out when uses will not be permitted in predominantly residential or mixed use areas.

#### Policy Ret 11

Sets out when food and drink establishments will not be permitted.

### Restaurants, cafés, snack bars and other Class 3 Uses

Proposals will be supported in principle in the following locations:

- Throughout the Central Area
- In designated shopping centres
- In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

Proposals in predominantly housing areas will not normally be permitted.

### Hot Food Takeaways

With the exception of proposals within areas of restriction (shown on the next page), proposals will be supported in principle in the following locations:

- Throughout the city centre area as shown in the adopted Edinburgh Local Development Plan (LDP)
- In designated shopping centres as shown in the LDP
- In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

Proposals in the areas of restriction will only be accepted if there will be no adverse impact upon existing residential amenity caused by night-time activity. Where acceptable, this will normally be controlled through conditions restricting the hours of operation to 0800 to 2000.

Proposals in predominantly housing areas will not normally be permitted.

Where a restaurant's trade is primarily in-house dining but a minor element is take-away food then this still falls within the Class 3 use. Where take-away is a minor component of the business it will not require planning permission.

You can find out whether a site is located in the city centre area or a designated shopping centre through the online proposals map for the LDP, which can be accessed via the following link: <https://edinburghcouncil.maps.arcgis.com/apps/webappviewer/index.html?id=d1e3d872be424df5b89469de72bb03bd>

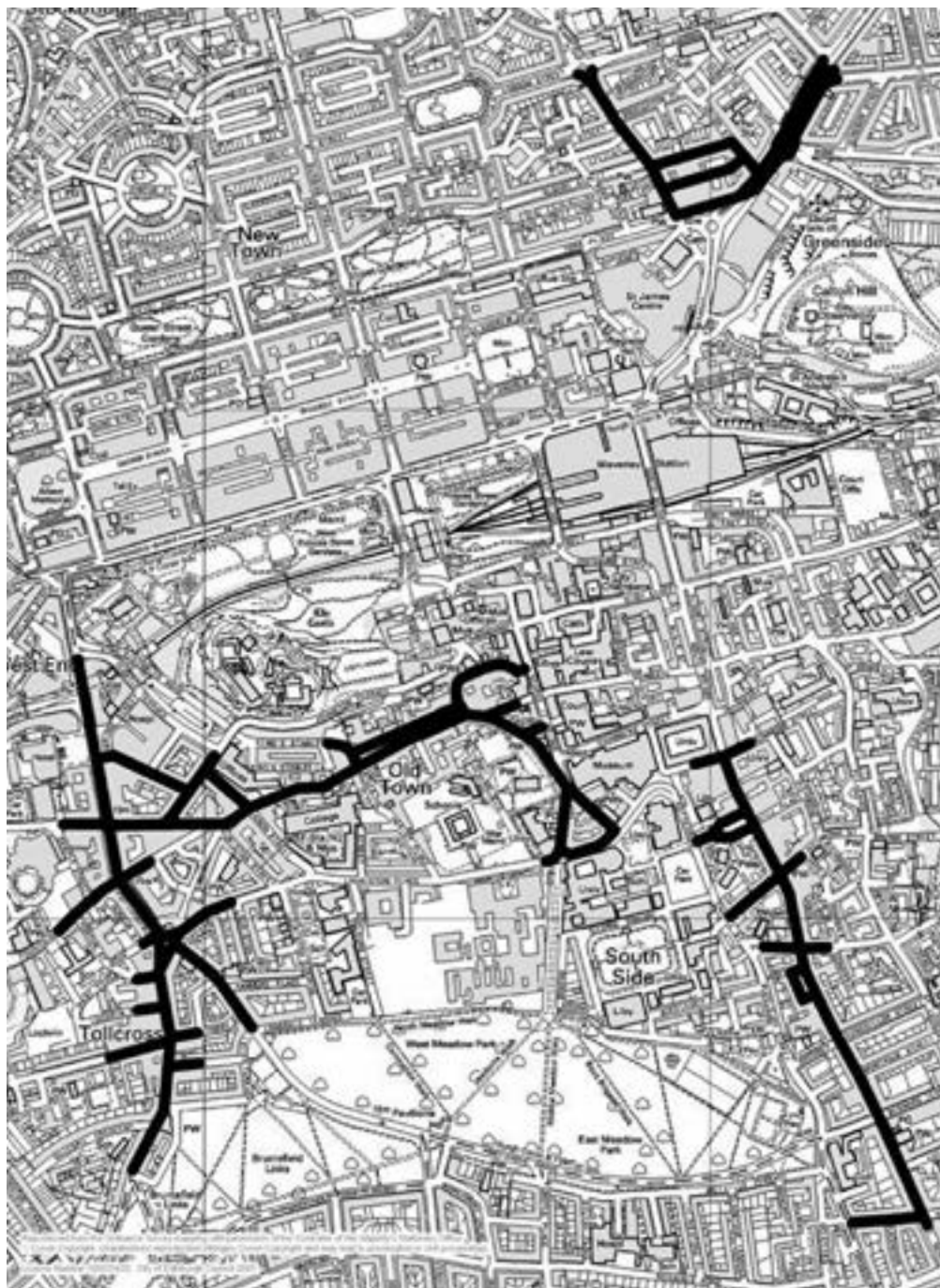
### Public houses, entertainment venues and hotels outwith Class 7 (Hotels and Hostels)

In all locations, these uses should be located so as not to impinge on residential surroundings. Accordingly, such developments, with the exception of public houses designed as part of a new build development, will not be allowed under or in the midst of housing<sup>1</sup>

There will be a presumption against new public houses and entertainment venues in the areas of restriction (shown on Page 10). Proposals for extensions to venues in the areas of restriction will only be accepted if there will be no adverse impact of the residential amenity caused by night time activity.

Proposals in predominantly housing areas and residential side streets will not normally be permitted.

[1] "Under or in the midst of housing" means a) where there is existing residential property above the application site or premises; or b) where there is existing residential property immediately adjoining two or more sides of the building or curtilage comprising the application site. "Residential property" means dwelling houses, flats or houses in multiple occupancy and includes any vacant units.



## Ventilation

If the use is acceptable in principle, establishments with cooking on the premises must satisfy ventilation requirements to ensure that they do not impinge on the amenity of the residential area or other neighbourhoods.

An effective system for the extraction and dispersal of cooking odours must be provided. Details of the system, including the design, size, location and finish should be submitted with any planning application. A report from a ventilation engineer may also be required where it is proposed to use an internal route in an existing building for ventilation ducting.

The ventilation system should be capable of achieving 30 air changes an hour and the cooking effluvia ducted to a suitable exhaust point to ensure no cooking odours escape or are exhausted into neighbouring premises.

Conditions shall be applied to ensure the installation of an effective system before any change of use is implemented, and/or the restriction of the form and means of cooking where necessary.

On a listed building or in a conservation area, the use of an internal flue should be explored before considering external options. The flue would need planning permission and listed building consent in its own right.

## Design

Any external duct should be painted to match the colour of the existing building to minimise its visual impact.

## Location

Ventilation systems should be located internally. Where this is not practicable, systems located to the rear may be considered.

## Noise

Conditions may be put in place to ensure that there is no increase in noise that will affect the amenity of the area.

*The map identifies areas of restriction. These are areas of mixed but essentially residential character where there is a high concentration of hot food takeaways, public houses and entertainment venues.*

# Changing a Commercial Unit to Residential Use

## When is permission required?

Planning permission is required to convert a business to a house or flat. Permission will also be required for physical alterations to any external elevation. Listed building consent, where relevant, may also be required.

## What to consider if planning permission is required

### Protected shops

Policies Ret 9-11

set out when a non-shop use is acceptable. They should be considered if a shop will be lost as part of the changes.

In some areas of the city, the loss of a shop use will not be permitted. In other areas, certain criteria must be met. These policies should be considered for more information.

## Amenity

Policy Hou 5

Sets out the criteria to be met by proposals to convert to residential use.

Applications for a change of use will need to prove that the quality and size of accommodation created is satisfactory.

Units with insufficient daylight will be unacceptable; proposals should fully meet the council's daylight requirements in the [Edinburgh Design Guidance](#). Basement apartments with substandard light will only be accepted where the remainder of the created unit represents a viable unit in its own right with regards to adequate daylight.

Dwelling sizes should meet the following minimum requirements and exceeding these standards is encouraged. Provision of cycle and waste storage is encouraged and may be required in some instances.

Number of Bedrooms	Minimum Gross Floor Area (sq m)
Studio	36
1 (2 persons)	52
2 (3 persons)	66
2 (4 persons)	81
3 (4 persons)	81
Larger Dwellings	91

## Design

**New designs should be of a high quality and respect their context**

- 1. Consider the architectural or historic merit of the shopfront and its context and identify an appropriate design from one of the following three basic approaches.**

### Retain the shopfront



*Henderson Street*

Retaining the existing shopfront and adapting it for residential use is a simple method of conversion and ensures the property fits well within its context. Where the shopfront is of architectural or historic merit this will be the only appropriate design.

A design which retains the shop front could be used in residential areas or within a row of shops.

### Simple contemporary design



*Royal Park Terrace*

Simple contemporary designs are often the most successful. The existing structural openings should be retained and any features of architectural or historic merit retained and restored. High quality materials should be used.

A simple contemporary design could be used in residential areas or within a row of shops.

### Residential appearance

Conversions with a residential appearance are rarely successfully achieved. Attention should be paid to structural openings, materials and detailing to ensure the new residential property does not stand out from its context.

Windows which are a version of those on the upper floors in terms of proportions, location and detail are usually most appropriate. Doors should relate to the scale of the building and should not result in a cluttered appearance.

Paint work should be removed to expose the stone or toned to match the building above.

A design with a residential appearance may be appropriate in residential areas but not within a row of shops.



### Consider the privacy of residents

To create privacy within the property, shutters or moveable screens behind the window could be considered as an alternative to frosted glass. Where considered acceptable, frosted glass should not occupy more than 50% of the height of the window. Retaining recessed doors also provides a degree of separation from the street. Metal gates could also be added.

# Altering a Shopfront

There should always be a presumption to improve, where possible, a poor shopfront.

## Understanding your shopfront

Policy Des 12 sets out the principles for altering a shopfront

### 1. Consider the period of the building and the style of the shopfront

Shopfronts come in many styles, reflecting the different periods of architecture in Edinburgh. Those of architectural merit or incorporating traditional features or proportions should be retained and restored.

### 2. Determine whether there are any original or important architectural features or proportions which need to be retained

The pilasters, fascia, cornice and stallriser form a frame around the window and should be retained. Recessed doorways, including tiling, should not be removed. Original proportions should be retained.



Pilasters



Cornice



Stallriser



### 3. Identify any inappropriate additions which should be removed

Large undivided areas of plate glass can be appropriate within a small shopfront, however over a larger area can appear like a gaping hole over which the upper storeys look unsupported.

Large deep fascia boards and other claddings should be removed and any original features reinstated.



Deep Fascia



Proportions



Cladding

### Good Example

At 37-41 Nicolson Street, Edinburgh, restoration work has been carried out to remove modern additions and unveil the original Victorian shopfront of 'McIntyre's Drapery Stores'. Architectural features, including the cornice, pilasters and glazing bars have been exposed. Views into the store have now been opened up and the shop is more noticeable in the street.



### Context

**Shopfronts should be designed for their context**

#### 1. Consider the relationship of the frontage to the rest of the street

The relationship of the frontage to the established street pattern should be considered, particularly in terms of fascia and stallriser height and general proportions. Alterations should preserve and strengthen the unity of the street.



One shopfront across two separate buildings will not normally be acceptable as it disrupts the vertical rhythm of the facades above.



## 2. Consider the relationship to features on the upper floors

Where units have a narrow frontage and vertical emphasis, they should retain their individual integrity, rather than attempting to achieve uniformity with adjoining properties.



## Good Examples



St Stephen Street



William Street



Grassmarket

## New Design

New designs should be of high quality and respect their surroundings

### 1. Identify the features or proportions which will need to be retained or restored

The pilasters and frame should be retained, even if the rest of the frontage is not of sufficient quality to merit retention.

Poorly designed fascias and pilasters do not make up a well composed frame. Pilasters should not be flat to the frontage and fascias should not exceed one-fifth of the overall frontage height or be taken over common staircases. Stallrisers should be in proportion to the frontage.

Cornice which continues from the adjacent frontages will require to be restored. No part of the frontage should be located above this.

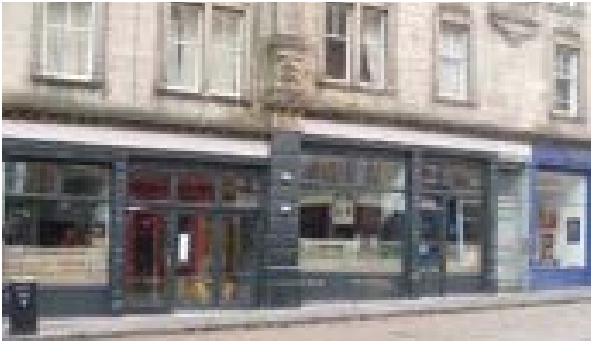
### 2. Consider the design and materials to be used

Where a new frontage is considered appropriate, there is no particular correct style. Modern designs will be considered acceptable providing they incorporate high quality materials, are well proportioned, and retain any features of architectural merit.

Reproduction frontages should be based on sound historical precedent in terms of archival evidence or surviving features.

Appropriate spacing and cornice should be used to create a visual break between the frontage and the building above.

## Good Examples



Barclay Place



Bread Street

In general, natural and traditional materials, such as timber, stone, bronze, brick and render should be used. These should be locally sourced from renewable or recycled materials, wherever possible. Frontages clad in incongruous materials will not be acceptable.

## Paint and Colour

### When is permission required?

Planning permission, and where relevant listed building consent, will be required to paint a building which is listed or within a conservation area, including a change of colour.

Planning Permission will not be required to paint an unlisted building out with conservation areas. However the painting and colour of a building should reflect its character and the area.

## Good Example



Victoria Street

## Listed Buildings and Conservation Areas

### Paint

Unpainted stonework and other good quality materials should not be painted.

### Colour Schemes

The creation of a strong identify for a business must come second to an appropriate balance with the context. Colour schemes should clarify the architectural form and not apply alien treatments and design. The most successful are simply schemes which employ only one or two colours.

Muted or dark colours are preferable.

### Uniform Appearance

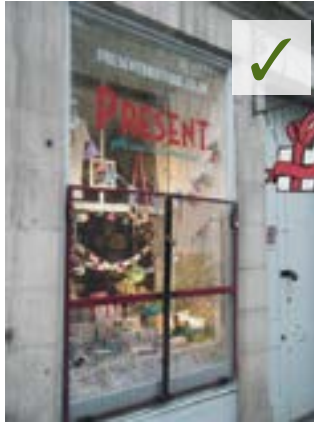
Coordinated paint schemes are encouraged and should be retained where present. In particular, common details, such as arches and pilasters, should have a uniform treatment. Similar lettering and signage should also be used.

The range of colours within a block should be limited.

## Security

### 1. Determine whether a security device is necessary and consider alternative solutions

Security devices should not harm the appearance of the building or street. Toughened glass or mesh grilles could be used as an alternative to security shutters.



### 2. If a device is considered acceptable, consider its location in relation to the window

Where shutters are not common within the immediate area, they should be housed internally, running behind the window.

Elsewhere, shutters should be housed behind the fascia or a sub-fascia.

Shutters should not be housed within boxes which project from the front of the building.

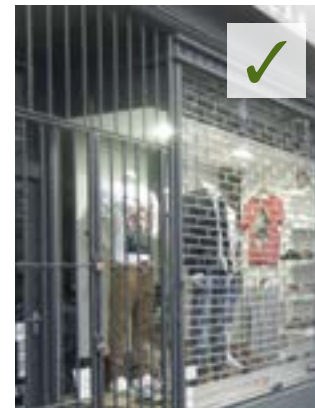


### 3. Identify an appropriate shutter design

Solid roller shutters are unacceptable. They do not allow window shopping at night, the inability to view the inside of the shop can be a counter security measure and they tend to be a target for graffiti.



Roller shutters of the non-solid type may be acceptable in a perforated, lattice, brick bond or open weave pattern. Shutters made up of interlocking clear polycarbonate sheets running externally to the glass may also be acceptable.



Where there is evidence of early timber shutters, they should be restored to working order or replaced to match.

External roller shutters require planning permission.



### Listed Buildings and Conservation Areas

Externally mounted shutters will not be considered acceptable.

The most appropriate security method is toughened glass. Internal open lattice shutters or removable mesh grilles may also be acceptable.

Metal gates are most appropriate on recessed doors.

Shutters should be painted an appropriate colour, sympathetic to the rest of the frontage and immediate area.

## Blinds and Canopies

### 1. Consider whether a blind or canopy is appropriate on the building

Blinds and canopies should not harm the appearance of the building or street.

Traditional projecting roller blinds, of appropriate quality, form and materials, will be considered generally acceptable

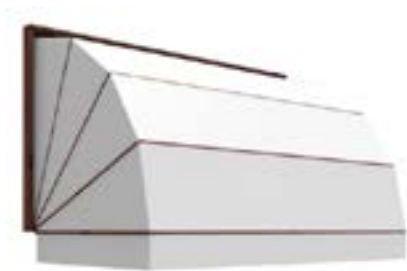
Dutch canopies will not be acceptable on traditional frontages where important architectural elements would be obscured.

### Listed Buildings and Conservation Areas

Dutch canopies will not be acceptable on listed buildings or in conservation areas.

Blinds and canopies will not be considered acceptable on domestic fronted buildings.

Solar glass and film are acceptable alternative methods of protecting premises from the sun, providing they are clear and uncoloured.



Dutch canopy

### 2. If acceptable, consider the location of the blind or canopy

Blinds and canopies should fold back into internal box housings, recessed within the frontage. They must not be visually obtrusive or untidy when retracted.



Boxes housing blinds and canopies that project from the building frontage will not be acceptable.

Blinds and canopies will not be acceptable above the ground floor level.



### 3. Determine an appropriate design and materials

Blinds and canopies must be made of high quality fabric. Shiny or high gloss materials in particular will not be supported.

An advert, including a company logo or name, on a blind or canopy will need advertisement consent.



Other works affecting or relating to a shopfront or other business which may require planning and/or listed building consent:

- Installation of garlands, particularly if they are supported by a structure
- Free standing advertisement fixtures, awnings, flagpoles and banners

Where permission is **required** these will generally not be acceptable.

## Automatic Teller Machines

### 1. Consider whether an ATM will be acceptable

ATMs should not impact upon the character of the building or area.

Free standing ATMs add to street clutter and will not be considered acceptable.

ATMs may be considered acceptable when integrated into a frontage, providing no features of architectural or historic interest will be affected and the materials and design are appropriate.

### 2. If acceptable, consider the location, design and access

Consideration should be given to pedestrian and road safety. Terminals should be sited to avoid pedestrian congestion at street corners and narrow pavements. The assessment of the impact on road safety will include any potential increase in the number of vehicles stopping, visibility and sightlines.

The use of steps for access to ATMs should be avoided and the units should be suitable for wheelchair access.

Where ATMs are removed, the frontage should be reinstated to match the original.

### Listed Buildings and Conservation Areas

Consideration should first be given to locating the ATM internally. For guidance on internal alterations, consider the Listed Buildings and Conservation Area guidance.

Externally, ATMs should be located in a concealed position on the façade, within an inner vestibule or on a side elevation.

ATMs should not be fitted to finely detailed façades or shopfronts of historic or architectural merit. They will not be acceptable where stone frontages, architectural features or symmetry will be disturbed. New slappings (knocking a hole through a wall to form an opening for a door, window etc) will be discouraged.

Only one ATM will be allowed on the exterior of any building.

Where acceptable, the ATM should not be surrounded by coloured panels or other devices and signage should not be erected. The ATM and any steps or railings, where necessary, should be formed in high quality materials and be appropriate to the area. Surrounding space should match the façade in material and design.

### Permissions Required

ATMs which materially affect the external appearance of a building require planning permission. Listed building consent may also be required for an ATM on a listed building. In addition, advertisement consent may be required for any additional signage.

### Air Conditioning and Refrigeration

#### Location

Air conditioning and refrigeration units should not be located on the front elevation or any other conspicuous elevations of buildings, including roofs and the flat roofs of projecting frontages.

It will normally be acceptable to fix units to the rear wall. These should be located as low as possible.

### Design

Units should be limited in number, as small as practicably possible and painted to tone with the surrounding stonework or background.

### Listed Buildings and Conservation Areas

The preferred location for units on listed buildings and within conservation areas are:

- standing within garden or courtyard areas (subject to appropriate screening and discreet ducting)
- Within rear basement areas
- Inconspicuous locations on the roof (within roof valleys or adjacent to existing plant). However, in the New Town Conservation Area and World Heritage Site, aerial views will also be considered.
- Internally behind louvers on inconspicuous elevations. This should not result in the loss of original windows.

Where it is not practicably possible to locate units in any of the above locations, it may be acceptable to fix units to the wall of an inconspicuous elevation, as low down as possible.

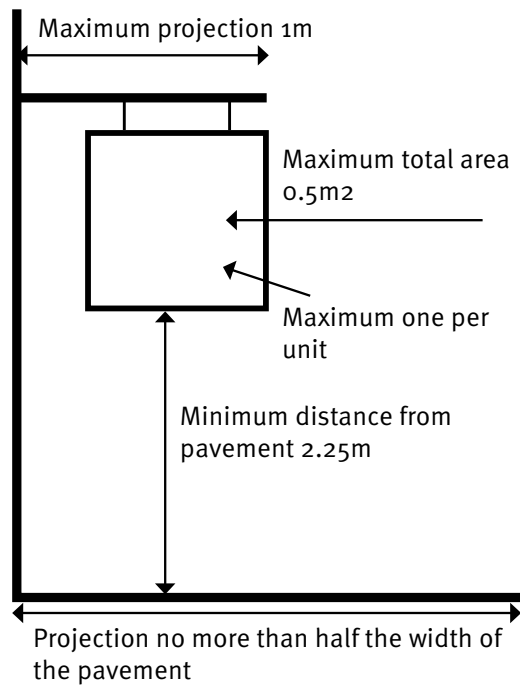
Units should be limited in number, as small as practicably possible and painted to tone with the surrounding stonework or background.

Ducting must not detract from the character of the building.

# Signage and Advertisements

## 1. Consider the scale, location and materials of the advertisement and any lettering

High level signage is not normally considered acceptable.



NB. Dimensions may be reduced for smaller frontages

## Projecting and Hanging Signs

Traditional timber designs are most appropriate on traditional frontages.



## Fascia

Box fascia signs applied to existing fascias are not considered acceptable.

Individual lettering should not exceed more than two thirds the depth of the fascia, up to a maximum of 450mm.

## Princes Street

Projecting signs and banners will not be supported. Illumination must be white and static.

## Listed Buildings, Conservation Areas and Royal Mile

Signage obscuring architectural details is not acceptable.

Signage should be timber, etched glass or stainless steel; synthetic materials are not appropriate.

Signage should harmonise with the colour of the shopfront.

Applied fascia boards/panels will not normally be acceptable. Lettering shall be applied directly onto the original fascia. If there is an existing applied fascia board/panel in place, this should a) be removed and the original fascia restored, or b) an appropriate new fascia applied but only where there is no original fascia.

Letters must be individual and hand painted.

On buildings of domestic character, lettering or projecting signs are not acceptable. Guidance on alternative signage is given on the next page.

In the Royal Mile area of Special Control, there are additional controls on advertisements.

## 2. Consider an appropriate method of illumination

External illumination will only be acceptable if unobtrusive.

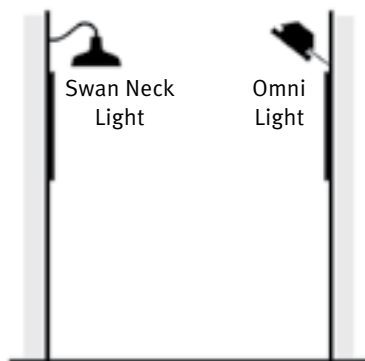
Individual letters should be internally or halo lit. Discreet spotlights painted out to match the backing material or fibre optic lighting may also be acceptable. Illumination must be static and no electrical wiring should be visible from outside of the premises. White illumination is preferable.

Projecting signs should only be illuminated by concealed trough lights.

LED strip lighting to illuminate signage may be acceptable where it can be positioned discreetly on the shop front.

### Listed Buildings and Conservation Areas

Swan neck lights, omni-lights on long arms or trough lights along the fascia will not normally be acceptable. Letters should be halo or internally lit.



## 3. Consider alternative advertisements

### Internal Advertisements

Advertisements behind the glass should be kept to a minimum to allow maximum visibility into the premises.



### Directional Signs/ Temporary On-Street Advertising / A boards

Advance directional signs outwith the curtilage of the premises to which they relate (including 'A boards' and other temporary on-street advertising) will not be permitted.

### Guest Houses

Houses in residential use (Class 9) but with guest house operations should not display signs, except for an official tourism plaque or a window sticker.

For properties operating solely as a guest house (Class 7), any pole signs located in front gardens should not exceed 0.5sq metres in area.

### Listed Buildings and Conservation Areas

#### Basement properties

Basement properties may be identified by a name plate or modest sign on the railings, or where they don't exist, discreet and well designed pole mounted signs may be acceptable.



#### Buildings of domestic character

On buildings of domestic character, identification should consist of a brass or bronze nameplate, smaller than one stone. Where the building is in hotel use, consideration will be given to painted lettering on the fanlight or a modest sign on the railings.



# Cycle Storage

Commercial buildings which operate under class 4, 5 or 6 of the use classes order\* have permitted development rights to erect a structure for the purpose of the temporary storage of pedal cycles, provided that the following criteria are met:

- The structure will not be sited within the curtilage of a listed building
- If the site is located in a conservation area, the structure will be located within the front curtilage of the commercial building
- The structure will not obstruct the clear line of sight of a road or footpath by the driver of a vehicle entering or leaving the commercial building (a driver's view of pedestrians and drivers on the footpath and road next to the building should not be worsened as a result of the structure being erected)
- The structure would create an obstruction to light to another building

To get written confirmation that you do not require planning permission you can apply for a Certificate of Lawfulness. You can do this online and you will get a decision from us on whether permission is required. This certificate can be used to confirm you do not need permission. It can also be useful should you decide to sell or rent the premises, or if you are asked if you have permission for ancillary buildings.

Note: The planning authority will not provide informal opinions as to whether a building will obstruct either the clear sight of a driver, or light to another building. If you wish to seek clarification as to whether your proposal complies with these requirements in order to be considered permitted development, a certificate of lawfulness must be applied for.

## \* Use classes order

### Class 4 - Business use

- As an office, other than a use within class 2 (financial, professional and other services)
- For research and development of products or processes
- For any industrial process

Being a use which can be carried on in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

### Class 5 - General Industrial

Use for the carrying on of an industrial process other than one falling within class 4 (business)

### Class 6 - Storage or distribution

Use for storage or as a distribution centre





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