

Planning Committee

10.00am, Wednesday, 30 September 2020

Financial implications of addressing potential short term lets

Executive/routine	
Wards	All
Council Commitments	

1. Recommendations

- 1.1 It is recommended that Committee notes:
 - 1.1.1 the financial implications of three scenarios set out in paragraphs 4.7 – 4.16; and
 - 1.1.2 that any individual report of a short-term let to the Council's 'Report a Possible Breach of Planning Controls Form' webpage will be fully investigated.

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Report

Financial implications of addressing potential short term lets

2. Executive Summary

- 2.1 A report was provided to Planning Committee on [2 September 2020](#) on Short Term Letting in Edinburgh. This report was prepared in response to Council agreeing a motion by Councillor Staniforth on [28 July 2020](#), as amended, to ask the Chief Planning Officer to prepare a response to issues contained in a report on commercial short term lets published by Andy Wightman MSP.
- 2.2 On 2 September 2020, Committee noted that paragraph 6 of that current report did not include an estimate of the cost of commencing enforcement action against any of those 380 properties identified in Andy Wightman MSP's report. It therefore agreed to receive a further report, within one cycle, setting out the likely cost of commencing enforcement action on those 380 properties.

3. Background

- 3.1 Andy Wightman MSP published a report in July 2020 of findings from a survey he conducted to identify the location of commercial short term let properties in Edinburgh. The survey identified 477 properties which were considered to be operated on a commercial basis, with no permanent resident, in the period January to June 2020.
- 3.2 From the full survey data, he identified 444 properties where there appeared to be use of a communal entrance or access. He supplied a list of addresses of such properties to the Chief Planning Officer. Using Planning Enforcement information available on the Council's Portal, the survey identified that 380 of these properties appeared not to have been reported to the Council previously.
- 3.3 Of the 477 commercial short term let addresses identified in the report, the survey could only identify that one had sought and obtained planning permission for such a use.

4. Main report

- 4.1 The 2 September 2020 report recommended that Committee:
- 4.1.1 notes the findings of the survey;
 - 4.1.2 supports the continued focus of Planning enforcement activity on cases where there is robust evidence of harm to residential amenity; and
 - 4.1.3 reinforces the use of the Council's reporting facility to capture the information required for Planning enforcement investigations.
- 4.2 Carrying out enforcement in relation to potential breaches of planning control in relation to short term lets is a complex process. It takes considerable time to gather details about properties, their ownership and to establish whether there has been a breach of planning control. Where there have been breaches of planning control it is then necessary to decide whether these are relatively minor in nature or are of a more significant nature that requires action to be take. Enforcement action can be conducted informally or formally through the serving of notices and ultimately through recourse to the courts.
- 4.3 In cases where enforcement action in relation to short term lets are appealed by those subject to enforcement notices to the Scottish Government's Department of Planning and Environmental Appeals (DPEA), the DPEA has dismissed these appeals where it has clearly been established the change of use from dwelling to short term let is causing harm to neighbouring residential amenity.
- 4.4 In conducting successful enforcement action therefore, it is necessary to understand whether the extent of harm being caused would warrant formal enforcement action.
- 4.5 The list that has been provided is only a list of property addresses that may be being used as short term lets. It is understood that the list was prepared between January and June of this year. Between 26 March 2020 and 15 July 2020, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 prevented holiday let business from being carried out. It is therefore probable that some of these properties are no longer in use as short term lets.
- 4.6 At Committee on 2 September 2020, officers outlined that if Committee wishes action to be taken in relation to the list there are three possible scenarios:
- Scenario 1**
- 4.7 A letter could be sent to each of the 380 properties identified. It would be addressed to the owner of the property and not a named individual. It would highlight that it had been drawn the Council's attention that the property may be being used as a short term let and that there are no records of planning permission being in place. The letter would advise the owner that where there has been a change of use from domestic to commercial property in this way, that planning permission is required and should be applied for but only where it would be in accordance with the Council's Guidance for Businesses.

- 4.8 Without owners' names, it is likely that many of the letters will not be read by owners and could be treated as junk mail. Many of the owners will not be at the properties regularly so even if they do read the letter, it may not be until some-time after it is sent. To ensure it accurately reflects the Council's knowledge, the letter would not be able to state that the Council thinks there has been a breach of planning control. It is likely that this approach would be of limited benefit.
- 4.9 Costs for doing this would be £402 for the cost of printing and posting and between £500 and £1,000 for officer time in preparing the letter, verifying postal addresses and checking whether planning permission is in place. The overall cost for this is therefore between £900 and £1,400.

Scenario 2

- 4.10 To determine ownership, research would have to be done on each of the 380 properties. Assuming that this could be done on average in around one hour for each property and taking account of associated costs in retrieving information from the land registry, it is estimated that this would cost around £10,000 to £12,000 in officer time.
- 4.11 This would enable any letter to be sent to be directed to the owner. Without further investigation however, it is likely that the sending of such letters would be of limited benefit.

Scenario 3

- 4.12 To fully investigate whether there has been a breach of planning control, it would be necessary to conduct further desktop research, serve planning contravention notices (which allows owners/operators to make representations about how the property is used and provide details of other parties who have an interest in the property) and carry out site visits including separate meetings with operators and affected parties. If a breach was established, it would then be necessary to take a view on what the impact of that was upon neighbours. If it was considered that the breach was harmful, consideration would be given to serving a planning enforcement notice which requires the unauthorised use to cease.
- 4.13 In many cases, where notices have been served, there will be planning appeals to the DPEA. Officer time has to be spent on these appeals defending the Council's position.
- 4.14 It is estimated that there would be an initial period of three months involving the full time equivalent of six to ten officers working on the cases. After that period, it is estimated that there would be a period of nine months involving two to three officers. The costs of this would range between £135,000 and £220,000.
- 4.15 However, it is very important to note that it would not be possible to bring in planning officers with experience of enforcement over the time period indicated above. In practical terms, to undertake the investigations, planning officers would require to be diverted from current tasks with the enforcement team and within the wider service, which would have potential impacts on application processing timescales or the ability to bring forward new policy and guidance.

- 4.16 The planning enforcement team considers all potential breaches of planning control. If its time is reprioritised for these cases, its ability to consider these other cases would be diminished and there could be a consequential drop in confidence in the planning system if the wide range of enforcement investigations are narrowed in scope.
- 4.17 It is therefore not proposed that these cases are investigated on the basis of this list.
- 4.18 This does not preclude the investigation of any of these properties if individuals report them on the Council's 'Report a Possible Breach of Planning Controls Form' web page. If these cases are reported in this way it will allow the enforcement team to obtain information about the impacts the alleged use of these properties are having on neighbours. It will allow the service to prioritise its investigations upon those breaches of planning control that are having the greatest harm.

5. Next Steps

- 5.1 As required by Committee on 2 September, the service will conduct an awareness raising programme of planning enforcement and the need to have planning permission for short term lets, where there has been a change of use.
- 5.2 The service will continue to investigate any reports received through the planning enforcement webpage.
- 5.3 Proposals will be brought forward for the designation of a short-term let control area for the city once planning legislation to enable this comes into force in the spring of 2021. In parallel, legislation is being brought forward for the licensing of short-term lets which the Council will be able to implement.

6. Financial impact

- 6.1 The financial implications of the scenarios outlined in section four are set out in that section.
- 6.2 In relation to scenario 1, the administrative cost of £900 to £1,400 could be contained within existing budget.
- 6.3 In relation to scenario 2, the cost of £10,000 to £20,000 is substantively the cost of officer time. It would be spread across Planning and other service areas that support the investigation of property ownership. This could be contained within existing budget, however, there would be an opportunity cost of other enforcement activity requiring to be reprioritised because of time being spent on investigating these cases.
- 6.4 There is no current budget for additional enforcement work. Therefore, in relation to scenario 3, the cost of between £135,000 and £220,000 would be an opportunity cost of diverting staff from current activities and depending on what they are

currently working there could be impacts on other enforcement activity, application processing timescales or the ability to bring forward new policy or guidance.

7. Stakeholder/Community Impact

- 7.1 There will be stakeholder/community impact if the survey data is used and resources are diverted from other enforcement cases where specific harm to residential amenity has been reported.

8. Background reading/external references

- 8.1 Report to Planning Committee of 2 September: [Short Term Letting in Edinburgh](#)

9. Appendices

- 9.1 None.