

EAST RENFREWSHIRE COUNCIL

12 October 2023

Report by Director of Environment

LICENSING OF SHORT TERM LETS

PURPOSE OF REPORT

1. The purpose of this report is to amend East Renfrewshire Council's Short Term Let (STL) Licensing Policy following a change to Scottish Government Guidance. Cabinet is also asked to homologate the decision to update space standards for short term lettings.

RECOMMENDATIONS

2. The Cabinet is asked to:
- a) Note the timescale changes associated with extended application deadlines;
 - b) Homologate the decision to update space standards for short term lettings; and
 - c) Approve the updated STL Policy.

BACKGROUND

3. On the 1st October 2022, it became a statutory requirement for all local authorities in Scotland to have established a short term let licence (The Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022).

4. The definition of a short term let (STL) is broadly defined as a business agreement to use residential accommodation by a guest but excludes: hotels; hostels and other licensable activities e.g. mobile homes. A popular example would be AirBnB. There are 4 categories that are covered in the definition:

- Secondary Letting: Host makes use of separate premise;
- Home Letting: Concerns the use of the host's only or principal home;
- Home Sharing: Concerns the use of the room(s) in the host's only or principal home; and
- Home Letting & Sharing: A mix of both during the licensing period.

5. Members will note a paper submitted on 13 October 2022, seeking approval of the Short Term Licensing Policy and the associated fees. A copy of the paper can be found at the following link, https://www.eastrenfrewshire.gov.uk/media/8247/Cabinet-item-04-13-October-2022/pdf/Cabinet_item_04_-_13_October_2022.pdf?m=638001325779270000.

6. A copy of the existing policy can also be found on the Council's website via the following link, <https://www.eastrenfrewshire.gov.uk/short-term-lets>.

7. The objective of the licensing scheme is to regulate a previously unregulated business activity and aims to improve: guest health and safety; property condition; reduce anti-social behaviour within communities and allow local authorities to determine what impact this business activity has in relation to local planning and housing provision.

8. The deadline for existing hosts to make applications was extended by the Scottish Government from 1st April 2023 to 1st October 2023. The 12 month timescale for the Council to make a determination on the licence application has also been extended to 30th September 2024 (unless planning permission is required - 1st January 2025).

9. New short-term let businesses are unaffected by this extension and therefore have been required to make an application and have it fully approved to operate since October 2022.

REPORT

10. In June 2023, a court ruling declared that parts of City of Edinburgh Council's STL policy were unlawful.

11. Following this ruling, the Association of Scottish Self Caterers wrote to the Scottish Housing Minister. They intimated legal action against other Scottish local authorities for potential "illegalities" in their STL policy if the Minister did not extend the STL Licensing deadline by a further six months and instruct a review of policy. The Scottish Government have stated that they have no plan to extend the deadline further: <https://www.assc.co.uk/representation/local-authority-short-term-let-licensing-policies-illegalities>.

East Renfrewshire Council Policy on STL Space Standards

12. East Renfrewshire Council has received 2 enquiries from STL operators regarding the existing space standards. Of 4 properties managed by these operators, 3 may be unable to meet the bedroom space standards set out in the existing policy. These are traditional build 2 and 3 bedroom houses. They further advised that other local hosts are also considering exiting the market as they feel that they cannot comply with the space standards set out in our current policy.

12. Each local authority previously had discretion to decide to how to apply space standards to STL licences. East Renfrewshire decided to base space standards on the overcrowding standards contained within the Housing Scotland Act (HSA) 1987, specifically following the approach of existing licensing functions e.g. House in Multiple Occupation (HMO). This was permitted in the original Scottish Government guidance.

13. New published Scottish Government guidance states: "in determining an appropriate maximum occupancy for a short term let premises, licensing authorities should note that minimum space standards that apply to HMO licensing do not apply to short term lets. Guests staying in a short term let may be prepared to accept staying in a smaller room that does not meet the HMO bedroom space standards in a number of cases such as city breaks where the room is only used as a bed for the night, or where the premises has large living accommodation".

14. The existing policy has been amended in accordance with this new guidance. The policy will still utilise statutory space standards set out in the HSA 1987. However where the space standards are not met, properties will be inspected jointly by Housing Services and colleagues from Environmental Health to determine the risks.

15. Due to the timescales for the introduction of the licensing regime it has been necessary for the space standards to be reviewed immediately. Failure to do so may encourage hosts to leave the market and damage tourism in East Renfrewshire. In approving this change the Convener for Environment and Leader of the Council were consulted and homologation of the decision is now sought.

Additional Conditions for STL Licences

16. The updated guidance also requires local authorities to be more explicit about the use of additional conditions and when they are likely to apply. Additional conditions cover issues such as hot tubs, waste disposal and anti-social behaviour. However additional conditions if applied, must be applied to all properties and not on a case by case basis.

17. Current evidence and consultation feedback has highlighted concerns around: noise; litter and (where applicable) hot tubs. Therefore the policy has been reviewed to focus only on these areas. However members should note that other concerns can still be addressed through the existing enforcement powers.

FINANCE AND EFFICIENCY

18. There are no adverse implications on finance and efficiency from the recommendations within this report. It is however important to note that true income and expenditure costs will not be known until 2024/25.

CONSULTATION AND PARTNERSHIP WORKING

19. In addition to the previous public consultation, the policy has been reviewed using views from individual STL hosts/operators, benchmarking with other local authorities and updated guidance from the Scottish Government.

20. A forum for hosts was held on the 16th August 2023. The new proposals were discussed and majority consensus (70%) wanted a flexible approach to overcrowding standards applied to space standards and did not see a need for temporary exemptions and licences.

21. Consultation has taken place with Legal Services, Environmental Health in relation to the recommendations.

IMPLICATIONS OF THE PROPOSALS

22. There are no implications with these proposals in terms of staffing, legal, property or sustainability.

23. An Equalities Impact Assessment was undertaken for this policy in 2022 and no issues identified. A further assessment will be undertaken in 2024.

CONCLUSIONS

24. Despite members approving the new policy for Short Term Lets in October 2022, East Renfrewshire Council has yet to receive the expected number of applications. This is due to the initial extension of the deadline for applications being moved from 1st April 2023 to 1st October 2023.

25. In addition there has been legal challenges from hosts/operators to the legislation in place. As noted in the report, the challenge against Edinburgh City Council required Scottish Government to change the existing guidance.

26. Following a review of the legal challenge and the change in guidance, the paper sets out the required changes to East Renfrewshire Council's Short Term Letting Policy. The changes seek to minimise any risk of legal challenge and support the STL market in East Renfrewshire.

RECOMMENDATIONS

27. The Cabinet is asked to:

- a) Note the timescale changes associated with extended application deadlines;
- b) Homologate the decision to update space standards for short term lettings; and
- c) Approve the updated STL Policy.

Director of Environment

Further details can be obtained from Phil Daws Head of Environment (Strategic Services) on 0141 577 3186.

September 2023