



Supporting self-catering in Scotland

## **Briefing Paper – Homes First Campaign**

Founded in 1978, the Association of Scotland's Self-Caterers (ASSC) is the leading source of knowledge on short-term letting and holiday homes in Scotland. The ASSC is the only trade body representing the interests of the traditional self-catering sector. It has more than 650 Members, operating in excess of 7,000 self-catering properties throughout Scotland, and has close links with other European countries, as founding members of the European Holiday Homes Association (EHHA). The ASSC commits its members to maintaining the principles of "quality, integrity, cleanliness, comfort, courtesy and efficiency" and to offering visitors to Scotland consistently high standards within their self-catering properties. The ASSC's vision is to place our members at the forefront of a professional, vibrant and prosperous Scottish self-catering sector.

### **Introduction: The Value of the Self-Catering Sector to the Scottish economy**

Self-catering provides a tremendous contribution to the Scottish economy. In addition to supporting over 15,000 jobs, self-catering attracts £723m in consumer spending; £470m of which is spent by visitors to Scotland. In fact, in Edinburgh and the Lothians alone, self-catering supports over 2,500 jobs and brings in nearly £50m to the capital.<sup>1</sup>

Short-term letting in Scotland's cities generates significant spend, particularly so in Edinburgh. Edinburgh's Tourism Strategy 'Edinburgh 2020' headline objective is "to increase the number of visits to the City by one third". The ASSC considers that short-term letting has a significant part to play in achieving this objective. From an economic development view, short-term letting is recognised by Edinburgh Council as being valuable to the city, and it has been a sector it has historically supported.

Despite the considerable benefits that short-term letting brings to the Scottish tourism economy, the industry has been subject to increasing levels of criticism in the media and by some politicians in Scotland. Concerns with short-term lets have been raised in a parliamentary motion<sup>2</sup> tabled by Scottish Green MSP Andy

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<sup>1</sup> See: [http://www.assc.co.uk/wp-content/uploads/2017/09/ASSC Economic Impact Assessment of Short Term Lettings on the Scottish Economy - Final Report v1.2.pdf](http://www.assc.co.uk/wp-content/uploads/2017/09/ASSC_Economic_Impact_Assessment_of_Short_Term_Lettings_on_the_Scottish_Economy_-_Final_Report_v1.2.pdf)

<sup>2</sup> See: <http://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5M-08370&ResultsPerPage=10>

Wightman which was then subject to a Members' Business Debate in the Scottish Parliament on 8<sup>th</sup> November. This Debate coincided with the launch of the Scottish Greens' 'Homes First' Campaign.<sup>3</sup>

Mr Wightman's motion touched upon some frequently aired claims – that short-term lets have a negative impact on the housing market, displace local communities, and that visitors engage in anti-social behaviour – before arguing that planning change of use clauses should be applied to the sector.

The ASSC, representing the traditional professional self-catering sector, welcomes the news that Mr Wightman has nothing against 'holiday apartments'. We also appreciate the perceived issues that have been raised in light of the apparent rise in short-term let accommodation in Edinburgh. However, the ASSC urges caution against sensationalising the challenges raised and believe that evidence should trump perception and anecdote.

### **The Importance of Accurate Data**

In terms of potential size of market, we understand that data taken from sites such as AirDNA and InsideAirbnb has been extrapolated to anticipate that by 2050 over half of Edinburgh properties will be holiday lets. Again, the ASSC would urge caution using such data sources.

It goes without saying that accurate and reliable data is imperative to inform regulatory measures on public policy, with decisions on both the traditional sector and the collaborative economy being no exception. We have put on record our deep concern at the scoping research commissioned by the Scottish Government, undertaken by Indigo House, on the supply and demand for short-term lets in Scotland. This analysis relied heavily on the use of so-called 'data scraping' from an unreliable third-party site. While the report briefly mentions the "*limitations*" of this kind of data, the authors then go on to state that it provides a "*fair representation of the trends in the emerging market.*" In fact, scraped data is subject to numerous assumptions, which can, in turn, lead to unsupported conclusions. Relying on this type of data does not lead to sound policymaking.

At the June 2017 meeting of the Scottish Government's Expert Panel focusing on peer-to-peer accommodation, concerns were raised about the validity of scraped data from many in those in attendance. The Discussion Paper resulting from this meeting also recognised that some of the data from third-party websites was "*open to dispute.*"

Given the profound consequences of any potential disproportionate government regulation, we would implore the Panel, Scottish Government and policymakers to take a thorough evidence-based approach which relies on the most accurate data

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<sup>3</sup> Scottish Greens., 'Wightman leads Holyrood debate on "Homes First" campaign, warning "a modern day clearance is underway", 08/11/17. See: <https://greens.scot/news/wightman-leads-holyrood-debate-on-homes-first-campaign-warning-a-modern-day-clearance-is-underway>

available from a diversity of sources, not flawed research designed to fit the desired policy outcome.

### **ASSC Code of Conduct**

The ASSC has recently launched its new Code of Conduct, aimed at improving standards in the industry and encouraging best practice throughout the sector.

The Code has been developed alongside the Scottish Government study and comes with a Policy Recommendation Paper, which sets out how the vital self-catering sector in Scotland can be improved for customers, hosts, and all others involved, including local authorities.

Both documents have been presented to the Expert Panel on the Collaborative Economy and can be accessed via the following link:

<http://www.assc.co.uk/about-us/code-of-conduct/>.

In addition, our Policy Recommendation Paper specifically addresses some of the concerns that have been raised:

#### **i. Ensuring that the growth in short-term letting does not reduce the amount of housing stock**

There is no evidence to suggest that short-term lets are having any significant impact on housing stock or prices. The overriding reason for housing pressures in the UK and Scotland is a lack of home building over a number of decades, and the selling off of council houses. For instance, the Institute for Public Policy Research (IPPR) think tank recently published a study on the impact of home sharing on London's housing supply and concluded that the impact is currently negligible.<sup>4</sup> Short-term lets are not responsible for the housing crisis, nor are they a significant driver in the shortage of homes.

The European Holiday Homes Association (EHHA) highlights that there are no EU studies carried out yet which would prove that short-term rental accommodation has raised housing prices and provoked its shortage in some cities. For this reason, they have called on the European Commission to carry out an EU wide study which would focus not only on economic aspects, but also on consumers' perception of short-term rental, the advantages short-term rental creates (i.e. self-employment, fostering local economy, widening consumers choice, contribution to national tourism strategies via local community).<sup>5</sup>

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<sup>4</sup> IPPR., *Homesharing & London's Housing Market: Summary Report* (December 2016). See: [http://www.ippr.org/files/publications/pdf/Homesharing-and-London-housing-market\\_summary-Dec16.pdf?noredirect=1](http://www.ippr.org/files/publications/pdf/Homesharing-and-London-housing-market_summary-Dec16.pdf?noredirect=1)

<sup>5</sup> EHHA., *Market Access Requirements for Accommodation Sector II* (March 2017).

## **ii. Planning Use Class Orders**

In terms of planning, self-catering/short-term letting is considered to be 'residential': the character of the occupation has not changed for the purposes of planning. People stay for short periods and possibly for holiday purposes, but it is essentially their home for that period. It remains residential for planning purposes.

There is currently no planning class for short-term letting. Short-term rental properties are classed as Sui Generis - meaning "of its own kind" / "the only one of its kind", i.e. unique. Using the term Sui Generis allows the authority to be non-specific about the planning class. It is for this reason that Edinburgh City Council Planning Authority looks at each case on a case by case basis, depending on objections or complaint received.

In shutting down an apartment in Edinburgh, Edinburgh City Council cited a "breach of planning permission and material change of use for residential flat (sui generis) to short stay commercial leisure apartment (sui generis)". In terms of the classes order, if something is in the same classes order, it does not matter if things 'look different' or are different, you can continue to use it without Change of Use planning permission. Short-term letting is not identified as a Change of Use from residential.

Councils will need to offer a solid case to state that the occupation of a short-term let property has changed from residential use and represents a material change of use. The ASSC does not support a review of Planning Use Class Orders.

The ASSC would agree in principal to local authorities having the ability to control development of the short-term let market in specific urban areas where there are housing pressures (e.g. The Square Mile in Edinburgh), however this may not be achieved via Planning Use Class Orders. There may be a case for making a regulatory distinction between amateur and professional, or commercial, activity.

## **iii. Maintaining residential amenity**

ASSC and STAA believe that there are already adequate means of addressing anti-social behaviour through existing law (i.e. Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011) while there are well-publicised examples of where guests have behaved irresponsibly, this is the exception and not the rule.

Existing laws need to be enforced by local authorities, a point made by the Minister for Housing and Local Government during the Members' Business Debate on Homes First led by Andy Wightman MSP:

"Local authorities have quite comprehensive powers to deal with antisocial behaviour and noise nuisance; I expect them to use those powers effectively. As recently as 2011, Parliament agreed to the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011. I wonder how often that order is being used in Edinburgh and

elsewhere, so I challenge local authorities to consider using it and other antisocial behaviour powers, as well as the powers in relation to noise and environmental health that are currently at their disposal. I urge local authorities to use those powers to deal with some of the difficulties that folk are facing.”<sup>6</sup>

And in response to Andy Wightman MSP highlighting that the “problem with short-term lets is that often by the time a resident has phoned the council and a council officer has visited, the visitor has gone, or will go the next day”, the Minister replied:

The powers may not be being applied properly, which might be the difficulty in all this. I will certainly discuss the matter with the City of Edinburgh Council, because under the order that I mentioned, the antisocial behaviour notice is **served not on the people in the property who are causing the problem but on the landlord**. That is extremely important. Folk having left a property should not affect in any way, shape or form the serving of a notice on the landlord.<sup>7</sup>

The City of Edinburgh Council has published advice for residents for reporting issues with Short Stay Commercial Visitor Accommodation (SSCVA) and this includes noise, anti-social behaviour and too many individuals staying in one property. If such problems occur, it can be reported to the local neighbourhood office who will carry out an investigation and, where appropriate, take action to rectify the situation.

Having investigated two perceived problems of short term-letting: loss of residential amenity, and party flats, Edinburgh City Council’s own study (in 2012) found that these problems happen far less frequently than anticipated, and subsequently came up with a solution to deal effectively with any problems using Antisocial Behaviour Notices (ASBNs) as enforcement.<sup>8</sup>

In Edinburgh, only three properties have been closed down as a result of complaint since 2015. There have only been 10 new cases (complaints against short-term commercial leisure apartments) raised in 2015/16, compared to 14 cases in 2014/15 and 19 cases in 2013/14.<sup>9</sup> More recent figures from March 2017 showed that there were only 11 SSCVA enforcement cases pending consideration.<sup>10</sup>

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<sup>6</sup> Scottish Parliament., *Official Report*, 8 November 2017. See: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11177>

<sup>7</sup> *Ibid.*

<sup>8</sup> See: [http://www.edinburgh.gov.uk/download/meetings/id/36389/item\\_12\\_short\\_term\\_private\\_lets-review\\_findings](http://www.edinburgh.gov.uk/download/meetings/id/36389/item_12_short_term_private_lets-review_findings)

<sup>9</sup> See: [http://www.edinburgh.gov.uk/meetings/meeting/4088/planning\\_committee](http://www.edinburgh.gov.uk/meetings/meeting/4088/planning_committee)

<sup>10</sup> City of Edinburgh Council Corporate Policy and Strategy Committee., *Short Stay Commercial Visitor Accommodation – referral from the Planning Committee* (2017). See: [http://www.edinburgh.gov.uk/download/meetings/id/53729/item\\_713\\_-\\_short\\_stay\\_commercial\\_visitor\\_accommodation\\_-\\_referral\\_from\\_the\\_planning\\_committee](http://www.edinburgh.gov.uk/download/meetings/id/53729/item_713_-_short_stay_commercial_visitor_accommodation_-_referral_from_the_planning_committee)

Our businesses depend on operators and guests having positive experiences, and it is critical for local communities to not be negatively impacted. ASSC and STAA would support the creation of local forums, or other lines of communication, that bring together all parties to tackle any local concerns.

Our Code of Conduct is designed to:

- Support accommodation providers (traditional and peer-to-peer) to enable them to operate professionally
- Offer comfort to guests that where they are staying is fit for purpose and safe
- Reassure residents that the operation will not negatively impact on residential amenity
- Offer local authorities the opportunity to terminate an operation if the Code of Conduct is not complied with.

#### **iv. Market Access**

In addition to issues raised in our Code of Conduct, we have recently alerted the Expert Panel on the Collaborative Economy that the EHHA is convinced that comprehensive EU data should be collected and assessed before imposing any regulatory restrictions on the STR sector.

Under EU law, in particular Article 9 and 16 of the Services Directive and Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) service providers are not to be subject to market access or other requirements, such as authorisation schemes and licensing requirements, unless they are non-discriminatory, necessary to attain a clearly identified public interest objective and proportionate to achieving this interest (i.e. imposing no more requirements than strictly needed). As the Services Directive requires national authorities to review existing national legislation and ensure that market access requirements continue to be justified by a legitimate objective, are necessary and also proportionate, the EHHA encourages regulators to focus on reducing unnecessary burdens and red-tape, not introducing new bureaucracy through ineffective licensing or authorisation schemes.

EHHA highlights that there are no EU studies carried out yet which would prove that STR accommodation has raised housing prices and provoked its shortage in some cities. For this reason, EHHA calls the European Commission to urgently publish a call for tender to carry out an EU wide study which would focus not only of economic aspects, but also on consumers' perception of STR, advantages STR creates (i.e. self-employment, fostering local economy, widening consumers choice, contribution to national tourism strategies via local community) etc. We would urge the Scottish Government to encourage and collaborate in such a study.

## **v. Small Business Bonus Scheme**

### **Key Points:**

- Local Authorities retain all Council Tax income.
- Larger Local Authorities (e.g. City of Edinburgh Council) get more income from Non-Domestic Rates (NDR), but don't retain it.
- NDR is spread round other Local Authorities that get less income from NDR (e.g. Argyll & Bute).
- The Scottish Government has access to all Rateable Values in Scotland and know which properties get SBBS relief. They also know what NDR income each council receives. Taking this into account, the Scottish Government calculates the grant that each council will be awarded.

Andy Wightman suggests that all short-term lets are not on the NDR role. However, it is important to consider that if they all were, then they may be eligible for the SBBS, resulting in the council losing out on Council Tax income.

However, the Scottish Government would realise that Council Tax income has dropped and properties receiving SBBS relief has increased, and the grant achieved by a local authority would be adjusted accordingly because of the net loss in income from Council Tax.

Individual councils are not disadvantaged by having fewer Large Business Supplement (LBS) properties relative to SBBS properties. Councils receive guaranteed levels of funding (based on need) under the local government finance settlement, and retain the NDR income in their areas as part of this.

There are published stats showing SBBS recipients by local authority area:  
<http://www.gov.scot/Topics/Statistics/Browse/Local-Government-Finance/NDR-Rates-Relief/SBBS2017>

### **Conclusion**

Short term rentals are not new and have a long history in Scotland but recent political and media scrutiny has been wholly negative in tone and does not provide an accurate picture of the sector and the role it plays in the tourist economy. The ASSC wish to constructively engage with policymakers, both locally and nationally, to find proportionate and workable solutions to problems raised – ensuring that the growth of the sector is balanced and successful.

At this time there are 1,555 Self Catering Unit(s) on Lothian's Roll (26<sup>th</sup> September 2017). In Edinburgh there are 1,291 Self Catering Unit(s) on Lothian's Roll. These are properties that available for let for over 140 days and are within the business rates scheme. These can be seen as commercial enterprises, and are operated by residents in the Lothians constituency.

We would urge policymakers to await the outcome of the Scottish Government Study into the Collaborative Economy before making judgements on a vital sector to the Scottish economy. We look forward to collaborating with MSPs, MPs, local authorities and Scottish Government to deliver sound policy that will benefit everyone involved.