

STL Planning Committee Briefing

Wednesday 20 March 2024

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Purpose

- Planning Committee 31 January 2024
Addendum by the Administration;

“Notes that a letter was received from ASSC which was circulated to members and asks that officers provide a briefing on the matters raised and a report detailing this to the next Planning Committee.”

ASSC Proposal

In relation to secondary lets prior to the control area (5th September 2022)

“as a matter of policy, any property in existing use that is not subject to complaint or enforcement is not considered to be a material change of use and therefore does not require planning permission and a certificate of lawfulness can be granted.”

Certificate of Lawfulness Purpose

- [Sections 150-153](#) of the 1997 Act define the concept of 'lawfulness'. They also set out the provisions for certifying the lawfulness of proposed or existing operations, uses or activities in, on, over or under land, by applying to the planning authority for a Certificate of Lawful Use or Development (CLUD).
- The procedure provides a mechanism for obtaining from the planning authority (or the Scottish Ministers on appeal) a statutory document certifying the lawfulness; i.e., whether an existing or proposed use or development is considered lawful for planning purposes.

Certificate of Lawfulness

What is lawfulness?

Section 150(2) provides that, for the purposes of the Act, uses of land and operations are lawful at any time:

- if no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission, or because the time for enforcement action against them has expired, or for any other reason;
- and, furthermore, that they do not contravene any of the requirements of any enforcement notice then in force.

Certificate of Lawfulness Determination

- In determining an application under section 150 the planning authority will have to address the question whether, on the facts of the case and the planning law applicable to the site, the specified use, operational development or failure to comply with a condition is lawful.
- Decisions on the balance of probability, not beyond reasonable doubt.

Certificate of Lawfulness

Type of STL applications

1. 10 years of continuous use
 2. Use begin within the last 10 years but not a material change of use requiring permission
- Onus of proof rests with the applicant
 - Refused applications appealed to DPEA
 - A certificate may be refused because the onus of proof is not discharged by the applicant, this does not preclude the submission of a further application.

Certificate of Lawfulness

Pre-Control Area STL applications

- JR2 decision clarifies the control area does not apply retrospectively. However, STLs operating prior to the control area may still be a material change of use under section 26 of the Act.
- S.26 defines the meaning of development. This includes “the making of any material change in the use of any buildings.”
- Moore (and the subsequent cases) confirmed that a fact and degree assessment is required in each case to determine whether use of a property for STL constitutes a material change of use in terms of S.26.
- CEC 2024 guidance updated in terms of STLJR 2

ASSC Proposal

Benefits & Disadvantages

Benefits

- Significantly reduced risk of further legal challenge from operators
- Reduced administrative burden in assessing applications and handling appeals

Disadvantages

- ASSC approach conflicts with SG guidance and not consistent with outcome of JR2.
- Risk of challenge from other groups if they consider the approach to be legally flawed.

Other Authorities' Approach

South Ayrshire

- When deemed appropriate, the Planning Authority will issue "no enforcement action" letters to applicants in relation to unauthorised Short Term Let properties.
- Applicants will be advised to seek Certificates of Lawfulness for Short Term let properties over 10 years old
- Applicants can continue to seek planning permission in order to formalise a pre-October 2022 short term let.

Glasgow

- Where the entirety of a flat is available for Short Term Let on a frequent basis, there is likely to be a material change of use which requires planning permission.
- Under Class 9 of the Use Classes Order, a house remains in use as a house whether it is the sole or main residence of the occupants or not. This sets a context that a house being used on a short-term let basis generally does not constitute a change of use. Therefore, use of a house as an STL is unlikely to require planning permission provided that it is occupied by a single household. A single household is defined as a single person or by people living together as a family.
- Where a house is rented to more than one household it may be that the use of the house as Short Term Let would require planning permission.

Thank-you