

Land use planning, tourism intensification and regulation of short term commercial visitor accommodation: the case of Edinburgh

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Abstract: Many cities globally have seen an expansion of short-term rental accommodation (via online platforms) as a means of increasing capacity and encouraging additional tourism revenue. This has led in some cases to concern for more effective regulation, for instance via land use planning, because of problems such as loss of amenity. There are also concerns that this has led to displacement of the supply of traditional residential letting, as well as a rise in overall rents and capital values. This paper considers the case of Edinburgh and the associated potential of regulation via land-use planning. It explores how such regulation might seek to minimise problems while retaining benefits arising from expansion of the overall tourism sector and associated revenue. However this is not straightforward, as evidenced by the significant variation in practice between cities this regard. In addition, there are significant associated problems related to the difficulties of detection, monitoring and enforcement in relation to letting activity. The experience of Edinburgh in these respects is instructive for many other cities globally which experience similar pressures.

Keywords: urban, regeneration, tourism

Introduction

The use of Short Term Lets and Short Term Commercial Visitor Accommodation (STCVA) has grown globally to a significant extent in recent years. In Edinburgh, the use of such accommodation has been particularly prevalent during the peak tourism months, especially August and December/January. Essentially, STLs comprise home-sharing (with a property or part of this being rented for a small element of the year but with the property remaining the primary residence of the owner) and Short Term Commercial Visitor Accommodation (with a whole property rented for a significant part of the year and not the residence of the owner) (Crommelin et al, 2018).

The use of STLs has been a way of expanding accommodation to meet the increased demand from tourists during peak periods (Swanson, 2018a). The contributing factors in relation to such growth include the increasing demand from tourists for accommodation which is more like a home than a hotel, with access to residential amenities such as a kitchen (Guttentag, 2015), as well as the increasing use of cheap air travel. The rapid expansion of such uses in many cities has been facilitated by the expansion of the 'sharing economy' (Ferreri and Sanyal, 2018), with the rapid growth of peer-to-peer services which have allowed easy and rapid proliferation and delivery of STL, including for instance Airbnb and Booking.com.

While the specific causes and effects of STLs are context-dependent to a large degree, the outcomes in many cities have been similar and transformative, and have raised a series of common questions and issues in relation to implication for existing communities. Consequent approaches to regulation, for instance in relation to loss of amenity, have so far been varied (Gurran, 2018).

This paper considers the case of Edinburgh, in terms of the implications of the growth of STLs (focusing on STCVA), including the potential for regulation to ameliorate the problems caused, whilst allowing benefits (particularly economic benefits arising from increased tourism spend) to be maximised.

A significant factor in Edinburgh is the city's distinctive history of home sharing, because of the high seasonal variation of tourism in the city (arising from its history of the festivals essentially taking place in August, as well as the large numbers of tourists coming to the city for the New Year 'Hogmanay' festival). As a consequence, there has been a long-standing practice of many residents providing temporary accommodation for visitors. This kind of use – what may be called 'home sharing' – does not have a significant impact on wider housing and does not have the same level of implications on cities as does STCVA (Gurran and Phibbs, 2017).

In overall terms there would seem to be around 9,000 STL/STCVAs in Edinburgh, with these being largely concentrated in the centre of the conurbation; over half of all Airbnb bookings in Edinburgh occur within the city centre (Mitchell, 2019). This pattern of uses seems to broadly replicate evidence elsewhere in Europe (Colliers International, 2018). In addition, in Edinburgh, whole-property lets are the fastest-growing sector of STL/STCVA, and in 2017 the sector amounted to 20% of all visits to the city; there was also a 70% increase year-on-year in such visits during 2017 (Mitchell, 2019).

Impacts and issues

A range of impacts may be seen to have arisen from the growth in the above types of accommodation, globally as well as in the case of Edinburgh. Perhaps the most evident in many cities has been the effect on residential amenity, for instance in terms of increased noise, anti-social behaviour, and related concerns over security and safety (for both visitors and residents). Such effects are of course part of a wider process whereby tourism uses gain prominence over traditional residential uses. This and related factors are considered below.

Loss of amenity

The introduction of STL/STCVA may affect residential amenity in many ways, for instance via noise and anti-social behaviour, as a consequence of the fact that visitors lack the relationship to the area that long term residents have. An extreme case in this context is that of so-called 'party flats' with clear implications for noise and nuisance. Of course, for home-sharing, such issues are ameliorated since neighbours can complain directly to the permanent resident, who also would seem to have an incentive to ensure that visitor behaviour is appropriate since they need to maintain appropriate coexistence with neighbours.

A further issue in this context is the nature of the accommodation itself. In Edinburgh for instance a large number of STCVA arises in tenemental properties, which coincide with areas where there is high demand for visitor accommodation. Particular problems may arise in such areas as a consequence of their high residential density, and the prevalence of common areas which may be neglected by landlords. Indeed, some observers have consequently suggested that tenemental properties are unsuitable in principle for use as STCVA. Certainly, the effects of visitors arriving at unusual hours, and using keyboxes to gain entry to flats and perhaps being unaware of which flat they need to access, might be magnified in such properties. While local authorities do have powers in relation to addressing noise and anti-social behaviour, there may be limited enforcement in practice.

Maintenance

There are also issues concerning the need for building maintenance; in Edinburgh, this relates particularly to the common spaces within traditional tenements, particularly the communal stair or 'close'). The assumption is that the operator of STL/STCVA is less likely than a traditional resident to carry out the repair of such areas, and so

in a tenement which comprising a number of residents and/or STL/STCVA operators there may be a greater reliance on a smaller number of residents for essential maintenance. Indeed, there have been anecdotal accounts in Edinburgh of tenemental properties with only one remaining resident remaining, leading to severe disturbance in such cases.

Of course, it may be argued that it is in operators' interests to ensure that their property is well maintained so as to ensure that there is sustained demand for it (ASSC, 2018). But in normal circumstances priority for maintenance is less likely where a permanent resident is absent. In addition, commercial operators may visit properties infrequently, and they may outsource cleaning and waste removal services, leading to a loss of accountability for maintenance issues.

There are also specific factors pertaining to Edinburgh in terms of maintenance issues, since the concentration of STL/STCVA in the Old and New Town areas means that they are also concentrated in areas with a very high density of historic buildings, which are more liable for need for maintenance.

Safety

Equally, there are many concerns on the issue of safety, because operators of STL/STCVA may be less likely than permanent residents to take account of the need for safety certification fire regulations for instance. This may be compared to the need for compliance for the operators of hotel and bed and breakfast accommodation. As with maintenance, it may nevertheless be argued that operators should be incentivised to ensure appropriate safety arrangements are in place in order to ensure a sustainable business operation (ASSC, 2018).

Specifically, there is a range of safety legislation in Scotland for the private rented sector as well as traditional guest accommodation such as hotels, for instance for gas, fire and electrical performance as well as more general public health and safety; however, this does not apply to private residential accommodation used for STL/STCVA. This is a significant issue for instance in view of the potential for STCVA to provide de facto 'hotels' (albeit potentially unregulated), which can put visitors (as well as neighbouring residents) at significant risk. In addition, in the case of safety, residents operating STL home-sharing may in fact be at greater risk than commercial operators, since they may have lesser knowledge of legal requirements. While the ASSC requires members to have certificates in relation to safety of their accommodation (ASSC, 2018), many operators may not be members, and this anyhow would not apply to home-sharing STL uses.

Loss of housing

Many observers also highlight the potential impacts of STL/STCVA via the loss of available housing. STCVA attracts a higher investment yield than traditional longer term letting, so many landlords choose to 'convert' traditionally let properties to STCVA, possibly involving the removal of existing tenants, as well as the loss of opportunity for traditional letting when properties are put up for sale. Indeed, it may be suggested that this process has contributed to a net loss of 10% in the PRS housing sector in Edinburgh in recent years (Mitchell, 2019). Such a loss of housing has also been noted in London for instance, particular in terms of the loss of affordable housing for short term rent (Simcock and Smith, 2016).

In Edinburgh, these issues are compounded by the geographical concentration of STL/STCVA, with clear 'neighbourhood' effects in terms of loss of traditionally let or occupied housing evident in areas such as within the Old and New Town World Heritage Site. Nevertheless, arguments over loss of housing have been contested however with contrasting views asserting that housing supply in Edinburgh is not significantly impacted by STL/STCVA growth (ASSC, 2018).

Gentrification

It is also asserted by many that the growth of STL/STCVA has led to gentrifying effects for instance via the increased costs of housing (linked in turn to reduced supply). There would certainly seem to be clear evidence of such impacts in Edinburgh, and the proliferation of STL/STCVA would seem to be acting as a contributing factor to driving up property prices. This is linked in turn to broader arguments in relation to gentrification as a process, and in Edinburgh this is reflected in the increase in development of uses such as hotels in the Old Town for instance. These arguments are of course reflected in many other cities including in particular Amsterdam, Berlin, San Francisco, New York and Barcelona, prompting a range of regulatory responses (Brauckmann, 2017; Wachsmuth and Wiesler, 2018).

World Heritage Site

The case of Edinburgh is also distinctive because of the presence of the World Heritage Site, which coincides with the main area of concentration of STL/STCVA. This may be seen to exacerbate the potential damage to historical heritage in the city, as shown for instance by the proliferation of key safes (allowing secure exchange of keys) which are located on many of the communal buildings of historic value. Moreover, more broadly, the contribution of the increase in STL/STCVA in the historic centre of Edinburgh may contribute to a loss of community character which in turn may exacerbate the threat to loss of World Heritage status, particularly with Edinburgh's World Heritage Site being distinctive as a residentially inhabited site.

Taxation

There are also concerns in Edinburgh (similar to many other cities) over the loss of taxation revenue associated with increasing STL/STCVA since it is argued that there is significant non-compliance with regulations in this sector with respect to council tax and non-domestic rates for instance, though it is asserted by the ASSC (2018) that there is little verifiable quantitative evidence in this context. Certainly, however, in many other cities (such as Barcelona for instance), the growth of this sector would seem to have led in many cases to provision of what are in effect unregulated and untaxed hotels.

Wider tourism context

The growth of STL/STCVA is clearly part of a wider growth of tourism, which is often encouraged as a means of economic diversification, via making use of opportunities arising from the global growth in the tourism sector (particularly in contexts such as China). There is a strategic aim in Edinburgh to increase tourism in the city, with the 2012 strategy aiming to increase tourism numbers by one-third by 2020 (ETAG, 2012), though, clearly, this would seem likely to lead to sustained tensions with city residents. There have also been associated calls for a tourism tax to address the externalities resulting from increases in tourism numbers..

Certainly, the growth of STL/STCVA in Edinburgh offers a way of increasing accommodation for tourists without the need for significantly increased numbers of hotels. There is also a global trend for tourists to seek greater 'authenticity' in their tourism experience, which might be seen to be assisted by growth in STL/STCVA. In addition, such growth might be more dispersed throughout the city than traditional hotel and related accommodation, which could assist with wider dispersal of economic benefits (ASSC, 2018; Scottish Government, 2018).

Legislative context in Scotland

The growth in the provision of STL/STCVA in Edinburgh, as well as related concerns over the issues set out above, have led to calls for more effective regulation and control of the sector. This is also paralleled globally

(Edelman and Geradin, 2015). In the context of land use planning in Scotland, a current difficulty arises since STL/STCVA do not constitute a ‘use class’ for the purpose of requiring planning permission; consequently, where such a use is brought to the attention of the local authority for instance via planning enforcement complaints, this means that an individual decision must be made concerning whether the operation constitutes a change of use (Mitchell, 2019). This would seem to lead to inconsistent decision-making and confusion for the stakeholders involved; it would also seem to lead potentially to wasted resources applied to appeal processes.

These issues are particularly relevant for STCVA, since this can clearly be seen as distinct from normal residential use. Nevertheless, there is significant debate on this issue: some assert that STCVA (as well as STL) is compatible with a residential use class (ASSC, 2018), while others argue that all cases of STCVA should constitute a change of use. In fact the City of Edinburgh Council has produced guidance on this issue via its *Guidance for Business* (CEC, 2018); this sets out factors for consideration which include impact on local amenity; size, scale, frequency and pattern of the use; and the character of the area in which the use is located.

Future ways forward

Self-regulation

Some argue that this would allow several potential ways forward in the case of Edinburgh, with respect to the growth of STL/STCVA. In overall terms this is based on the assumption that markets have the capacity to regulate themselves (Gurran and Phibbs, 2017). Certain, in Scotland, the ASSC suggests that a voluntary code could be helpful (ASSC, 2018); nevertheless, membership of this organisation is not universal for STL/STCVA operators, and, in any event, the only reasonable sanction against non-compliance would be revocation of membership (Mitchell, 2019).

The Scottish Government’s Expert Advisory Panel for the Collaborative Economy (Scottish Government, 2018) considered proposals from Airbnb for self-regulation in terms of STL/ATCVA. Specifically, Airbnb argued that self-regulation could allow operators to let properties for up to 90 days per year (though not including the summer and winter festival periods). This has been criticised since the time periods appear to be generous (since in practice they could allow in excess of 150 days per year); and the self-regulation would of course not apply to other platforms hosting STL/STCVA.

Licensing

There would also seem to be significant potential for some form of licensing to be applied to address the issues identified above. As of 2019, the City of Edinburgh Council had requested the Scottish Government to ensure that the necessary legislation was passed to allow this to progress. Specifically, the local authority hopes to introduce a licensing requirement for STL/STCVAs which operate for over 45 days per year; a test for operators; and the potential for limitation of number of STL/STCVA uses within a geographical area of the city. These proposals would seem to have support from many stakeholders in the city (Mitchell, 2019).

Planning permission requirement

As a result of the increasing concerns in Edinburgh, the Scottish Planning Bill currently (as of 2019) progressing through the Scottish Parliament has included consideration of an amendment proposing a change in the definition of ‘development’ in law which would require a planning application for a change of use from residential to operation of ‘a dwellinghouse for short-term holiday lets’ (namely where this is not the sole or main residence of the owner, though the definition could take into account the threshold of a certain number of days per annum for letting), but this has been contested.. Such a provision would allow the local authority to produce relevant policies for instance to determine the overall level of STCVA; the areas where it is to be focused,

and areas deemed to be at risk from growth in this sector (Mitchell, 2019). The implementation of such proposals would arguably allow many outstanding issues to be addressed as well as bringing more consistency in the treatment of STCVA.

This leads in turn of course to the potential for framing of appropriate policy for instance to either concentrate or disperse STCVA uses, in what way. However, this is not straightforward. Arguments for dispersal suggest that this might reduce problems of erosion of amenity in the city centre for instance, as well as bringing economic benefits to more marginal parts of the city, via the (albeit limited) spending of visitors in local shops and on local services. The notion of dispersal of such uses would also seem to chime with the common strategy to address problems of tourism congestion in cities by moving tourists away from ‘honeypots’. Such a policy has been applied successfully in many cities such as Amsterdam, and has been suggested as a way forward for managing tourism impacts in Edinburgh. However, there is no clear consensus on where in Edinburgh STCVA might best be located in the future, in relation either to area, or to type of property. In relation to area, some suggest the need for alternative tourism zones within designated parts of the city (such as Leith), but equally of course there is also the potential for extreme dispersal, or a mixture of both of these approaches. In relation to the type of property, many commentators have suggested that tenemental property, widespread in the city centre, is not ideally suited to such uses, and that additional STCVA would result in disproportionate loss of amenity in areas that have a significant concentration of tenemental or flatted accommodation. This would further underline the argument for dispersal from the city centre.

Conversely, however, there may be cases where concentration of STCVA uses in the central areas of cities might be deemed appropriate, for instance where there is clear linkage to local services and attractions, or where there is limited public transport availability. What would therefore seem to be needed is further research in this context to ensure that policy going forward can be evidence-based to enhance its effectiveness.

Availability of data

An added advantage of the use of measures such as licensing and planning permission requirements would be the consequent increased availability of data in relation to the actual use of STL/STCVA, since the use of such data seems essential for the development of appropriate policy. At present the diversity of platforms in relation to STL/STCVA means that the generation of accurate data is difficult (Cockburn Association, 2018), and peer-to-peer platforms have not always been willing to share relevant data (Frenken and Schor, 2017). Hence, if data could be obtained directly from operators (for instance from licensing/planning permission requirements), this would assist greatly with the formation of appropriate policy (Mitchell, 2019).

Conclusions: legislation and policy

There are clear implications from the above discussion for the need for appropriate legislation and policy to address STL/STCVA. In terms of legislation, measures to require planning approval for operation of STCVA would allow the local authority scope to manage the development of these uses. This might be accompanied by a system of licensing. Such measures would have the potential to address to an extent concerns surrounding issues such as safety, and would have clear benefits for the collection of appropriate information. While measures such as these have relevance more generally in other contexts, the potential for some form of ‘model’ solution for regulation of these uses is contested.

On the one hand, the issues brought about by the growth of STCVA and STL would seem to be similar in many contexts globally, particularly between contexts with similar characteristics, such as historic cities with high (and growing) levels of tourism. This would seem to imply the potential for cross-national learning to develop good practice for application in different contexts. In addition, platforms such as Airbnb have emphasised the advantages of a ‘model legislation’ approach (at least within one nation state) whereby the same regulatory

approach can apply in different contexts (Ferreri and Sanyal, 2018). On the other hand, however, there are also clear arguments in relation to the importance of geographical and other specificities, which suggest the need for different local approaches. Nevertheless, of course, legislation in relation to planning requirements might be applied in national legislation, but applied via locally derived policy.

This leads to the potential need to develop policy via local authorities such as Edinburgh to set out where STCVA might best be located. Certainly, the provision of clear data in relation to existing provision of STCVA (coming for instance via licencing and planning requirements) could be very helpful in this respect. But the issue of location policy for STCVA could usefully be the scope of further research, since this issue involves potentially conflicting concepts and assumptions.. Clearly, further research in relation to the potential of such policy could be of benefit to many cities globally as well as Edinburgh.

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