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Government Proposals For Short Term Lets

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The Government has been continuing its consultation on changes proposed to the short term lets sector.

The term 'short term lets' covers a wide variation of possible letting models by operators in the sector, varying generally from uses similar to hotels and apart-hotels (Use Class C1) to temporary stays of 90 days per year or less, or in other cases of more than 90 days per year (sui-generis).

What Use Class does 'Short Term lets' fall into?

At this time, there are no permitted development rights from C3 use (self-contained houses or flats used as the sole or main residence of the occupier) to either C1 (hotels, guesthouses and bed-n-breakfast) or to sui generis short term or holiday lets.

There is currently no 'defined' use class for 'short term lets' and therefore, whether or not any particular use of a property in this use falls into a specific category will vary from one case to another.

Short term lets, along with Air BnB, holiday lets, and some forms of serviced accommodation form part of the Short Term Visitor Accommodation (STVA) market and have no defined planning use. The typical duration of stay will vary according to the business model from one night to up to six months on occasion, i.e. generally less than a typical AST of at least six months' stay.

What affects whether it falls into a different use class?

If the owner or a tenant does not reside at the property as their main home, such as if the property is let out under the classification of an Airbnb, the use class will therefore be a short-term commercial let and not residential use.

The question is one of 'fact and degree' based on the judgement from Moore v Secretary of State for Communities and Local Government [2012]. In this case, it upheld the decision of an appeal inspector that the holiday letting of a large house fell outside C3 use class and into sui generis use.

In Moore, the court confirmed that an appeal inspector was right on the following points:

1. The character or planning use of a large house rented out through a company for short-term holiday lets did not always fall within sui generis use as a short-term let.

2. Depending on the character of occupation and, as a matter of fact and degree, the occupation of a large house by a single family or occupant on a short-term basis could fall into sui generis use.

3. The inspector had noted that there are several distinct differences between the current use and use of the appeal property as a family dwellinghouse. Notably:

a. the pattern of arrivals and departures;
b. associated traffic movements;
c. the unlikelihood of occupation by family or household groups;
d. the numbers of people constituting the visiting groups on many occasions;

e. the likely frequency of party type activities, and the potential lack of consideration for neighbours.

The NPPF seeks to encourage uses that add to community and social cohesion (paragraphs 7-10, NPPF 2023). Many local planning authorities and appeal inspectors are now placing significant weight on these objectives to support planning enforcement against unauthorised short-term lets.

Further significant weight is given to the loss of permanent local residential accommodation to Short Term Visitor Accommodation (STVA). In recent Parliamentary debates on the topic, several MPs have warned of the 'hollowing out' of communities, with the viability of local shops, schools and other local services impacted by the lack of a permanent population and properties being left vacant over winter.

The 90-day rule

The Deregulation Act 2015, s.44, affects only properties in the Greater London area. Within London, all properties let out for 90 days or less in any calendar year will require planning permission from C3 use. Properties let out for longer will continue to fall in C3 use and will not comprise a form of STVA.

Outside London, the issue is more nebulous and will depend on the definition and policy objectives of each individual local authority.

Cambridge City Council Appeal Cases

This approach was endorsed in an appeal involving Cambridge City Council in 2019 (APP/Q0505/C/18/3196460), which related to a number of purpose-built flats at Roman House and Florian House, Severn Place in Cambridge. The building owner had been using 13 flats for short-term lettings. The local authority served enforcement notices for breach of planning control on the basis that the premises were not being used as dwelling houses under use class C3 but for short-term visitor accommodation – a sui generis use for which the buildings did not have consent. The notices (a separate one was served on each apartment) required that the use for short term lets of 90 days or under permanently cease and that all related advertising be removed.

The owner contended that there had not been a material change of use on the basis that the facilities and services provided at the flats were of a kind that would keep them C3 rather than any other class. The council, however, referred to the data assembled relating to the use of the flats and referred to the ruling in the Moore case that in each case it would be a matter of fact and degree. The council pointed out that in one 11-month period the 13 flats had received over a thousand different bookings.

Similar appeal decisions since, such as involving the change of use of a large HMO to short term lets in March Lane, Cambridge (APP/Q0505/C/19/3226916) and in Blandford Walk, Cambridge (APP/Q0505/C/19/3226489), both in 2020, serve to emphasise the character distinction between the planning impact of STVA when compared with large HMOs, let alone smaller houses or flats.

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Proposed reforms

The Government has been seeking to respond to these challenges through recent proposals to reform the operation of the planning rules around STVA, including the following:

- Planning permission will be required for future short-term lets
- Mandatory national register to provide information and help ensure accommodation is safe
- Proposals aimed at giving communities greater control over future growth
- Homeowners can continue to let out their own main or sole home for up to 90 nights a year (e.g. Air BnB)
- New Use Class for existing and dedicated short-term let operations
- New PD right to move from new Use Class to C3, and vice-versa
- No impact proposed to Use Class C1 via these changes (there is a separate ongoing consideration of a potential prior approval from C1 use to C3 use – awaiting further news).

In order to reflect the varied spectrum of uses encompassed by short-term lets and STVA, the Government proposes the following definition:

"Use of a dwellinghouse that is not a sole or main residence for temporary sleeping accommodation for the purpose of holiday, leisure, recreation, business or other travel."

The proposed structure of the new use class means the letting out of a room or rooms, for example to a lodger, within a 'sole or main' dwellinghouse will be unaffected by the introduction of the new class. This could continue to operate instead within Use Class C3, as it does at present.

The current consultation also indicates that a 'nuanced' approach or specific separate arrangements may have to be put in place for some types of accommodation that comprise the sole/ main accommodation of the occupier for part of the year only, such as student accommodation.

Possible PD rights from short term lets

The Government's intention is to create a new PD right from C5 short-term lets to C3 dwellinghouse use (houses or flats) and vice-versa. There would be no conditions or limitations on this PD right, in much the same way as the Class L rights allow a small HMO (Use Class C4) to change to a C3 dwellinghouse and vice-versa. However, the key issue is the width of the Use Class C5 in itself and exactly what type of short-term lets that this use class would or might cover.

The Government consultation hints at a potentially different approach to be taken between STVA that is subject to a 90-day maximum limit, which might then fall into the suggested new C5 Use Class, and STVA of a longer duration, which might be either sui generis or within a new C6 Use Class. The suggestion is that any PD rights to and from C3 use class vis-à-vis C5 use would only benefit STVA accommodation of 90 days or less. The logic to this is that for most of the year, the accommodation would mainly be in use under C3 use class.

Short term rentals of a whole dwellinghouse

As well as allowing the change from a short-term let to C3 use, the Government is also consulting on the prospect of a change to the definition of C3 dwelling use, to allow whole dwellinghouses to be let out for a period of 30, 60, 90 days or another set period (e.g. the homeowner is away on business or vacation, for local sporting events), or to create a separate PD right ▶

for C3 dwellings to let out for such short term periods as an alternative to the C5-C3 proposed PD right.

It is of course open to a local planning authority to introduce an Article 4 Direction in any particular area (probably not borough-wide given the constraints in the NPPF) in order to seek to push back on any PD rights hereby created. Most such Article 4 Directions would be expected to be 'on notice' and would therefore have a roughly 12-month lead-in before coming into force locally. However, subject to the prospect of a Secretary of State call-in, review and modification or cancellation, there are limited provisions for Councils to make an immediate Article 4 Direction (as unusual as this may be).

National Register for Short Term Lets

The consultation defines three possible options for registration:

1. A local authority could decide whether or not to opt-in depending on the needs or challenges of their area.
2. An opt-in basis, as in Option 1, but a point at which the Government might review this and decide if necessary to apply this across the whole country.
3. A mandatory scheme across all areas.

Within the registration scheme to be considered is then the question of what is registered: the owner / agent / managing company, individual premises or dwellings, or individual units of accommodation within a dwelling or part of a dwelling.

As the register is intended to be 'light touch', more creative means of short-term lets could possibly be exempt from the scheme, such as caravans, tents, yurts, glamping pods and house swaps.

Some types of accommodation would be exempt from these controls on short-term stays, such as women's refuges, student halls of residence, supported living, child or adult care homes, licenced hotels and B&Bs and self-catering properties on their premises, homeless hostels and other temporary accommodation for homeless people, and accommodation for asylum seekers.

Conclusion

Planning law in relation to short term let and visitor accommodation has lacked clarity and consolidation for a long time. As more property investors see the attractiveness of this strategy in terms of generating high yields from residential property, this has led to more social, economic and environmental problems in some areas, giving rise to the need for greater clarity as to the meaning and nature of such uses and where acceptable limits should be set.

The Government has to try to set a balance between encouraging enterprise, innovation and boosting the local tourism economy, and the unfortunate consequences of poorly managed and 'bad neighbour' impacts of some short term lets.

Residential developers, investors, property owners and agents in this space need to be aware of the onset of possible regulation, the parameters of the existing law defining 'short-term lets' and ensure they deliver and maintain high standards or accommodation and responsibly run lettings, as well as being aware of the opportunities for future changes of use by permitted development. PIN