



**RTPI**  
Royal Town Planning Institute

# 2024 Planning Enforcement Conference

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LEGAL

Planning & Enforcement. Solved

Short term lets- a Planning Enforcement perspective

# Short term lets/holiday lets/AirBnB

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Planning permission is required for development (s57). Development can be either [operational development] or a material change of use.

Does the use of a property as a short term let require planning permission?

*It depends.*

If not a material change of use, no development → no control.

*Unless there is a condition on a planning permission.*

# Greater London

S25 of the Greater London Council (General Powers) Act 1973 provides that use as temporary sleeping accommodation of any residential premises in Greater London involves a material change of use of the premises and of each part thereof which is so used.

Section 44 of the Deregulation Act 2015 created a new section 25A of the 1973 Act which provides that the use as temporary sleeping accommodation of any residential premises in Greater London does not constitute a change of use if certain conditions are met:

1. That the sum of the number of nights of use and number of nights of any previous use of the same premises in any calendar year does not exceed 90 nights
2. For each night counted, the person who provided the sleeping accommodation must be liable to pay council tax

## Elsewhere in England

*Sage v SoSHLGC* [2021] EWHC 2885 (Admin) (Ricky Sage)

Considering whether gym use remained incidental.

*“A material change of use can be made without any adverse environmental impact at all. Treating environmental impact as the seemingly crucial issue for the judgement as to whether a material change of use has occurred, or a purpose is reasonably incidental is not consistent with clearly established law. The crucial test is whether there has been change in the character of the use”*

# Elsewhere in England

*Moore v SSCLG [2012] EWCA Civ 1202; [2013] JPL 192*

A dwellinghouse may be let out on a commercial basis and temporary or holiday accommodation. Matter of fact and degree as to whether this is a material change of use or not.

Not correct to say either than using a dwelling for a commercial holiday let would never amount to a material change in the use of a dwelling or that it would always amount to use a material change in use. Rather, it is a matter of fact and degree in each case and would depend on the characteristics of the use of the accommodation.

Relevant factors in that case:

- Pattern of arrivals and departures, with associated traffic movements
- Unlikelihood of occupation by family or household groups
- Numbers of people constituting the visiting groups on many occasions
- Likely frequency of party-type activities, and the potential lack of consideration of neighbours

# Elsewhere in England

## Matter of fact and degree

*Panayi v Secretary of State for the Environment* (1985) 50 P&CR 109

Effect on the residential character of the area, the resulting strain on welfare services, and the reduction in the stock of private accommodation available for renting were all relevant considerations in determining whether there had been a material change of use of a building that contained four self-contained flats to a hostel for homeless people, which had taken place without structural alterations.

# Blackpool case

*Blackpool Borough Council v SoS for Environment* [1980] 40 P&CR 104

Blackpool townhouse used by owner for holidays himself and for friends and family, and commercially let when not required. Commercially let for 10-18 weeks in the summer.

Council issued EN alleging MCU to holiday let. On appeal inspector overturned EN. Divisional Court upheld decision- Inspector entitled to conclude as matter of fact that the character of the house in question had not changed. House not constantly let in short holiday lettings and its character had not been changed by the succession of occupiers of by the fact that some were renting as single households.



# Use Classes Order 1987

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Uses Classes Order puts more common uses of land into categories.

S55(2)(f) TCPA provides that a change to a different use falling within the same class as the original does not require planning permission.

UCO is purely permissive. Irrelevant if no material change of use has occurred.

The fact that a new use falls outside the parameters of the old use class, does not itself cause it to be a material change of use.

C3 < -- > C4

Sui generis- outside

Proposed new use class?

# Residential use types

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**C1- Use as a hotel, boarding or guest house or as a hostel where, in each case, no significant element of care is provided**

**Hotels, guest houses, BnB- usually an element of hospitality is provided. Rooms bookable on an individual basis, some form of on-site management, provision of food, even if only breakfast**

**C3- Use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people living together as a family; (b) a single household or not more than 6 residents where care is provided; or (c) a single household of not more than 6 residents where no care is provided (other than a use within class C4)**

**C4- Use of a dwellinghouse by 3-6 residents as a 'house in multiple occupation'**

**What are holiday lets?**

**Property usually booked as a single property. Can give rise to noise and disturbance complaints. Removes accommodation for local people. C1/C3/sui generis?**

# How to establish if MCU to holiday let/short term let has taken place

PCN – ask about bookings, relationship between occupiers

## Site visit:

- Access arrangements: concierge, keypad entry, welcome table
- Remainder of the property's use: single family renting a room, other rooms which can be booked, manager living on site
- Cooking facilities
- Dining facilities- communal?
- Cleaning between visiting groups
- Provision of linen and towels

Neighbour – diary of movements

Internet searching- AirBnB, vrbo, etc.

# Wales, Scotland & Northern Ireland

## Wales:

Since 20 October 2022 new use classes:

C5- Dwellinghouses, used otherwise than as sole or main residences

C6- Short-term lets

PD between C3, C5, C6. A number of Article 4 directions in progress.

## Scotland:

Planning circular 1/2023.

Following changes that came into effect on 1 April 2021, section 26B of the Town and Country Planning (Scotland) 1997 Act and the Control Area Regulations provide that a change of use of a dwellinghouse to short term letting in a control area will be deemed to be a material change of use and so require planning permission. Planning authorities may designate all or parts of their area as a control area.

## Northern Ireland:

Aligned with England (outside London)

# Proposed changes

DLUHC press release 19 February 2024

## Headline terms:

- Planning permission will be required for future short-term lets
- Mandatory national register
- Communities will have greater control
- Homeowners can continue to let out their own main or sole home for up to 90 nights a year

New C5 use class created for short-term lets not used as a sole or main home.

**BUT**

Permitted development rights to be introduced: to allow change of property from short-term let to a standard residential dwelling AND to allow change to a short-term let.

# Proposed changes

Consultation paper said:

“The term “short term let” can encompass a range of activity associated with a dwelling. Some short term lets may be let out for a limited period while the owner themselves go on holiday. Others may be properties that provide for a series of lets for holidays etc or very short term overnight sleeping accommodation including renting an individual bedroom while the owners are in situ”

Proposed new Use Class C5:

“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.”

C3 <--> C5. Article 4 Directions could remove the PD right. 1 year lead time.

Further details to be set out in the government’s response to the consultations with the changes being introduced from this summer.