

Advances in technology – Air bnb, change of use and holiday lets

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21st Century land uses

- Dark Kitchens, Uber Eats, Deliveroo Editions (Rooboxes), Just Eat, etc.
- Air bnb and short-term lets.
- ‘Digital Service providers’ rather than real estate management.

Dark Kitchens – cook for delivery



- Issue arose in 2017
- App based orders
- Change in use? Normally a B1(c) Industrial use. EN has been served for a Sui Generis Use – “the preparation and delivery of food on demand”.
- Permission needed for existing B1 to have flues, ducts, air con.

Dark Kitchens – cook for delivery

- Frequency of persons comings and goings by mopeds, cars, bicycles for deliveries from premises a change in character?
- “Unacceptable Odour”
- Environmental Health legislation also required, and Licensing if selling alcohol.



Short Term Lets

Can this be defined? By name? Initially house share, now also commercial high yield.


Air bnb, short term lets, short term visitor accommodation, holiday lets.

By duration of stay? 1 night – 1 week, 1 month, 3 months?
Anything less than 6 months?
AST duration

The Booking.com logo, featuring the word 'Booking.com' in white and blue text on a dark blue rectangular background.

Booking.com

What's the difference?

- **Is it a Change of Use?**
- **Moore vs Sec of State Moore v Secretary of State for Communities and Local Government** [18 September 2012] – a matter of fact and degree on a case by case individual basis
- S55 TCPA 1990 – most changes of land use require pp
- In Moore, C3 to commercial leisure accommodation
- To be a change of use there must be a change of character of use. Compare the current unlawful with previous lawful.
- Inspector found differences with the pattern of arrivals and departures with associated traffic movements, the likely frequency of party type activities and the potential lack of consideration for neighbours with the current use.
- Recent Cambridge trend of Large HMO (Sui Generis)  STVA (Sui Generis) – less of a change of character? EN's served and appealed.

Local Plan - Where's the harm?

- Loss of Permanent residential accommodation
- Loss of amenity to neighbouring properties through:
 - Increased likely comings and goings,
 - Increased likely late night / early morning movements,
 - Increased likely tourist behavior,
 - Loss of community, against NPPF principles

What can you require?

At investigation – Service of PCN requesting details including all durations and timings of occupancies. Had Excel spreadsheet returned listing over 800 bookings a year.


Enforcement Notice

- Cease use of premises for Short Term Visitor Accommodation.
- -stipulating a minimum stay period e.g. 90 days, may result in under enforcement and going against your own policy and argument.
- Remove all advertisements as a requirement?
- Inspectors flexible in approach regarding time to comply. Tends to allow for current bookings to be honoured.

Cambridge Successful Enforcement Notices

- Cambridge City Council; appeals upheld by Planning Inspectorate.
- **17 Richmond Road.** C3 terraced house. Appellant evidenced 45% time unoccupied and 60 stays within 12-month period.
- Transient nature seen by number of and duration of stays.
- “the evidence indicates that the character of the use in question, in particular the notably transient pattern of occupancy, together with the pattern of related arrivals and departures, is significantly different from that normally associated with a house. The difference is such that, as a matter of fact and degree, I consider it amounts to a material change of use”.
- **Lots of small drops = Oceans**
- “While other aspects of the city’s economy may well benefit from fresh influxes of short-term visitors, it seems to me that that the non-participation... extend to other community institutions such as libraries, schools and the like. The consequences attributable to one property in this respect would probably not amount to much. But, were this to be repeated elsewhere, far from helping to create a sustainable community, the cohesion of the local community could well be eroded. This, in turn, could well make the area a less pleasant place in which to live and would be at odds with the social objective to support strong vibrant and healthy communities contained in The Framework. Nor would it be consistent with the promotion of social interaction advocated in The Framework”.
- **Florian / Marino House.** 13 apartments across 2 blocks built for C3 use let out as Short Term Visitor Accommodation (STVA). Use ranged from nightly to corporate style 60 to 90-day stays. Inspector concluded “some sort of hybrid between use class C3 and C1” and ruled, the “variable nature of the transient uses of the properties has resulted in a different character of usage from class C3”.

Other legislation

- Environmental Health.
- HMO Licensing.
- Council Tax  Business Rates.
- Fire Brigade / Building Control.
- Leasehold breach action by managing agents.
- Mortgage breach condition by lenders.
- HMRC?

Legislation limiting short term lets

- **London** '90 day' rule as amended by GLC Act & Localism Act.
- **Ireland** – 90 day rule for whole properties where main residence. Unlimited room(s) where resident. No 2nd home short-term renting. Registration required.
- **Dublin 2019** - refusal of planning permissions for maximum of 200 nights a year - the need to preserve “residential units as a scarce resource”. Would be contrary to the core principles of the Dublin Housing Strategy.
- Major global cities such as **Madrid** “touristification” – licence required but no apartments with inside front doors for more than 90 days in central areas;
- **Berlin** – initial ban before permit required for up to 90 days a year at their own home. 2nd homes / commercial lets require special permit of 3 months of no permanent tenant. Fines of up to 500,000 euros.
- Proposed **Oxford City Council** 140-day rule – endorsed by Air bnb – MOC “ill-defined”. LPA asking landlords to apply for permission. Air bnb Register proposed to be held by Govt. Also idea submitted to **Scottish** consultation.
- Lessons to learn from other countries? Problems global of long-winded appeal and scarcity of resources to enforce rules.

Where to look

- House of Commons briefing paper
- <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8395>
- Oxford City Council
- https://www.oxford.gov.uk/news/article/1220/city_council_calls_on_short-let_landlords_of_entire_homes_in_oxford_to_apply_for_planning_permission
- Guardian article
- <https://www.theguardian.com/technology/2019/sep/23/airbnb-hosts-could-be-put-on-register-to-prevent-illegal-renting>
- Cambridge Enforcement Notice appeal decisions
- <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?CaseID=3193261&CoID=0>
- <https://www.theplanner.co.uk/decision/enforcement-notice-upheld-against-13-cambridge-%E2%80%98hybrid-use%E2%80%99-flats>