

# Short Term Lets Issues and enforcement

## **Is planning Permission always required?**

Starting at first principles: planning control arises only where there is a material change of use. If an owner rents out their house on a shorthold tenancy i.e. 6 month let, the chances are it will be to a single person/couple/family and they will occupy the property as a residential dwelling house. Therefore no change of use has occurred and so no planning control applies. Problems can however arise for certain short term, or holiday lets (eg. AirBnB) because of the particular characteristics of certain short-term letting use and this may bring them under planning control.

## **Factors that bring holiday lets under planning control**

In the case of *Moore v Secretary of State for Communities and Local Government* [2012], the Court of Appeal stated that using a dwelling house for commercial holiday lettings will not always amount to a material change of use, nor is it that the use of a dwelling house for commercial holiday lettings can never amount to a change of use: it is a matter of fact and degree in each case. In *Moore*, the dwelling was large (8 bedrooms) and could accommodate up to 20 guests. Large non-family groups stayed there, with lots of comings and goings, vehicular movements, parking, noise and general disturbance. There was found to have been a material change of use to a sui generis use described in the enforcement notice as "commercial leisure accommodation". Similar action was taken by WODC in bringing enforcement action at Newland Mill, against a "party house" use, that is, unrelated groups of people congregating primarily to socialise which is a fairly obvious example of occupation which, as a matter of fact and degree, falls outside normal residential use. Residential Use (Class C3) in the now heavily amended Use Classes Order 1987 is described as use as a dwelling house whether or not as a sole or main residence by:

- C3(a) a single person or
- people to be regarded as forming a single household (as construed in accordance with section 258 of the Housing Act 2004), or
- C3(c) not more than 6 people living together as a single household (not including HMOs).

With non-family groups (which may well exceed 6 in number) it can be argued that they fall outside the definition of C3(c) but in addition, usually the large number of cars arriving and departing and noise/disturbance issues associated with large groups will in any event be consistent with a change in the planning character of the use.

## **Is it only larger properties that need permission?**

For larger properties used regularly for holiday lets/gatherings it is relatively easy, for the reasons given above, to demonstrate that a material change of use from C3 requires planning permission. Interestingly, however, the planning impacts arising from smaller properties being used for short-term lets are now being recognised, as a case involving Oxford City Council seems to show. The property in that case was a more modest dwelling with small garden and no off-street parking and occupation was stated to be restricted to a maximum of 4 residents – well below the parameters of C3(c). However what

appeared to be important in this decision was the inspector's finding as to the sheer level of turnover of occupants which he considered to be inconsistent with the pattern of occupancy normally associated with use of a dwelling house. In this case the inspector took into account the fact that newcomers to a property will usually be unfamiliar with parking arrangements, the location of the keys to the property and as such there was also a "transient pattern" of activity that was materially different from that associated with a dwelling house. In addition, frequent turnovers meant that cleaning/housekeeping staff would be visiting the property more frequently and this "increased intensity of service provision" was another factor distinguishing the use of this property from residential use. The inspector concluded that the level and character of the activities on site were materially different from those associated with a dwelling house and a material change of use had taken place.

### **Summary of Planning Position**

With short-term lets of properties where there is a high rate of turnover of occupiers and where properties are used to accommodate large groups of people, there is likely to be a need for planning permission on the basis that the residential character of the use has changed in a material way. Factors that will evidence this change of use over a period of time will include website advertising and reviews establishing the volume of turnover, types of bookings (family/non-family groups) and the number of guests, use of guest logs and activity logs undertaken by affected adjoining residents.

### **What other forms of legislation and control are there?**

#### **A) Housing Conditions.**

The condition of a property is regulated under Housing legislation. The emphasis is on the protection of the occupants (their health and safety). Houses in Multiple Occupation are regulated under this legislation. However, Holiday lets and Guest Houses are regulated by the Fire and Rescue Service. Landlords are responsible for completing a fire risk assessment and they must ensure gas and electrical safety checks are routinely carried out. ( Housing Act 2004. Regulatory Reform Order 2005 )

#### **B) Behaviour of owners, occupiers and tenants.**

Statutory Nuisance: Noise and other nuisances (e.g. accumulation of rubbish/noxious material).

The Council can deal with specific complaints about properties that are causing a nuisance to neighbours and action can be taken where the evidence amounts to a Statutory Nuisance. ( Environmental Protection Act 1990 )

Anti-social Behaviour (ASB) : Housing and ASB legislation - Ongoing harassment, alarm and distress. Under the Housing Act 2004, selective licensing schemes to licence all rental properties within a defined area can be introduced, subject to consultation. There are specific reasons that allow for the consideration of introducing such a scheme and anti-social behaviour caused to an area can be one of them. However, there has to be evidence of ongoing ASB affecting the community and one must demonstrate that other measures have not been effective or appropriate. Selective licensing cannot be applied to holiday lets. Closure/Management Orders can be sought by the Council where a property is causing

ASB to to the community. Under housing legislation this only applies to housing under Part 3 and 4 and therefore not to holiday lets. For a Special Interim Management Order, an application is required to the First Tier Tribunal. One needs to demonstrate that it is required to protect health safety and welfare of those living in the property and its vicinity. ( Housing Act 2004 ).

Under ASB legislation , Closure Orders can be sought by the Police or the Council. This is usually applied to control those having access to the property. Applications for an extended closure have to be made to a Magistrates court. ( Anti-Social Behaviour Crime and Policing Act 2014 ).

Community Protection Notices (CPN) . These can be applied to individuals and those in control of businesses that are causing ongoing anti-social behaviour to a community. Breaches can result in fines or prosecution. Therefore if a landlord was permitting or encouraging ASB at a holiday let then a CPN could be used to control or prevent such activities. ( Anti-Social Behaviour Crime and Policing Act 2014 ).

### **What else may need to be considered?**

As well as formal controls as set out above there are also other issues to consider such as whether the property is insured for commercial use, do domestic or commercial waste disposal arrangements apply, are all electrical appliances safe and properly tested, is the correct business rate being paid, is the occupation in accordance with the terms of any mortgage, does the letting of the property accord to the terms of any letting agency or organisation etc etc??