



Report to Planning Committee 8 June 2023

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| Report Summary | |
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| Report Title | (a) Legislative Update; and (b) Introduction of a use class for short term lets and associated permitted development rights Consultation |
| Purpose of Report | To: (a) appraise Members of Planning Committee of changes to planning legislation; and (b) to set before Planning Committee the latest permitted development right consultation and detail of the Council's response |
| Recommendations | To (a) note the changes and their requirements; and (b) note the contents of the Council's response to the permitted development consultation. |

1.0 Background

1.1 The government issued new legislation (SI 2023 No. 142) in relation to Active Travel under the [Town and Country Planning \(Development Management Procedure\) \(England\) \(Amendment\) Order 2023](#) in February which comes into force on 1st June 2023. The background to this legislation is to make walking, wheeling and cycling the preferred choice for everyone to get around England. Active Travel England is the government's executive agency responsible for this.

1.2 In addition, on 12th April, the Department for Levelling Up, Housing and Communities (DLUHC) commenced a consultation on changes to the Town and Country Planning (Use Classes Order) 1987, as amended on:

- The introduction of a new use class for short term lets;
- The potential introduction of a new permitted development right for the change of use from a dwellinghouse to a short term let;
- The potential introduction of a new permitted development right for the change of use from a short term let to a dwellinghouse;

- How flexibility for homeowners to let out their home for a number of nights in a calendar year could be provided through either changes to the dwellinghouse use class or an additional permitted development right; and
- The introduction of a planning application fee for the development of new build short term lets.

The accompanying consultation paper is not available as a downloadable format, however it can be viewed using the following link [Introduction of a use class for short term lets and associated permitted development rights](#). There were 18 consultation questions – attached at appendix A. The consultation was undertaken between 12th April and 7th June 2023.

2.0 Proposal/Options Considered and Reasons for Recommendation

Active Travel

- 2.1 The legislation requires the Council, as Local Planning Authority, to consult with Active Travel England on planning applications before issuing a grant of planning permission where development falls within any of the following descriptions:
- a) the number of dwellings is 150 or more; or
 - b) the provisions of a building or buildings where the use is not exclusively for the provision of dwellings, and the floor space to be created by the development is 7,500 square metres of internal floor space or more; or
 - c) development carried out on a site having an area of 5 hectares or more.
- 2.2 Consultation is required for any relevant planning applications submitted (i.e. valid) on or after the 1st June 2023. The Active Travel legislation amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO).
- 2.3 As background, for Members' awareness, the DMPO sets some of the 'rules' for the processing of planning applications e.g. statutory timescales, requirement for notification (including site and press notices) as well as defining statutory consultees, which Active Travel England is now one, amongst many other matters. Included within the list of statutory consultees is Historic England, National Highways, the Environment Agency, Coal Mining Authority, local highway authority for developments affecting the local highway network etc. For awareness, Town and Parish Councils are not a statutory consultee for development within the District unless it comprises urgent Crown development. Such development for the Council is unlikely. Town/Parish councils can be notified of applications with Paragraph 8(1) of Schedule 1 of the 1990 Act (Local Planning Authorities: Distribution of Functions) placing a positive obligation on Town / Parish councils to request, in writing, those applications that the council wishes to be notified of. The applications that the request can relate to are applications for planning permission or approval of a reserved matter under an outline planning permission or permission in principle. We have engaged with Town/Parish Councils previously on such applications and will engage (seeking the positive obligation) now that there are new administrations.

Possible Amendments to Permitted Development Rights

- 2.4 The consultation sets out that the scope of the consultation is seeking to address concerns in certain areas about the increase in the numbers of short term lets and the impact this can have on the sustainability of communities and the availability and affordability of homes for local people. In addition, the consultation also sought views on the introduction of new permitted development rights to provide flexibility where short term lets are not a local issue, and which allows for this flexibility to be removed where there is local concern. Views on how homeowners might be provided with flexibility to let out their sole or main home for a number of nights in a calendar year were requested. Finally, DLHUC sought views on the planning application fee required where permission is required for the development of a new build short term let.
- 2.5 For Members' awareness the [Town and Country \(Use Classes\) Order 1987](#), as amended, (the UCO) groups uses of land and buildings into various categories known as 'Use Classes'. What are generally referred to as 'homes' [dwellinghouses] typically fall within the 'C3 Dwellinghouses' use class in Schedule 1 of the UCO. This use class makes no distinction between whether the dwellinghouse is used as a sole or main home, for personal or commercial use, or its tenure (rental or home ownership). Use classes apply nationally.
- 2.6 Section 55 of the Town and Country Planning Act 1990 sets out that planning permission is required for development, including the material change of use of land. The planning system allows for local consideration of the merits of individual cases "as a matter of fact and degree" as to whether there is a material change of use requiring planning permission. This gives rise to existing properties being used in a variety of ways. For example, a homeowner may be able to let out a room to boost their household income. In other cases, the whole property may be let out for a two-week holiday period while the owner is away. Other properties however may be let out as a series of short term lets, over all holiday periods or for several weekends. Planning permission will be required in respect of any such cases where there has been a material change of use.
- 2.7 Permitted development rights are a national grant of planning permission by the Secretary of State, including for the material change of use of land. These rights are set out in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), as amended, (the GPDO). These permitted development rights can rely on the use classes, including those that provide for the change of use to residential (C3). Local planning authorities may remove a permitted development right by making an Article 4 direction in line with national policy set out in paragraph 53 of the National Planning Policy Framework.
- 2.8 The changes would introduce a new Use Class for short term lets which is defined in the consultation as:
- "C5 – Short Term Let - 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."*
- 2.9 Existing properties that fall within the C5 use class definition would not be affected by the introduction of this re-classification. Individual rooms that are let within a dwellinghouse would not fall within this Use Class. In addition to this consultation, the Government, through the Levelling Up and Regeneration Bill, is looking to introduce the

requirement for a register of short term lets. A separate [consultation](#) on the approaches to the registration scheme is being undertaken by the Department for Culture, Media and Sport and is being responded to by Environmental Health colleagues (this consultation also ends on the 7th June).

- 2.10 The consultation proposes that it would be permitted to switch between a C5 and C3 use and vice versa without the need for planning permission. Those authorities looking to remove this right can do so by making an Article 4 direction. No limitations or conditions would apply to this right. However, it is proposed that the local planning authority be notified whenever either of the individual rights for the change of use to a short term let (a) or from a short term let (b) are used.
- 2.11 It is acknowledged that some homeowners let their home for short periods of time, such as when they are on holiday, to benefit from a sporting event. The consultation questions whether this should be limited to 30, 60 or 90 nights in a calendar year. This would form an additional permitted development right and would only apply to dwellinghouses within the C3(a) use (a single person or people forming a single household).
- 2.12 Planning fees would apply for applications resulting from an Article 4 direction and if planning applications are submitted for the construction of building(s) for short term lets, the fee would be the same as for new dwellinghouses.
- 2.13 Policies to address the circumstances when these proposals would or would not be supported can be set out within the Council's local plan as well as by Town / Parish councils through their neighbourhood plans. The application of such policies would only apply when planning permission is required.

3.0 Implications

In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Background Papers and Published Documents

[Town and Country Planning \(Development Management Procedure\) \(England\) \(Amendment\) Order 2023](#)

[Introduction of a use class for short term lets and associated permitted development rights](#)

[Consultation on a registration scheme for short-term lets in England](#)

Appendix A

Q.1 Do you agree that the planning system could be used to help to manage the increase in short term lets?

YES

To provide a mechanism to manage the number and / or density of short term lets within areas where this is necessary.

Q.2 Do you agree with the introduction of a new use class for short term lets?

YES

It will enable those local authorities who have problems in their areas with the proliferation of short term lets impacting upon the number of dwellings available for permanent occupation to have a mechanism to manage numbers and thus their impacts.

Q.3 Do you agree with the description and definition of a short term let for the purpose of the new use class?

NO

There needs to be some form of definition or, probably better, guidance as to what would be considered a person's 'main residence' if, for example, a person has multiple residences.

In addition, the consultation adds confusion as to whether a change between C3 and C5 would be 'development' and therefore need a planning application (through the prior approval process) once the regs are implemented. The consultation seems to be implying that a change between C3/ C5 before any implementation date would not require permission ("any re-classification is not considered development"). It is accepted that if a property has been used for a C5 use prior to any Regulations coming into force these should be exempt, save for any enforcement action that might have been previously taken, for example.

Q.4 Do you have any comments about how the new C5 short term let use class will operate?

YES

There needs to be some form of notification as to when a person is changing the use between the classes, particularly between C3 to C5.

Clarity will be key. These types of use are potentially financially valuable and therefore people will likely look for loopholes to exploit any legislative changes. Therefore, guidance and legislation will need to be accurate and clear so that LPA's are able to implement any changes with confidence.

Q.5 Do you consider there should be specific arrangements for certain accommodation as a result of the short term let use class?

YES

Student accommodation that is not purposely designed e.g. when dwellinghouses are 'converted' to provide accommodation for students should fall within the C5 definition.

Student accommodation that is purposely designed, typically that found within university grounds, should be exempt from the C5 classification. No other types of buildings come to mind.

However, the implementation of this sentiment is questionable. Drafting legislation to include all (or the majority) of permutations within legislation will likely be nigh on impossible.

Q. 6 Do you agree that there should be a new permitted development right for the change of use from a C3 dwellinghouse to a C5 short term let (a)

YES

However, clarification is considered will be required as part of any change(s) to the GPDO to clarify how many days a C3 dwelling may be let before it falls within the C5 use class. This will assist in providing clarity to homeowners on the approach a local planning authority might take. Otherwise, trying to determine whether the occupation as a short term let is a material change or not will likely be challenging and lead to uncertainty for homeowners.

In addition, it is considered that a blank cheque/ blanket allowance is not the right approach. In this past, the LPA has received numerous complaints about properties being used for 'short term lets' with associated anti-social behaviour.

For this provision to be adopted it is recommended that the PD Regulation are in the form of a 'prior notification' whereby owners have to initial notify the LPA that they will be utilising this provision, providing the maximum number of people that may stay in the premises, number of car parking spaces and contact details for the owner should complaints be received. The LPA could then consider whether the proposed PD change would be suitable.

There could also be a provision that if the LPA receives substantiated complaints about nuisance behaviour at the property, then the LPA has the provision to 'reject' any future prior notification applications for the same address.

Q.7 Do you agree that there should be a new permitted development right for the change of use from a C5 short term let to a C3 dwellinghouse (b)

YES

However, the permitted development right should be made clear that it only permits a change of use from C5 to C3 when the previous use was C3. Otherwise, a planning application will be required.

The rationale for this response is that there are a number of developments that have been granted from the outset for tourism use with one of the key aims to benefit the economy. For these to be able to become a C3 use without the need for an application would potentially undermine this and could also lead to complaints from occupiers of the C3 units from noise and other disturbance from those occupying the C5 units.

Q.8 Do you agree that the permitted development rights should not be subject to any limitations or conditions?

NO

Owners should be required to make sure that provision is in place for adequate car parking and contact details in the case of nuisance behaviour, with details provided through a notification process. Also, if the property is a proven problem (noise, nuisance or similar) there should be provision for the PD right to be withdrawn through the Regulations. An Article 4 could not be imposed as, if the use is in place, such a Direction cannot remove it in retrospect.

Q.9 Do you agree that the local planning authority should be notified when either of the two permitted development rights for change of use to a short term let (a) or from a short term let (b) are used?

YES

This would provide clarity on the numbers and density of properties within the C5 use class within an area. The notification must provide for the applicant to state the date that they will implement the provision from each year (to create a record) and for the number of days / number of occasions that the notification applies to. Should the applicant wish to increase the number of days and/or the number of occasions within that year, a further notification will be required. Without this the numbers of days, and the C5 use will be unenforceable.

Q.10 Do you have any comments about other potential planning approaches?

YES

Suggest prior notification approach to assess the likely impact of the use. The prior approval should require information on the date of commencement, number of bedrooms/maximum number of occupants and parking facilities/number of days available for let/ contact details for owners and provision to refuse future prior approval applications for the address if the use is a proven nuisance.

Q.11 Do you agree that we should expressly provide a flexibility for homeowners to let out their homes (C3 dwellinghouses)?

YES

With the cost of living crisis and lack of availability of affordable rooms and lets in larger areas, this could resolve an issue in such areas and provide an additional income for homeowners with space to spare. However, it should be subject to a prior notification process.

Q.12 If so, should this flexibility be for:

30 nights in any calendar year

This would provide greater flexibility to homeowner as to how to use their home, however the Regulations need to enable withdrawal of this if the use proves to be a nuisance, when even 30 might be excessive.

Q.13 Should this flexibility be provided through:

- i. Yes but the provision must be controlled and subject to the suggested conditions. Even 30 nights, if utilised 1 per weekend, could seriously affect the amenity of an area if the use proves to be a nuisance.*

- ii. *If this amendment is provided - Rooms are often rented out to long-term renters to assist, for example, when they are working away from home. Allowing occupation for as long as possible will assist in giving those people a home away from home and might assist in having them become part of the community. As an example, agency planners will often work away from home in the week, return to their own property at the weekend. Their ability to live somewhere as long as possible (possibly even longer than the 90 days) will be of benefit to them as well as the employer (thus economy).*

This permitted development should, like the other rights be managed through a prior notification procedure.

Q.14 Do you agree that a planning application fee equivalent to each new dwellinghouse should apply to applications for each new build short term let?

YES

Still has the same issues as a dwelling. Such applications have similar considerations as a proposed dwellinghouse.

Q.15 Do you agree with the proposed approach to the permitted development rights for dwellinghouses (Part 1) and minor operations (Part 2)?

DON'T KNOW

There is concern that an owner will exploit the ability to extend their property and thus have greater ability to have more rooms to rent out without appropriate parking provision or risk of greater nuisance e.g. through noise resulting through more occupants, thus have an increased negative impact upon a community without the LPA being able to consider these issues and community cohesion, for example.

Q.16 Do you have any further comments you wish to make on the proposed planning changes in this consultation document?

YES

See previous comments. There needs to be an easier/ quicker method for LPA's to restrict use than through Article 4 directions, which cannot be applied retrospectively. Whilst the introduction of this use class is welcomed, it is considered that for many authorities it will be too late (i.e. after the horse has bolted) as it not possible to remove such rights retrospectively.

Q.17 Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could give rise to any impacts on people who share a protected characteristic? (Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation).

NO

Q.18 Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could impact on:

a) businesses

b) local planning authorities

c) communities?

YES

The introduction of the C5 use class in itself won't have impact on a), b) or c). However, for those areas where an Article 4 Direction is introduced it will have impacts as follows:

- a) People who are looking to buy dwellings to use as short term lets will be, potentially, affected financially with the introduction of the C5 use class if an Article 4 direction is in place in a given area. However, they would hopefully have undertaken due diligence prior to purchasing the property and will therefore go elsewhere if the market calls for such properties. Businesses in surrounding areas may be affected as tourists would be more likely to eat out than homeowners on a regular basis. This could be offset by businesses having greater access to workers where the property is occupied by homeowners and their family. It is potentially a quid pro quo.*
- b) Minor impact will occur in relation to the receipt of prior notifications. There may be, in the short term, greater enforcement activity with properties being purchased as dwellings (C3 use) and converted to C5 use if people are not aware of the legislative change. However, the clarity will assist planning authorities.*

Any legislative changes that encourages an increase in 'short term lets' is likely to have a direct impact upon planning enforcement resources. The LPA regularly receive complaints about the use of such properties and the impact of these uses on neighbouring residents and the wider community. Therefore, it is envisaged that an indirect promotion of this type of use will directly result in increased complaints. It is likely that any control/ monitoring of nights used, as suggested, will again create additional work/ impact upon resources.

While a standard definition is long overdue, LPAs have previously been required to 'make do' with case law and C3/ sui generis, there needs to be guidance accompanying any changes so that all LPA's are interpreting legislation in the same way.

- c) Where A4D's are imposed, this will benefit communities by removing, without the need for a planning application, the possibility of a C5 use commencing adjoining their properties and the possible ensuing challenges this can trigger.*

However, there are significant concerns that the introduction of the proposed C5 use will encourage homeowners to implement such a use by 'advertising' it as a mechanism to offset e.g. cost of living crisis. The planning enforcement team has received numerous complaints about anti-social behaviour and nuisance regarding 'short term lets'. Any promotion of this type of use will likely have a direct impact on more communities than at present which is more than likely to negative impacts.