

Chartered Institute of Housing response to the consultation for a use class short term lets and associated permitted development rights (June 2023)

Summary

Chartered Institute of Housing (CIH) welcomes the opportunity to respond to this consultation and would be happy to discuss any details of our response. We have also responded to consultation from the Department for Culture Media and Sport (DCMS) on a registration scheme for short-term lets in England, and our response can be found [on our publications page](#).

The challenges created by the steep rise in short term and visitor accommodation lettings over recent years is an important topic for many of our members. Whilst visitor accommodation is important to support the tourism economy in certain locations, a high concentration of short term lets (STLs), particularly the conversion of residential property previously rented out in the private rented market into STLs, is dramatically reducing choice for local residents and pushing up prices. STLs are unevenly distributed across England. In those areas where they are concentrated, coupled with the chronic and long term under supply of social housing, this situation is disastrous for many individuals and communities. We believe that STLs should not be prioritised over the right to adequate housing, and we welcome government's exploration of this issue.

We previously submitted evidence to the call for evidence on 'developing a tourist accommodation registration scheme in England' in 2022. In our [response](#) we recommend that government undertake a more comprehensive review of the issue and options and consider proposals for a combination of a licensing scheme alongside planning legislation and council tax and business rate changes.

We consider planning has an important role to play in managing STLs, however, there is not a single solution to this complex problem and therefore this needs to be tackled from a range of policy angles. As detailed in our response to the DCMS consultation on registration currently being undertaken in tandem to this consultation, a registration scheme would help to harness better information and data and should be linked to the planning system (i.e., any application for registration must have to demonstrate that the necessary planning approvals have been achieved). Although a registration scheme should be administered by local authorities, it needs to join up into a national database of shared information. This

should require the platforms advertising properties to share information as well. Platforms should also have to ensure that the properties they advertise have valid registration (with penalties issued for the platforms where they allow listings that do not have a valid registration number, or where they have failed to check that it is current and valid). This will help to ensure compliance with the system.

As part of a multi-pronged approach taxation changes should also be fully considered. It is welcome that this is underway for second homes, but reform is also needed for STLs. Properties operating as STLs still use many of the services council tax is designed to resource, for example bin collections, and often more intensively than if a property was being rented out on a long-term rental to a single household. Whilst local taxation needs to be structured in a proportionate and fair way, enabling local authorities to charge council tax premiums and vary business rates could generate proceeds to be ring fenced for investment in much needed affordable housing provision to replace the homes lost. This could be targeted at those areas most affected and experiencing the greatest housing stress and set at price points local people can afford. In relation to second homes, in Cornwall the local authority demonstrated that if the council tax premium were set on second homes at 100 per cent of the normal council tax level, it could generate c.£20m in revenue per annum, which would support the financing costs of a largescale programme of new affordable homes ([Cornwall committee public reports pack 15 December 2021](#)).

Given the pressing nature of the impact of STLs in some areas, government should consider the most effective and quickest vehicle to introduce measures to tackle the problem, and to ensure that these work with and do not undermine the welcome security for long term renters being introduced through the Renters Reform Bill.

It is also crucial to point out at the outset that any measures to be undertaken, monitored and enforced by local authorities must be adequately resourced by central government. [Research by the RTPi](#) in 2022 highlighted that local authority planning teams face significant funding, recruitment, skills and performance challenges. This report demonstrated that local authority net expenditure on planning has fallen by over 40 per cent from 2009/2010 to 2020/2021. To ask local authority planning teams to continually do more with less is unsustainable. For any of these measures to have impact and be successful it is vital that suitable resourcing is provided.

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

Yes.

We consider that the planning system could potentially be used as one of a number of tools to help manage the increase of short term lets. It will be essential that local planning authority teams have the resources needed for any changes to be meaningful.

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

Possibly.

Short term lets differ extensively in terms of their use from long term homes, and therefore it is sensible that they would be in a separate use class. Introducing a new use class for holiday lets would provide a potential solution in that all new STLs would require planning permission. However, it is important to note that if, as the consultation documents proposes, permitted development rights (PDRs) are also introduced for dwellinghouse to short term let conversions, this could liberalise the situation in some locations and so be counterproductive to the aim of managing this problem. As we will discuss later in our response to question 6, Article 4 directions have serious limitations in this context and will not be a suitable tool here to manage this issue effectively and address the housing emergency which short term lets are creating in certain localities.

We consider that there may be a better tool available within the planning system to address this problem. We support further exploration of the Royal Town Planning Institute's (RTPI) suggested approach (discussed in response to question 10).

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

Yes.

If a new use class is created this seems to be a practical definition making a precise distinction between a main residence and a short term let property.

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

Yes.

Introducing a new STL use class under current legislation is the most straightforward change available to planning. However, there are significant limitations with this approach which must be considered, notably that this will not deal with homes which have already been converted to holiday lets. The monitoring and enforcement of these proposals for a new use class are likely to be compounded by the lack of resources available to local planning authorities.

Whilst we would not like to rule out the use of a new C5 short term let use, we urge government to engage with planning specialists and others to avoid the creation of any unintended consequences.

If the use class change proposals are to be taken forward it is important that the planning and registration systems are linked together, and that evidence of planning permission is required for registration. Planning enforcement is a lengthy process and [research by the RTPI](#) has highlighted a crisis in planning enforcement teams with unmanageable workloads and insufficient staff, leading to an inability to meet public demand. The requirement for evidence of planning permission to obtain registration will ultimately lead to less pressure on local authorities and allow the system work more effectively.

It is disappointing that the 90-day rule in London is proposed to continue. Anecdotal evidence from our members and from colleagues across the housing sector has demonstrated that this is not working successfully and has proved extremely difficult to monitor and enforce. The Greater London Authority Housing Research Note 04: [Short-term and holiday letting in London](#) has considered this and concluded that whilst local authorities are tasked with planning enforcement in their boroughs, they have struggled to monitor and enforce against unlawful short-term letting practice. This is partly due to a lack of resource and is compounded by a lack of available data.

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

No.

Opening a list of specific arrangements in this way will lead to a watering down of the policy measure and any loopholes will likely be exploited.

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)

No.

We are concerned that if a new permitted development right is created to allow a change of use from C3 dwellinghouse to a C5 short term let properties, Article 4 directions will not be a strong enough tool to control the situation in many locations. Making these conversions permitted development will liberalise the system, and the use of properties in STL use could be maximised. We consider that, as they currently exist, Article 4 directions will not be able to control this problem adequately for several reasons:

- Over recent years the government has sought to limit the use of Article 4 directions; indeed the current NPPF amends previous wording so that paragraph 53 states that the use of Article 4 directives should “in all cases, be based on robust evidence, and apply to the smallest geographical area possible”. This means that robust evidence would need to demonstrate the impact which has *already* taken place on housing supply, community cohesion, etc. for the Article 4 directive to be implemented. Once the Article 4 directive is implemented, although it would prevent any more C3 dwelling houses from being converted to C5 short term let properties, it would not address the problems caused from those which have already been converted, therefore in effect the damage may already largely have been done.
- Applying Article 4s to the “smallest geographical areas” risks simply moving the problem around, effectively pushing the STLs to the edges of the Article 4 boundary, which could be a matter of a few streets from the original affected area. A local authority may need to make multiple, even dozens of Article 4 directives to have any impact on the situation. This patch work could be very complex and time consuming.

- As we have already noted, many local planning authorities are under significant strain. Therefore, the implementation of Article 4 directions is likely to be sporadic, being used only by those local authorities particularly minded to do so and with sufficient capacity to make it happen.
- Article 4 directives are not quick to implement. An Article 4 direction cannot be made in relation to a future permitted development right, so authorities' hands are tied until the statutory instrument containing the new rights is actually made. Then a legal process, including public consultation, has to be followed in order to introduce an Article 4 direction. To avoid compensation payments a local planning authority must confirm and publish its intention to make the Direction at least 12 months ahead of the Article 4 taking effect. During this time more homes will likely be lost to STLs in a 'rush' to get in under the line being drawn. This could potentially exacerbate the very problem which it is trying to overcome.
- Local authorities are best placed to understand local needs and plan for STLs, however these proposals create uncertainty by giving the Secretary of State a 'veto' power to block or modify Article 4 Directions before they come into force. This power has exercised regularly in relation to other permitted development rights (for example in relation to office to residential conversions).

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)

We do not agree with the proposed approach to STLs, but if it is to be taken forward, then yes there should be a new permitted development right to change from a C5 short term let to a C3 dwelling house. Conversions of a property back to long term housing should be as simple as possible.

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

No.

We do not agree that this PDR should be introduced. However, if it is introduced there should be limitations and conditions including size limitations and conditions. This should not apply to listed buildings and in National Park and Areas of Outstanding Natural Beauty etc.

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?

If these proposals are introduced, then local planning authorities should be notified as this will help local authorities build up an accurate picture of housing in their area. The current lack of robust data is a significant issue.

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

The proposed approach has significant weaknesses which we have already covered in our responses to the questions, including that it:

- Creates too much uncertainty about whether local authorities will be able to regulate STLs
- Is likely to produce unintended consequences whereby new STLs are pushed into areas where there are no planning controls limiting their creation
- Allows a 'lag period' between a local policy to control STLs being created, and it being applied. During this time there may be a rush in conversions in the areas which are specifically trying to control new STLs
- Fails to adequately address how short-term let use will be monitored and enforced.

Exploring planning (and other approaches) taken by our devolved nation neighbours in Scotland and Wales in more depth would be welcome. We would particularly recommend further exploration of learning from Scotland's approach for amending the definition of development. In England, section 55 of the Town and Country Planning Act 1990 defines the meaning of 'development'. Currently the use of a dwelling as a second home or a holiday let does not constitute development under the Act. It is therefore difficult to introduce planning tools or interventions to address second homes or holiday lets. In the Planning (Scotland) Act 2019 the definition of development has been amended to address this, and the Scottish Government has given local authorities the power to designate '[short-term let control areas](#)'. In a short-term let control area, the use of a property for providing short-term lets will be deemed to involve a 'material change of use' of the dwelling house and so require planning permission. This is reinforced with a parallel licencing scheme which addresses issues not controlled by planning, including environmental health considerations such as noise. Planning permission for a short-term let in a control area is a pre-requisite for obtaining a licence. This

therefore addresses the issue of those houses already being used for short-term let, as they would need to apply for planning permission through a planning application or establish existing use that meets the legislative time limits through a Lawful Development Certificate (LDC).

CIH would support RTPI's proposed approach (as detailed in RTPIS [response](#) to this consultation exercise) to amend the meaning of 'development' as defined by section 55 of the Town and Country Planning Act 1990 in England. This could potentially be made via the Levelling Up and Regeneration Bill. If the government were to amend this definition of development so that it included the use of dwelling houses as STLs (and provided accompanying regulations), doing so would be deemed a material change use. Therefore, this in turn, would mean that property owners that did this would need to seek planning permission. Local authorities would then be able to write plan policies to shape the use of STLs in their areas, and grant or deny planning permission accordingly. They could tailor these policies according to local needs and concerns. This could be done across a whole local authority area, or individual locations. Local authorities that do not wish to limit the development of STLs in their areas could purposefully set a very low policy bar. Other local authorities that want to more stringently control, could then establish 'STL control areas', which would reduce the expansion of STLs. In both cases planning permission should be a prerequisite of the licencing/registration scheme, and owners of dwellinghouses which are already being used for STLs would need to apply for planning permission through a planning application or a Lawful Development Certificate. This would give local authorities the power to control their existing stock of STLs (in situations where they needed to do so). The government could also, if it sees fit, establish time-limited planning permissions for STLs, so that local policy could be responsive to changing needs and concerns over time.

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

No, because as we have seen in London this is impossible to monitor. [London Councils](#) research suggests that the introduction of the Deregulation Act 2015 has not stopped the growth in short term lettings and that multiple online letting platforms mean property owners can circumvent the rules. In addition, the report concludes that enforcement of this legislation is proving to be an impossible task for local authorities, who do not have access to the information they need to proactively engage with owners. [Research by Camden Council](#) in 2020 estimated

that almost half of the data they collected on homes available for short-term lets breached the 90-day limit.

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

i. 30 nights in a calendar year; or

ii. 60 nights in a calendar year; or

iii. 90 nights in a calendar year

See answer to Q11.

Q.13 Should this flexibility be provided through:

i) A permitted development right for use of a C3 dwellinghouse as temporary sleeping accommodation for up to a defined number of nights in a calendar year

ii) An amendment to the C3 dwellinghouse use class to allow them to be let for up to a defined number of nights in a calendar year.

See answer to Q11.

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.

It will generate work for local authority teams to process the applications and it is important that the application costs reflect this adequately.

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

Part 1) No. Permitted development rights to extend properties will have very different implications depending on whether the house is being used as a long-term home or for a STL. In the case of STLs extensions are likely to mean more guests can stay in the property, which will have implications for residential life

alongside the STL (for example potentially more noise, more rubbish and so on). Therefore, it is important that local authorities have control in these situations.

Part 2. Yes.

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

As noted in the summary section of our response, STLs are dramatically reducing choice for local residents and pushing up prices in certain locations in England. In those areas where they are concentrated, this situation can be catastrophic for individuals and communities. In discussions with our members who work in local authorities in locations where STLs are particularly concentrated, we have heard accounts of people presenting as homeless who previously would have had no difficulties finding a home; because they simply cannot find anywhere affordable to rent as so many previously private rental properties have been 'flipped' to more lucrative STLs. This includes essential workers such as nurses and teachers who traditionally would have been welcomed by PRS landlords as tenants. In addition, our members in some local authorities affected by the issues have told us of their difficulties discharging their homelessness duties given the undersupply of social homes and now the undersupply of PRS properties. This leads to homeless households being trapped in temporary accommodation which is both expensive and unsuitable. Anecdotal evidence from members tells of people from outside the area accepting jobs in the public sector, only then to withdraw their acceptance because they cannot find somewhere affordable rent near to their new employment.

We welcome the government's focus on this issue, however, neither the planning or registration proposals being consulted on will provide a 'silver bullet' resolution. Both require more careful consideration, exploration and development to ensure the best outcomes. A suite of measures across planning, taxation, registration and potentially licensing will be needed. It is important to flag that measures must also ensure that platforms take responsibility. Government should introduce requirements on short-term letting platforms to routinely share data at the local and national level. Platforms should also be required to support the operation of a register and face penalties if they do not. If platforms can only list a property when a registration number has been uploaded (and that registration process also required the necessary planning approvals to have been obtained) and are penalised for listing unregistered properties, this will help ensure compliance with the system and distribute the burden of monitoring to the platforms as well as local authorities.

Finally, again we must stress the importance of adequate funding for any changes. Any system proposed will ultimately fail if local authorities are not adequately resourced to monitor and enforce it.

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).

Yes

If these proposals fail to address housing needs in areas heavily effected by STLs then access to affordable, good-quality housing will likely become even more of an issue than it already is. We know that people with protected characteristics are often disproportionately represented amongst those with lower incomes and with the least housing options, and face systemic disadvantage, so they are also more likely to be negatively impacted by any failure to address this issue.

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is to provide housing professionals and their organisations with the advice, support, and knowledge they need. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org.

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