


<p>Cabinet</p> <p>20 March 2018</p>	
<p>Report of: Ann Sutcliffe, Acting Corporate Director, Place</p>	<p>Classification: Part Exempt (Appendix 1)</p>
<p>The impact of short-term holiday platform lets</p>	

Lead Member	Councillor Sirajul Islam, Cabinet Member for Housing
Originating Officer(s)	Marc Lancaster, Private Sector Housing Policy Officer
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	A great place to live

Summary

Any residential premises in London let as a holiday home for less than 90 nights during a calendar year has since October 2015 no longer needed planning consent for a change from residential to commercial use. Such permission *is* still needed where short-term letting takes place over more than 90 nights in a year. Anyone letting without required permission is liable on conviction for an unlimited fine. However, evidential requirements mean that Local Authorities have been unable to enforce this 90 night limit.

In the last two years, the number of London properties listed every year on Airbnb has nearly tripled, to more than 50,000. There are at least 40,000 London properties listed on other platform sites. This market is particularly intense in Tower Hamlets: in the year to March 2017 there were more Airbnb bookings in Tower Hamlets than any borough except for Westminster. Holiday lettings are concentrated around Brick Lane and around Canary Wharf. In many cases lettings are carried out not on an occasional basis by residents but year-round by holiday let businesses.

This represents a loss of residential accommodation in the borough as landlords shift properties into the short-term letting market. Evidence also strongly suggests that it causes a nuisance for residents, undermining community cohesion and contributing to antisocial behaviour.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Apply to the Secretary of State for Housing to exempt from the 90-day permission those parts of the borough that are most severely affected by the growth of short-term letting
2. Work at a leadership level with MPs, the GLA, Local Authorities negatively affected by the growth of short-term letting, and other stakeholders to lobby Government for legislative change
3. Develop a substantial communications plan around short-term holiday lets using social, on-line and traditional media in order to deter unlawful holiday letting and to support to the council's lobbying objectives
4. Ensure that work is carried forward by Tower Hamlets Homes and by THHF to ensure that Registered Providers enforce lease restrictions against all leaseholders who operate 'Airbnb businesses'
5. Establish a working group to establish lead responsibility and a multi-agency response to problematic short-term letting including through enforcing health and safety, tax, and insurance compliance
6. Set up an on-line system by which residents affected by short-term letting can log with the Council addresses and dates where those lettings take place
7. Develop policy on Community Protection Notices that includes their use for problematic short-term letting, and delegates power to Registered Providers in order that they can serve them on short-term letting providers rather than their licensees

1. REASONS FOR THE DECISIONS

- 1.1 The exponential growth over the last two years in the use of holiday letting platforms has led to a relatively small but significant loss of residential housing in Tower Hamlets. Profits from unregulated holiday lets can considerably exceed those from residential letting.
- 1.2 There is evidence that short-term holiday letting is also linked to anti-social behaviour, nuisance, and in some cases criminality. These factors have been raised strongly by Registered Providers in the THHF working group on leasehold landlords, and by officers in Town Centres Teams. During its evidence sessions on the Night Time Economy, the Economy Scrutiny

Committee heard evidence suggesting that properties in the Borough have been rented out using sharing economy services, and that this had created problems in residential areas, with the properties being let for weekends to groups who used the properties to hold weekend-long parties, with ASB impacts on neighbouring properties within street and buildings.

- 1.3 There have been cases in the Brick Lane area of properties rented through holiday platform sites for prostitution and drug dealing. Short term lettings on City Island were used for sex and drug-taking parties and raided by the police
- 1.4 Limiting the area in which we are seeking an exemption gives more chance of success: government guidance indicates that it is intended as a targeted response.
- 1.5 It should be noted that any exemption would **not** be intended to prevent residents letting their home on a short-term basis: it would just require them to ask the council for permission before doing so. This in turn would make it possible for the council to plan and control the nature of short-term letting, preventing the loss of homes and minimising any loss of amenity.

2. ALTERNATIVE OPTIONS

- 2.1 The Council could take the view that there is no case for attempting to regulate or restrict the market. Firstly, many residents value the fact that they can use sites such as Airbnb to let out their homes when they are away for short periods – or to let out rooms in their home for short periods. Actions to regulate the market may restrict their capacity to do this, or may be perceived to restrict it, and may therefore be unpopular and unwelcome. Secondly, many visitors to the borough like the freedom and ‘authenticity’ associated with staying in residential-style accommodation: restricting its availability could damage the tourist economy. Thirdly, there does not appear to be any direct financial benefit to the Council in regulating abuses of the market; indeed, there may be a financial cost associated.
- 2.2 The Council could decide that efforts to regulate the market should be focused solely on campaigning for a change in the law and for backing the Mayor of London’s efforts to work with the industry. The council could take the view that as the legislation stands, there is no realistic scope for effective enforcement when set against the size of the profits available from breaking the law.
- 2.3 Cabinet could decide to apply to the Secretary of State for Housing for exemption from the Deregulation Act across the borough. This is likely to be received unfavourably: guidance and the experience of Westminster suggest that any successful application would need to be tightly focused and evidenced. However, such an application may be popular and could serve a lobbying end.

3. DETAILS OF REPORT

Legislation and regulation

- 3.1 Under the Greater London Council (General Powers) Act 1973, short-term rentals in London are subject to a planning restriction making the use of residential premises as temporary sleeping accommodation a “material change of use” for which planning permission is required. The Deregulation Act 2015 introduced an exception to this restriction allowing residential premises to be used for temporary sleeping accommodation – provided that such use does not exceed 90 nights a year, and that at least one of the “hosts” who provided the accommodation was liable to pay council tax.
- 3.2 The Deregulation Act also provides that Local Authorities can apply to the Secretary of State for the 90-day exemption to be lifted in a defined area. An exemption would be the only policy route through which short term rental properties could be further regulated. Local Planning Policy or Supplementary Guidance would have to be in conformity with the current national policy approach, which is to allow residential premises to be used for temporary sleeping accommodation as outlined in 3.1 above.
- 3.3 To date, Westminster City Council is the only authority to have applied, and their application was rejected in May 2016.
- 3.4 Owners of properties not liable for council tax or who without planning permission have let the accommodation on a short-term basis but for more than 90 nights can be fined an unlimited amount. The DCLG were explicit that the exemption in the 2015 Act intends to help residents wishing to let out rooms or the entirety of their own home for short periods – not to provide opportunities for the commercial sector¹.
- 3.5 On 21 March 2017 Karen Buck MP presented a Private Members Bill to require registration of short or holiday lets with Local Authorities. The Bill was presented with the support of other MPs including Jim Fitzpatrick and Rushanara Ali. However, because of the General Election and dissolution of Parliament from 3 May 2017, the Bill fell and no further action could be taken.
- 3.6 On 13 December 2017 Karen Buck MP presented the Bill again as a Private Member’s Bill. It is expected to have its second reading debate on Friday 15 June 2018. The Bill would require householders to notify local authorities of an intention to register accommodation for short or holiday lets; and for connected purposes.

¹ DCLG (February 2015): *Promoting the sharing economy in London: Policy on short-term use of residential property in London*

The scope of short-term holiday letting

- 3.7 In the year to March 2017 there was a 60 per cent increase in the number of listings on Airbnb in London. 51 per cent of all lettings were for an entire home: entire home listings rose 54 per cent to 27,175 in the same period.
- 3.8 Five boroughs accounted for more than half of all Airbnb bookings in London during the year to March 2017, as well as the majority of the city's Airbnb supply at almost four million listings: Westminster, Tower Hamlets, Camden, Kensington & Chelsea and Hackney.
- 3.9 Even within these boroughs listings are highly clustered, with many areas of relatively little activity and a few hotspots where there are over 1,000 listings within a 1km radius. The biggest of these hotspots in London forms a corridor from Hoxton down to Aldgate incorporating the Shoreditch and Brick Lane area.
- 3.10 In the year to March 2017 there were more Airbnb bookings in Tower Hamlets than any borough except for Westminster.
- 3.11 As well as the market leader, Airbnb, there are also many other short-term lettings platforms including VBRO, HomeAway, Booking.com, and Wimdu.
- 3.12 Further, there are companies specialising in short-term lets that own - or lease and manage - second homes in the borough: Skyline Worldwide Accommodations, Go Native, Premier Apartments London, and Apple Apartments, for example, between them manage 110 apartments in Tower Hamlets.
- 3.13 Appendix 1 shows the extensive and increasing use of residential housing in Tower Hamlets for short-term holiday letting since 2015, and that this market is highly professionalised. Data in Appendix 1 suggest strongly that these factors are leading to a loss of residential housing.

Airbnb, the GLA and the collaborative approach

- 3.14 Following pressure from the GLA, Airbnb announced on 1 December 2016 that it would enforce the law by removing from its site *entire homes* that had been let for 90 days in a calendar year – unless the 'host' had official consent. GLA Assembly Member Tom Copley said: "Airbnb have engaged constructively since I raised this with the Mayor a couple of months ago. I now call on other short-term letting websites to do the same."
- 3.15 Since January 2017, then, Airbnb have operated a 'dashboard' warning system that advises 'hosts' to seek permission from their Local Authority as soon as their property has been let for 75 nights in the calendar year. If the 'host' does not confirm that they have received planning permission, their letting is removed from the Airbnb site after 90 nights. Since April 2017, such removals have been taking place.

- 3.16 In a letter of 8 February 2018 to Mayor John Biggs, Airbnb state that since introducing limits in January 2017, the number of hosts in London exceeding 90 nights has dropped from 23 percent to 7 percent. It should be noted that this still represents around 5,250 hosts.
- 3.17 Airbnb have agreed to pass information to Tower Hamlets and four other authorities on 'hosts' who claim to have permission to let for more than 90 nights in order that officers can confirm whether permission has been granted. However, before providing this information they have required a very substantial specification of the council's IT systems which officers are currently attempting to complete.
- 3.18 It should be noted that to date no permission has been granted to change from a residential planning category to one permitting short-term letting for more than 90 nights in a year.
- 3.19 Airbnb have stated that they are not prepared to share with Local Authorities details of 'hosts' who have reached 90 nights letting and then withdrawn their property from the Airbnb site. In the absence of that information, enforcement is almost impossible against operators who simply move to another site. However, Airbnb have indicated that they would be likely to share information where a Planning Enforcement Notice has been issued.
- 3.20 Airbnb state that they have put in place measures including image recognition software to ensure that 'hosts' are not able to circumvent their ban by relisting properties under different designations.
- 3.21 Airbnb have this year introduced a 'Neighbour Tool' onto their website which allows neighbours to report to them concerns about any Airbnb letting.
- 3.22 Airbnb state that they rigorously bar 'hosts' and 'guests' who cause significant nuisance from using their site again. Airbnb have introduced 'responsible guest guides' in a further attempt to reduce nuisance and antisocial behaviour in their lettings.
- 3.23 There is significant evidence that when a short-term landlord reaches the 90 day limit on Airbnb, they simply migrate to another site. In their letter to Mayor John Biggs of 8 February, Airbnb highlight new data showing that there are at least 40,000 listings on other platforms in London; and that Booking.com saw a 50% increase in short term rental listings between December 2016 and January 2017 in London.
- 3.24 Airbnb have formed the Short-Term Accommodation Association (STAA). The STAA are promoting their work towards self-regulating industry. However, only a relatively small number of other platforms have joined.
- 3.25 In February 2017, the Mayor of London Sadiq Khan wrote to holiday letting platforms to ask for self-regulation on the lines of Airbnb's 90 day limit. He then met with a number of them. These reportedly argued that self-regulation

would be impossible because unlike Airbnb they operate solely as 'match makers' and do not monitor the outcome of their 'introductions'.

- 3.26 Airbnb are lobbying for a licensed operator scheme in London.
- 3.27 The Mayor of London's Draft Housing Strategy addresses the issue only briefly: "The Mayor welcomes the rise of the sharing economy, and supports the right of Londoners to use online lettings sites to rent their homes out for short periods of time. However, this right needs to be balanced against the impact that shorter term lets can have on certain local communities and on the supply of permanent private rented housing. The Mayor will work with councils to encourage all short term lettings operators in London to enforce the 90 day limit, and will work with the industry to develop an information-sharing protocol or other measures to support council enforcement of the law".
- 3.28 At a meeting with Councillor Islam on November 2017, the British Hospitality Association expressed scepticism about the efficacy of self-regulation, suggesting that in cities across the world the offer of self-regulation has been part of a pattern to prevent or at least delay effective regulation.

The issue and responses in the City of Westminster

- 3.29 The impact of short-term holiday letting is particularly intense in the Westminster City Council area and has been for many years.
- 3.30 In the 15 years before the Deregulation Act, Westminster's Planning Enforcement Team dealt with 7,362 enforcement cases against short-term letting through a dedicated Short Term Letting Team of six members of staff.
- 3.31 In October 2015, just as the Deregulation Act 2015 came into force, Westminster City Council applied to the then Housing Minister Brandon Lewis to exempt two wards and sixteen blocks in other wards from the 90 day permission.
- 3.32 Brandon Lewis rejected the application in May 2016 on the basis that it would in his opinion unfairly penalise those homeowners who were acting within the law. In a letter to Westminster City Council he suggested that they resubmit the application having addressed the concerns he raised. With the change in Government, and more immediate pressures at the time, Westminster have not reapplied.
- 3.33 On 8 November 2017 Westminster CC's leader announced a new strategy with three components: lobbying government to introduce a "tax" on short term letting to mitigate the council's costs; a team of four officers to provide proactive intelligence to the existing Short Term Let Team; and an approach to the Great Estates landowners to ensure that in communal buildings they own, all letting is lawful and responsible, and that inconsiderate leaseholders/landlords are dealt with appropriately.

- 3.34 In February 2017 Karen Buck MP for Westminster North published the results of her survey into constituents' experience of short term lettings, undertaken during October and November 2016. 80% thought that it should be easier to enforce the rules that properties should not be let out for more than 90 days. 81% had experience of a neighbouring properties being rented out on a holiday or short-let basis; 55% had experienced problems with that.

Enforcement and regulation in Tower Hamlets

- 3.35 Planning Officers have taken no action to enforce against any breaches of the 90 day rule. Planning enforcement notices are served on the balance of probabilities – but the enforcement, and the possibility of challenge, present significant evidential difficulties.
- 3.36 Planning Officers have not granted any change of use permissions in relation to holiday letting. The Planning Inspectorate recently found in LB Tower Hamlet's favour in an appeal against our refusal to give permission for a dwelling to change its use category to a holiday let. The Inspectorate found that refusal was justified on the basis that the loss of accommodation would be inappropriate. There is therefore a good basis to refuse such changes of use as a policy position.
- 3.37 In November 2017 information about short-term letting was added to the council's website.
- 3.38 A THHF Working Group looking at private letting by leaseholders has identified holiday letting as a significant issue in terms of nuisance, ASB, and criminality. Recommendations on more robust lease enforcement are being drafted for the THHF Executive.
- 3.39 Officers have identified a number of blocks in and around Brick Lane where short term letting is clearly taking place on a permanent basis and are considering a targeted response. However, Planning Service contends that there is currently inadequate capacity to take effective enforcement action on the scale required. This is because each short term letting unit is a separate planning unit in itself that would have a 90 day period of lawful short term letting. In order to ascertain whether each dwelling unit or flat in a development is unlawfully let on a short term basis regular monitoring on each unit in the building will be required to demonstrate unlawful short term usage for more than 90 days in a calendar year.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report provides an update on the implications of short term holiday letting on the supply of residential housing within the borough, and in particular the work being progressed by members of the Tower Hamlets Housing Forum (THHF) to attempt to enforce lease restrictions to control this activity within their own stock.

4.2 In addition to the responsibilities in respect of its own dwellings, the Council has a regulatory role in relation to all properties within the borough. The report asks the Mayor in Cabinet to consider a number of options in respect of the regulatory function, some of which will require financial resources. These include initiatives in respect of enforcement and court action, the potential establishment of an on-line reporting system, and publicity and information campaigns. In relation to its own stock, funding will need to be met from the Housing Revenue Account, with the wider regulatory role being charged to the General Fund. These costs will need to be funded from within existing Council resources.

5. LEGAL COMMENTS

5.1 Section 25 of the Greater London Council (General Powers) Act 1973 ('the 1973 Act') provided that short-term rentals in London are subject to a planning restriction making the use of residential premises as temporary sleeping accommodation a "material change of use" for which planning permission is required. Subsequently the Deregulation Act 2015 amended the 1973 Act and introduced an exception to this restriction allowing residential premises to be used for temporary sleeping accommodation – provided that such use does not exceed 90-nights per calendar year, and that at least one of the "hosts" who provided the accommodation was liable to pay council tax.

5.2 Where there is a breach of the 90-nights rule, enforcement action can be taken. There is a range of ways of tackling alleged breaches of planning control, and the Council is required to act in a proportionate way. The Council has discretion to take enforcement action, when it is regarded as expedient to do so having regard to the development plan and any other material considerations. In considering any enforcement action, the local planning authority has regard to the National Planning Policy Framework.

5.3 The 1973 Act was also amended so that the local planning authority may direct that the 90-nights exemption is not to apply to particular residential premises specified in the direction; or to residential premises situated in a particular area specified in the direction. This is as provided by section 25A. Such a Direction can only be made with the consent of the Secretary of State however.

5.4 There are no Regulations specifying the process to be followed but Guidance on the Government's website provides that the Secretary of State will consider each application for consent from a local authority on its merits, and all arguments are taken into account before a decision is made but directions may only be given if it is necessary to protect the amenity of the locality. A direction is likely to be necessary to protect the amenity of the locality where:

- there has been successful action against a statutory nuisance related to short-term letting; or,
- there has been successful enforcement action against a breach of section 25 or 25A of the 1973 Act.

- 5.5 The Guidance also provides that the term “successful action” means that the notice has come into force and the person responsible has not complied within the relevant time period, and that there is no on-going appeal
- 5.6 With reference to recommendation 7, this is to develop a Policy that will be subject to a separate report back to Members for the adoption of a Policy and detailed legal comments will be given in such report. In the meantime, Community Protection Notices (CPNs) are designed to stop a person aged 16 or over, business or organisation committing antisocial behaviour (ASB) which spoils the community's quality of life. On the basis that the report states that there is evidence that short-term holiday letting is also linked to anti-social behaviour, nuisance, and in some cases criminality, then CPN use may be appropriate. A CPN can be issued by Council officers, police officers, police community support officers (PCSOs) or social landlords, if designated by the Council.
- 5.7 Before a CPN can be issued, the person, business or organisation suspected of causing the problem must be given a written warning stating that a community protection notice will be issued unless their conduct changes and ceases to have a detrimental effect on the community. The warning must also detail that a breach of a CPN is a criminal offence. Further, any decision to serve a CPN has to be taken in accordance with the Council's Enforcement Policy and be both necessary and proportionate.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 There is a risk to social cohesion as long-term residents become more and more exposed to the churn of guests staying in flats on their estates. Similarly, the high proportion of elderly Tower Hamlets residents living on social housing may experience increased fear of crime and sense of isolation from a flux of short-term visitors around them.
- 6.2 The loss of affordable housing has a disproportionate impact on groups who are financially excluded – disproportionately groups with protected characteristics.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 Responding to the challenges of regulating the short term lettings market is likely to incur additional costs that won't be recoupable. The benefits of taking action in order to increase the supply of the traditional rented market and potential reduction in anti-social behaviour would need to be weighed against these additional costs.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 Regulating the unlawful platform lettings market may reduce the energy footprint of visitors to the borough by moving them into hotel accommodation rather than poorly converted residential accommodation.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are increased risks for residents around flats used for short-term holiday letting. This includes risks of accidental fire, water, and electrical damage, as well as the risk of deliberate damage.
- 9.2 It could be argued that in light of the significant number of homes lost to short-term rentals in Tower Hamlets, and of the risks set out above, it would be negligent of the Council to fail to take action.
- 9.3 Standard home insurance is not suitable for holiday lets: short-term holiday letting requires specialist insurance covering public liability, accidental damage and loss of rent. Insurance would also need specifically to cover periods of unoccupancy: nearly one in five claims made on holiday rental buildings and contents insurance is for damage caused by escape of water.
- 9.4 The Regulatory Reform (Fire Safety) Order 2005 makes all short-term holiday 'hosts' responsible for taking steps to protect the people using their premises from the risk of fire including by carrying out a fire risk assessment and if necessary, improving fire safety measures. It is possible that some 'hosts' are unlikely to have complied may have an impact on insurance.
- 9.5 Airbnb's own Host Protection Insurance is designed to protect all listed hosts from liability in case guests cause property damage. However it is 'secondary' insurance and Airbnb ask their 'hosts' to insure themselves. Some 'hosts' may have adequate insurance, increasing the risk of loss to the residential tenants and leaseholders around the holiday let. Many social housing tenants on low incomes are uninsured, and in the event that they suffer loss related to holiday lets their capacity to get redress will be significantly undermined if holiday let landlords are not properly insured. It is likely that landlords' insurance – including buildings insurance – will be robust enough to cover unlawful subletting in their estates.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Environmental Health officers and management have stated that Airbnb-style lettings are responsible for a significant amount of noise nuisance. 'Airbnb parties' – where a flat is rented for a weekend, specifically for a party – are evident. However, at present this is anecdotal: there is no hard data because instances related to holiday lettings are not specifically recorded by Officers. Polar HARCA, Swan, THH, and East End Homes have all identified holiday letting on their estates an issue for identical reasons.

Linked Reports, Appendices and Background Documents

Linked Report

- The Economy Scrutiny Committee's Scrutiny Review Report *Creating a Balanced Night Time Economy in Tower Hamlets*, September 2017

Appendices

- Appendix 1: **The scope of short-term holiday letting in Tower Hamlets - EXEMPT** – (This is due to it containing information relating to the financial affairs of an individual or body – Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.

Officer contact details for documents:

- N/A