

Response of London Borough of Southwark

6 June 2023

Introduction of a use class for short term lets and associated permitted development rights

Summary of response

The London Borough of Southwark is broadly supportive of the introduction of a new use class defining short term letting uses. In addition, providing flexibility and clarity to *homeowners* and occupiers in regards to short term letting is considered positive.

However, there are significant concerns over the scope of the proposals in the consultation, particularly around the proposed Permitted Development Right (PDR) and resultant impacts. The concerns are:

1. The proposals as a whole are unclear about how a new use class and the PDR will interact with the current short term letting situation in London as per section 25 of the Greater London Council (General Powers) Act 1973 and section 44 of the Deregulation Act 2015. Certainty is crucial in this regard so that the full impacts of the proposed changes are known to London authorities, and can be managed.
2. The PDR is unnecessary to allow flexibility to homeowners and will serve to allow commercial operators to expand their operations. This will:
 - a. result in the loss of housing stock,
 - b. impact on existing residents, and
 - c. severely impact communities in areas where short term letting is more desirable for operators.
3. The reliance on article 4 directions gives no comfort that short term letting uses will be able to be managed effectively, and protect against these concerns. It could also result in a substantial amount of work for LPAs
4. In the absence of a borough wide article 4 direction the PDR will remove the ability for what is often an intensive and disruptive use of land to be subject to the full assessment of the planning authority and subject to local consultation.

5. A registration scheme must be robust and allow local authorities to have access to full data to identify short term letting properties and quantify the level of short term letting use, to assist monitoring and effective enforcement where appropriate.

Detailed answers to the questions in the consultation

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

Yes

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

Yes

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

In principle there is no objection to defining a short term let use in the UCO, in a similar although not identical way as the situation in London (section 25 of the London Local Authorities Act).

However the wording of C5 goes well beyond allowing homeowners to let out the property they live in for short term periods. The wording of C5 suggests a short term letting use which will be available to commercial short let operators all year round. In that respect it is unclear:

1. what the difference (in practice) would be between a new use class defining a property that can be used all year round for traveller accommodation by a commercial operator, and the existing C1 use class (or a guest house, BnB or Hostel).
2. If there is a difference between C1 and C5 is that difference or would that difference likely be material. There is a concern that C3 to C5 under the proposed PD right could be followed by a change to C1, which if not materially

different would not require any planning permission. It is also unclear whether a C5 unit would be counted as a dwelling for housing monitoring purposes

3. Regardless, the C5 use class used all year round by a commercial operator is likely to have very similar, if not worse, effects to a guesthouse or BnB or small hotel use. There is a fear that effects could be worse because experience shows that one of the main difference between small C1 uses and C5 as proposed is a lack of any management or staff on the premises.

It is noted that currently a property owner who wishes to use their property to provide short term visitor accommodation on a commercial and permanent basis can apply for planning permission to use their property as a short term let (C1 or sui generis). This would be assessed against local policies and other material considerations and be subject to consultation exercises.

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

Yes. If the proposals are enacted as outlined in the consultation, LPAs will be unable to enforce against problem short term letting properties that already exist.

This is because as explained in the consultation a property being used as such will automatically be subsumed into the new use class C5 and be authorised as such at point of the introduction of use class C5, there will be no way of applying an Article 4 direction to these properties either. This will also crystallise the loss of a C3 dwelling to the new C5 use class potentially permanently.

If adopted as proposed, transitional measures should seek to protect against this.

It is not clear how a new use class work alongside the existing situation in London and whether the introduction of C5 as proposed conflict or override the provisions of section 25 of the Greater London Council (General Powers) Act 1973 and section 44 of the Deregulation Act 2015. There is concern that both could be relied upon in London, with the proposed C5 offering unlimited short term letting and crystalizing the loss of housing stock, unless article 4 directions are proactively applied (and confirmed).

It is understood that Section 25 of the Greater London Council (General Powers) Act 1973 is primary legislation that defines a material change of use always will occur in London where a residential premises is used for temporary sleeping accommodation for less than 90 consecutive nights. But this provision does not create a new use class as such, and does not currently benefit from a PDR as such. However the wording of C5 is for all intents and purposes the same as section 25 of the Greater London Council (General Powers) Act 1973.

There is no apparent reason in the consultation why, on adoption of these proposals or at a later date, an operator of a short term let property in London cannot claim that they fall squarely within the description of C5 (assuming that they do), and be lawfully used for that purpose.

There is no precedent for a use class in the UCO only applying to certain geographic areas. If it is the case that C5 would not or cannot supersede the situation in London then it needs to be made very clear, ideally in legislation and guidance to LPAs why.

If C5 accurately describes an activity being carried out on land in London then there is no reason why the PDR discussed further below would not be available to an operator of a short term let property in London. The PDR as proposed in the consultation is a planning permission that would then authorise the material change of use defined under section 25 of the Greater London Council (General Powers) Act 1973.

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

Yes. The stock of emergency homeless accommodation, HMOs, student accommodation and accommodation which provides some care to occupiers (all uses potentially within C3) could be detrimentally affected by these proposals.

These should be exempted from a permitted development right because they are types of accommodation with a particular use and often acute need.

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. This will result in the loss of permanent housing stock, and hollow out new build developments, inner city areas, and other areas attractive to visitor accommodation.

It is considered likely that the income from a property rented out on a nightly basis (even for only a portion of the year) is more than a property rented out on a longer term basis, with less regulatory and financial barriers (even with a new registration scheme), and is considered to be an attractive property ownership option for investors, commercial operators and second home owners.

Whilst article 4 directions can remove PD rights, these should apply to the smallest geographic area possible. If used in parts of a planning authority's area these could push the issue into other nearby areas. This might be a problem in urban authorities, because of good public transport links in residential areas that are likely to make them attractive places for C5 properties.

It is also considered that evidence of an issue with the operation of the PDR would often come too late to apply an article 4 direction.

The PDR could quickly result in a change to the character of an area by increasing traffic generation, noise and parking issues, and encourage a more transient character. It could also exacerbate a shortage of homes for sale due to it being more lucrative for a homeowner to retain the dwelling for both residential and letting purposes, as opposed to selling.

As noted above there are very similar characteristics and effects between C1 and sui generis nightly accommodation uses, and the proposed C5 use. For similar reasons that C1 uses would not be regularly approved in residential areas and buildings it is considered that the PDR will result in unacceptable impacts on residential amenity.

There are also concerns about noise nuisance, over-occupation and damage to communal space resulting from the use of properties as short term lets.

A property owner who wishes to use their property to provide short term visitor accommodation on a commercial and permanent basis can currently apply for

planning permission to use their property as a short term let, to be assessed against local policies and other material considerations, and be subject to consultation.

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)

If the PDR above in Q6 is adopted. However, safeguards need to be in place, and/or clarity is needed in both PDRs to avoid the risk of creating C3 units under the technical housing standards requirements, or deficient in other ways, without the assessment of the LPA.

For example - could works be carried out to a C5 property to provide multiple apartments for short letting within use class C5, and would these internal works need planning permission? If not, a subsequent return to C3 under the PDR to revert to C3 could result in poor standard permanent residential accommodation which would be undesirable and potentially problematic to enforce against if permitted by the PDR.

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

No, if adopted then there should be limitations to ensure accommodation is safe, for example space standards and numbers of occupiers.

Registration (to a new registration scheme) should be a condition of the PDR to ensure basic safety such as gas and electrical safety. Whilst this is likely to be covered by the proposed regime separate to planning, there is no reason why such basic safety should not be a condition of the PDR, and this would not be unusual. For example air source heat pumps being required to meet MCS standards (Schedule 2, Part 14, Class G of the GPDO), or new dwellings being required to meet the technical housing standards (Article 3 (9A) of the GPDO).

It is considered that if the above PDRs are adopted, then consideration should be given as to whether they apply to just dwelling houses, i.e not flats in a similar fashion to Schedule 2, Part 1 of the GPDO permitted development rights. This is

because short letting of flats has the potential to be more disruptive to other residents in blocks of flats.

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, and that should be a condition of the PD right and registration details should be provided also. This is not unusual and a common feature of existing Schedule 2, Part 3 of the GPDO classes of permitted development (Changes of use). This would be required for monitoring purposes.

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

Yes. Whilst the introduction of a specific use class relating to short term letting could result in additional clarity around such uses, the planning system is capable of dealing with these uses already, without the introduction of the proposed PDR. Permanent commercial use of properties previously used as a dwellinghouse (and other uses) for short term visitor accommodation should be subject to a consultation and a full planning assessment against the development plan and any other material considerations. This is because they can often be uses which are very disruptive to permanent residents.

In the absence of borough wide article 4 directions, LPAs will have to predict where demand for such uses will be and apply for article 4 directions. This will result in LPAs chasing the issue and risks pushing short term visitor accommodation away from the areas where it would be more suitable and into areas where it would be more harmful, both in terms of impact to neighbouring amenity and in terms of impact to housing stock.

Where article 4 directions are not applied for then there is a risk of losing housing stock to visitor accommodation permanently.

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

Yes. Expressly providing flexibility for homeowners to let out their homes, to a specified level, is considered right. It is considered that clarification on this point would be helpful to both homeowners and local planning authorities.

However there are concerns regarding additional flexibility to allow a defined level of short term lets alongside their permanent residential occupation. This is difficult to monitor and enforce, and could change the character of an area by increasing issues traffic generation, noise and parking issues, and encourage a more transient character. For example, this could impact on services such as education, where school rolls may not be filled if there is a reduction in 'full time' families with children living in an area. It could also exacerbate a shortage of homes for sale due to it being more lucrative for a homeowner to retain the dwelling for both residential and letting purposes, as opposed to selling.

Clarification should be provided, and it should be clear that such flexibility should not be available for any level of commercial operators. Access to any registration and monitoring data must be provided to LPAs

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**

90 nights

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.

Whilst it is considered that a permitted development right would bring the greatest clarity to homeowners over their rights, an amendment to the C3 use class would likely be less open to abuse by commercial operators.

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

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

No. There is no justification why a potentially intensive short let use (as described in proposed use class C5) in a residential area, for commercial gain should benefit from the same PD rights to extend a house occupied by permanent residential occupiers.

There is however no objection to a homeowner making use of a clear flexibility to allow a defined level short term lets alongside their permanent residential occupation from benefitting from their existing PD rights to extend under Schedule 2, Part 1 of the GPDO.

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

One of the key problems in managing short term letting in London is accurately identifying short let properties. Whilst a relaxation/clarification on short term letting for *homeowners* is welcomed, providing LPAs with the tools to monitor and enforce where appropriate is key to maintaining confidence in the planning system.

We welcome plans for a registration scheme for short-term lets, which would allow LPAs to both effectively monitor our own stock and carry out enforcement in the private sector.

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, not properly limiting use as short term letting has the potential to drive up the cost of longer lets as the supply of such properties is reduced. The propensity to depend upon the private rented sector for housing will vary amongst communities and groups with protected characteristics of race and age. If restrictions on short term letting are not imposed, those with these protected characteristics will be disproportionately affected.

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

Yes, there could be an impact on businesses in a local area from an increase in visitor accommodation. This will not necessarily be negative, but could result in a change in the services offered in a local area. For example services could become geared towards visitors and operator of short term lets rather than towards permanent residential occupiers.

b) local planning authorities

Yes. The proposals will place a burden on local planning authorities to consider and prepare article 4 directions. Where article 4 directions are not introduced local authorities will potentially lose housing stock.

It is considered that as proposed the changes will impact planning enforcement services in London given the comments in response to Q4.

c) communities?

Yes, unfettered short term lets are considered likely to result in harm to neighbours and local areas. Unless area wide article 4 directions are introduced, local authorities will not be able to protect against the loss of housing to this use or address harm to neighbouring amenity.

Housing stock otherwise suitable for first time buyers and local residents will be attractive to commercial operators who can benefit from the proposed C5 use class, and will be permanently lost to such uses, resulting in a loss of housing stock suitable for first time buyers and the rental market at all levels.

There are also concerns about noise nuisance, over-occupation and damage to communal space resulting from the use of properties as short term lets, which can be damaging to local communities.