

Short-term lets and Title Deeds



Time for a test case?

What are title deeds?

- Title deeds are the legal papers that show the ownership of a property and any legal restrictions (sometimes known as “burdens”) that come with a building or land.
- For example, there may be restrictions which state a property cannot be used to run a business.
- Title deed restrictions are different to the restrictions under the planning system. These systems both control how a property can be used. Permission from one system does not grant permission from the other system. PLACE has created a guide to reporting breaches of planning [here](#).

Which title deed restrictions might prohibit short-term letting?

- “Use of the property as a private residence”, “carrying out a trade or business”, “multiple occupation”, “hotels and hostels”, and “nuisance” have all prohibited short-term letting businesses in England (see list at end).
- This is yet to be tested in Scottish Law.
- Anyone with restrictions who wishes to use a property for regular short-term letting can apply to the [Scottish Lands Tribunal](#) for the restricting title to be changed. An application is £125.

What can I do if a neighbouring property is operating a short-term let in breach of shared title deed restrictions?

- **Speak to the owners of the business about the breach** - Responsible owners will want to make sure that they are conducting their business lawfully and that their business is not harming those living close by. Formally request that the owners obtain both planning and lands permission. Communicate calmly, politely and in writing. You may wish to point out that if they wish to continue to use their property as a short-term let they can apply to the Scottish Lands Tribunal to ask if it would be fair for the title deeds to be varied.
- **If there is no satisfactory response from the owners** - This is disappointing but you have raised the issue politely and formally. You will have clear documentation of the date at which the owners chose to continue their business without following the processes for permission. It is then up to you to consider your options.
- **Educate yourself on title conditions and how they are enforced** - Unfortunately, enforcing title conditions is not the simplest of matters. It requires legal representation and potentially court action. This sounds daunting and expensive but there are avenues that can be taken which would remove the burden of cost.
- **What are the costs?** - It depends. The best case scenario is that, upon serving the court papers on the owners of the business, they immediately approach for settlement, or that they do not enter any defence of the action within the specified timeframe and a court order is granted. In such a case, it is estimated that the costs would be around £1,500 less any settlement. If the matter went all the way to court, it would cost approximately £15,000 to £25,000 or more depending on the lawyers used. If you are successful in the case it is likely that you will recover much of your legal expenses from the owner of the short-term letting business.
- **What title conditions are enforceable?** - Title conditions are enforceable where it can be shown that your property and the one being used as a short-term let are “related” and part of a “common scheme”. What this means is that the properties are sufficiently close to have an impact on each other and that they have the same or *similar* conditions in their title deeds.
- **What would you need to demonstrate to a court?** Once it is established that your properties are related and part of a common scheme it is then necessary to demonstrate “title” and “interest”. Title means there is something in the title deeds which says that the property cannot be used for that purpose. Interest exists if failure to comply with the real burden is resulting in or will result in material detriment to the “value or enjoyment of the person’s ownership of, or right in, another property.
- **How likely are we to win?** The million dollar question. Until it is tested we do not know. However, we do have some overwhelming precedent being set by the high number of planning law cases currently being *appealed* in

Glasgow and Edinburgh. [Twenty one appeal cases](#) (and counting) have found that short-term lets in *flatted* properties have “materially detrimental effect on the living conditions of nearby residents” under planning law. The test under civil law is the same. In a fully detached property, the impact may or may not be harmful. The successful cases listed at the end include many detached properties.

- **What evidence would be useful for a case?** A diary recording issues with the let is pretty much essential; screenshots from letting sites detailing level of letting from customer reviews; reports of antisocial behaviour reported to the Community Safety Team, or Police.
- **How can I afford it?** There are three options as far as we understand. Firstly, if you believe you have a strong case you may wish to risk paying legal expenses with the hope that you will be able to recover your costs.
- **Legal expenses insurance** - Secondly, you can check your home or bank insurance policy for [legal expenses insurance](#). Most policies cover title deed breaches but it is up to the insurance company to decide whether they are willing to defend the case. Given the overwhelming number of enforcement decisions which have been upheld on appeal, there is an increasing chance these cases may be taken on.
- **Crowdfunding** - There is increasing discussion about our community about crowdfunding a test case. PLACE have been approached by Crowd Justice who wish to support such a case or cases. If you think you could be the test case, feel free to get in touch to see how we can help.
- **Why is a test case so important?** - At the moment, residents only have the planning enforcement route to tackle unlawful short-term rentals. This means there is little motivation for short-term letting owners to comply upfront with planning regulations (other than the moral one!) because the enforcement process takes such a long time and at the end of the process there are no financial sanctions for being found in breach. A successful civil test case is crucial as short-term let owners and management companies will have to decide whether to settle or whether they are willing to risk of an even more expensive civil case plus the additional risk of being ordered to pay expenses and even compensation to affected neighbours. Lastly, a successful test case will increase access to justice by making insurance companies more likely to take these cases on.
- **I want to know more** - Below is a list of what we understand are the most relevant civil cases. A list of all planning appeals in flatted properties is found [here](#). Civil law cases are listed below.

Civil Law Cases

- ✓ **2015, 2018 (appeal) - [701 Courtenay House, London \[2015\] LON/o0AY/LBC/2015/0021](#)**
 - Short-term lettings of a room breached three covenants "as a private residence for occupation by a single household", "carrying out a trade, business or profession", and "nuisance, damage, annoyance".
 - "he is not permitted to use the Property otherwise than as a private residence for a single household in any circumstances. Furthermore, he cannot run a business in the Property and this he is also clearly doing both by letting out rooms for commercial gain."
- ✓ **2016 - [Flat A, 20 Nottingham Place, Westminster \[2016\] EWLVT LON LV FFT 00BK 0020](#)**
 - Short-term lettings breached five covenants: use as a private residence; sub-letting; nuisance and annoyance; depreciation of the character and reputation of the property; voiding communal insurances.
 - "the presence of nearby hotels and hostels is a different matter to "constantly" having different unknown people coming in and out of the communal areas of a private residential building."
- ✓ **2015, 2016 (appeal) - [Nemcova v Fairfield Rents Ltd, London \[2016\] UKUT 303 \(LC\)](#)**
 - Landmark case. First to conclude that very short-term lets breaches the "private residence" covenant.
 - This case found just **seven short-term lets** a breach of the conditions associated with the building.
 - "Such a restriction is likely to have significant benefits for the lessees of the Building who would, we have no doubt, prefer to live with other owner-occupiers or long term tenants as opposed to those using a flat in the Building on a short term let for, perhaps, only a few days."
- ✓ **2012 - [Moore v Secretary of State for Communities and Local Government and Suffolk District Council](#)**
 - "Starting from first principles, without the assistance of any authority, whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact

and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation.”

- “As a matter of common sense, this particular use for holiday lettings is very far removed from the permitted use as a dwellinghouse and a material change of use has occurred.”
- This was a large house in entirely private grounds and a change of use was deemed to have occurred.

✓ 2011 - **Kettlewell v Turning Point Scotland 2011 SLT (Sh Ct) 143**

- Material detriment found to value (10% reduction) and enjoyment (increased traffic and parking issues).

✓ 2008 - **[Smith v Lawrence LTS/TC/2008/18; 2009 GWD 6-104](#)**

- Rejected an application by a property company to vary a title condition in a Musselburgh home to permit student occupation due lack of control, and impact on: noise, traffic, parking and property values.
- “The immediate effect might increase values as the market is opened to more landlords, longer term the attraction for families may be gradually reduced, with an effect on saleability and values.”
- Often cited as the closest case to short-term letting.

✗ 2007, 2008 (appeal) - **[Barker v Lewis 2007 SLT \(Sh Ct\) 48; affd 2008 SLT \(Sh Ct\) 17](#)**

- Unsuccessful interdict against a proprietor operating a B&B from her large detached home.
- Incidents (smoking, antisocial hours, parking issues, intrusion) on 10% of days deemed immaterial.
- ✓ The sheriff indicated that an increase in the level of business by 60% would result in material detriment.
- ✓ Furthermore, a few more *serious incidents* might well have gone the pursuers’ way.
- ✓ Malcolm Combe notes the incomparability of this case in [Land law responses to the sharing economy: short-term lets and title conditions](#): “...Airbnb will not necessarily have the presence of a live-in host that a traditional B&B will have. Such a presence might bring a certain amount of control (not to mention a cooked breakfast) that is not present in a short-term letting of a whole property. As such, even before the less stringent interest to enforce case law is considered, Barker v Lewis might be distinguishable.”

Other notes

- **Context** - All of the case law (but the first three) refer to detached properties, with owners/carers living onsite.
- **Change in nature of “holiday” lets** - Previously “holiday lets” involved families staying a week or two in a detached property on holiday. Now, they involve (unrelated) groups, staying a few days, in residential areas, usually flats, as a hotel alternative. This greatly increases the likelihood and impact of disturbances.
- **Maintenance burdens** - Most tenements are self-managed. Absent commercial operators profit at the expense of residents who voluntarily manage cleaning, gardening, refuse and repairs for shared buildings.
- **No worse than a noisy family?** - “the risk of a noisy family is one, under the titles, the pursuers are bound to take. They are *not* bound to take the risk of noisy guests in a B&B” - [Interest to Enforce Real Burdens](#).
- **Loss of privacy** - Sharing communal but private spaces and gardens with fee-paying strangers breaches reasonable expectations of privacy and reduces residents’ ability to enjoy these spaces.
- **Loss of security** - Short-term lets cause significant security impacts as keys to communal buildings are handed to hundreds of customers a year. Residents cannot identify who is “allowed” to be there and who are intruders. This insecurity is advertised by the use of key safes, often without the necessary permissions.
- **Value** - Estate agents report that sellers are giving instructions [not to sell](#) to STLs to protect communities.
- **Voiding insurances** - Short-term letting will breach the conditions of most normal [mortgage](#) and [insurance](#) policies. In this [case](#) short-term letting was found to void the insurance of all properties in the building.
- **Key safes** - Can also void [home](#) insurance. These should be fitted with permission of all property owners in the building. Key safes may also need planning permission for installation on [listed buildings](#).
- **Business rates** - Short-term lets are liable for [business rates](#) if they are advertised for >140 days per year.
- **Unlawful listings** - This New York paper finds that [two-thirds of income](#) on Airbnb comes from illegal listings.