

Short-term Lets Consultation

1. Are you aware of any additional data on the impacts of short-term lets (over and above that set out in Annex A – The Short-Term Rental Sector, Housing and Tourism in Scotland and briefly summarised above) which the Scottish Government should take into account when considering proposals for regulation?

- 1. Data on days let from the DPEA Planning Appeals, and Civil Case Law** must be used to set the home-sharing allowance at a level which is compatible with neighbours' right to a peaceful and private home (these are listed at the end of the document).
- 2. The economic costs and benefits of Airbnb, Economic Policy Institute**
- 3. Regulating Short-term Rentals. A guidebook for Equitable Policy, Sustainable Economies Law Center**

2. Should a regulatory framework distinguish between sharing, swapping and secondary letting?

The definitions used here don't reflect the usual use of these terms. This will lead to confused responses, particularly with regard to "sharing" as it is defined by the consultation.

The language used should reflect the process:

- 1. Sharing** should only apply to properties where it is the owner's home; where they are the Host and they provide accommodation for Guests.
- 2. Swapping** should apply only to swapped properties where two households live temporarily in the home where the other is usually resident (house swapping "chains" should not be allowed). Swapping is never used to refer to the provision of services in exchange for money as it is described in the consultation.
- 3. Short-term letting businesses** should apply to properties that have Planning Permission for a Change of Use, to run with an Operator and Customers.

Regardless, we believe that any framework which aims to distinguish between “swapping” and “secondary letting” as defined here will be exploited and so the framework needs to be the same.

3. Should the rules be capable of being different depending on the type of accommodation? For example, to distinguish between tenement flats and detached houses.

No. This is important. Scotland has an accessible housing crisis as highlighted by the STUC and Inclusion Scotland. Councils including the City of Edinburgh Council have a presumption against Change of Use planning for properties with shared entrances. By setting different, more permissive rules for the small number of main-door properties we will incentivise the use of accessible and affordable family homes for short-term letting investment. This would have a cataclysmic effect on what is already a crisis for accessible homes across many parts of Scotland, with a sharply rising older population.

The rules and allowances must be set so they are sufficient to protect the peaceful enjoyment and privacy of tenement homes but applied equally to all properties to protect accessible and affordable housing for all. For example, on the Island of Skye the 300 properties registered on Airbnb are having a seriously detrimental effect on the ability for businesses and essential services to function as there is no longer enough housing for residents. It would be expected that the vast majority of the housing being used for short term letting are detached properties

4. Do you have any comments on any other aspect of the definition of short-term lets?

Living Rent are evidencing that some landlords are using holiday lets to evade setting up a private residential tenancy agreement. They recommend that short-term lets are defined as any let which is one month or less. We support policy that prevents landlords evading private residential tenancy agreements and priorities the use of housing as homes.

5. Do you have any comments on the positive or negative impacts of short-term lets?

Negative impacts

- a) **Economic costs** - The Economic Policy Institute finds that the economic costs imposed by short-term letting likely outweigh the benefits. Property owners may benefit but the beneficiaries are disproportionately high-wealth individuals who can own more than one property. Claimed increases in economic activity are often vastly overstated because the spending would have occurred anyway by travellers staying in other accommodations. The Economic Policy Institute finds that there is little evidence that cities with an increasing supply of short-term Airbnb rental accommodations are seeing a large increase in travellers. Instead, accommodations supplied via Airbnb seem to be a nearly pure substitution for other forms of accommodation. Furthermore, the shift from traditional hotels to Airbnb lodging leads to less-reliable tax payments to cities.
- b) **Privacy** - Residents of flats or properties with shared gardens are forced to share communal but still private areas of their homes with fee-paying strangers who they have never met before and are unlikely to meet again. This had been found unacceptable in planning and civil law.
- a) **Security** - The security of communal spaces is completely lost. Neighbours cannot tell who is supposed to be in the property and who is not, or who has keys to shared areas. The insecurity of a shared building is advertised by key safes which are installed without permission from neighbours or listed building consent. Properties where mail comes through a single letterbox for all the residents are particularly vulnerable. Anecdotally there is evidence that short-term let customers are more likely to leave shared entrance doors open, which has resulted in residents coming home to unknown people using drugs, and engaging in other antisocial or threatening activities in their mutual shared areas.
- b) **Anti-social behaviour** - Neighbours of short-term lets are almost guaranteed to experience anti-social behaviour from customers. Alcohol is a regular contributing factor which makes these situations particularly unpredictable and intimidating to deal with. Members of the PLACE network regularly describe issues relating to waste disposal, parking issues, noise, people returning late at night or arriving early in the morning, customers ringing the wrong doorbells or trying to enter the wrong doors, banging on doors, setting off fire alarms, barking dogs when animals are not allowed, friends of “guests” attending the property,

parties, over-occupation, verbal abuse, damage to property, intoxication, intrusion into private space, drinking and smoking in communal spaces, and tampering with residents' property.

- c) **Disturbance and noise** - It is will established through planning and civil law that short-term lets bring an increased level of noise and disturbance. The groups occupying the property on a short-term basis are almost always on holiday with the associated holiday mindset seven days a week. Due to there being no personal belongings in short-term let businesses there is nothing to soak up sound resulting in an echo chamber being created where previously there would have been no noise pollution to neighbours, every scrape of a chair and conversation can be heard. Likewise, most properties in Scotland do not have carpeted entrances and hallways as hotels do, so the banging of suitcases at all hours and the excited chatter of customers echoes at entrances and in hallways. There is additional noise and disturbance as groups bring their belongings in and out of properties, including dragging suitcases and banging them off walls and doors, damaging the paintwork. Cleaners and greeters attend to turn over each property between every short-term let, which can mean banging and vacuuming past midnight. Cleaners and laundry companies may leave trip hazards in shared areas such as large laundry bags. Some letting agencies offer "luggage drop off" services where suitcases are then left in common stairs to be retrieved by customers later.
- d) **Mental health impacts** - Residents draw huge comfort from a home which has a basic level of familiarity, stability and security. The regular intrusion of transient pleasure-seeking strangers is deeply unsettling. Neighbours of short-term lets regularly describe feeling stress, anxiety and other mental health impacts. This disproportionately impacts on disabled people, people with long term health conditions, people who live alone, children and young people.
- e) **Attitudes of customers** - Although most customers are not ill-intentioned, they simply have their own priorities and expectations about how they can use their "short-term let". They have paid handsomely to occupy the space and understandably wish to use it to maximise their enjoyment. The payment of money to what appears to be a reputable company seems to banish any conscience with regard to the invasion of privacy. They have no awareness of their impact or that of the scores of groups who have preceded and will follow them. Indeed

their behaviour is encouraged by the advertisements of profiteering websites and absentee hosts, who beseech them to “live like a local” and “belong anywhere” without any of the responsibilities that brings.

- f) **Overcrowding** - Short-term rentals often bring more than the advertised number of customers. Groups will also often invite their friends to visit and enjoy their short-term let bringing additional disturbance. Short-term let businesses often advertise for far more customers to stay than would normally reside in a property in relation to its size.
- g) **Waste disposal** - Recycling is rarely carried out. Communal bins are often used and permanent residents are expected to manage putting out and collecting bins on behalf of the absent owners. Rubbish bags are often left out in communal stairs. Cleaners usually clean inside the short-term let properties but do not usually clean any shared areas. This leaves the residents to clear up after the customers or live in a poorer quality environment.
- h) **Effect of multiple lets** - Where multiple lets are operating, the issues are multiplied similarly and the burdens are shouldered by even fewer residents. This effect is most intense during July and August – a time when families most wish to enjoy the peace and privacy of their homes.
- i) **Displacement of community** - Our places need to be inhabited to stay habitable. As more and more dwellings are turned into short-term lets, an area loses its community. The burden of reporting issues with antisocial behaviour, disturbance or noise falls to fewer and fewer people who eventually give up and move on.
- j) **Safety** - There is no requirement for any safety checks putting visitors and neighbouring properties at risk.
- k) **Insurances** - Short-term letting requires specialist insurance which many do not have. The voiding of communal insurances has been the matter of a court case in London.
- l) **Impact on rents and housing prices** - A property which is used solely for short-term letting is no longer part of the housing stock. Dwindling numbers of properties will obviously impact housing availability, house prices and rents. It is suggested by Shelter that this forces people into accommodation that they cannot afford, leading to homelessness and people living in unsuitable housing. There appears to be a growing pattern of previously long term rented accommodation being changed to

student lets for Oct–May and for the remainder of the year being short-term let businesses. This provides owners with short-term letting opportunities over all the holiday periods while making it harder for students to develop long term relationships with their neighbours. Four months of intensive holiday letting over the summer will certainly have unlawful impacts on amenity for close neighbours.

- m) **Impact on traditional guest houses, bed and breakfasts and other lawful accommodation providers** – There is evidence that traditional accommodation providers are being significantly disadvantaged by the proliferation of unlawful short-term letting businesses. Lawful accommodation providers struggle to compete with unlawful lets who can often offer lower prices by avoiding the costs of compliance.
- n) **Reduced spending by tourists** – Research commonly finds that visitors staying in properties with self-catering facilities spend less than those in hotel-type accommodation, often buying supermarket meals rather than using local cafes and restaurants. We do not believe that tourism should be limited to high-wealth individuals, however, where residential accommodation is being repurposed for holiday lets under the auspices of boosting tourism, a clear knowledge of the true benefits and costs is essential.

6. Do you have any examples of other positive or negative impacts of short-term lets?

As above.

7. Do you have any comments about the impact of short-term lets on the housing market?

As above.

8. Do you have any comments on the restrictions imposed on short-term lets by planning law?

Planning law plays an important role in ensuring that residential properties are used for their designated purposes. Current planning law recognises the potential for short-term letting to cause harm to neighbouring amenity. Furthermore, the inappropriateness of using shared tenement-type

properties for short-term let businesses has been confirmed at appeal on fourteen separate occasions so far.

However, the enforcement of planning law is incredibly weak. Despite clear data showing unprecedented levels of unlawfulness with regards to short-term letting in flats and non-flatted properties, very little action has been taken: action is always reactionary and unbearably slow.

9. Do you have any comments on powers to tackle antisocial behaviour caused by short-term lets?

Short-term lets attract a level of disruption and antisocial behaviour and therefore they should simply not be given planning permission where they can cause disruption to neighbours.

Where planning permission is given a named person should meet and greet customers to ensure that the booking is correct, and guide people to any relevant information needed -key safes should not be used. A 24-hour contact number should be given to the customers, Local Authority and neighbours for dealing with issues.

10. Do you have any comments about complaint systems for short-term lets?

At the moment complaints are dealt with at an excruciatingly slow speed via planning enforcement or the community safety team.

The planning enforcement charter states that following an enquiry, a formal response will be made in 20 days, and that interested parties will be informed if progress requires more than 4-6 weeks. It is stated that the planning authority will aim to serve an enforcement notice within 3 months of the date of the original complaint (this may take up to 6 months for Short Stay Commercial Visitor Accommodation cases)

This service standard is not being met. Hundreds of residents are waiting months, usually closer to a year, sometimes longer, for a case to be resolved. Communication is rarely given. Neighbours are simply expected to accept the negative impacts on their amenity while the extended process goes on. As a result of this lack of enforcement significant numbers of residents have given up on the process, have sold up and moved out. Parts of the city have been critically depopulated through lack of action.

Too often a “lack of evidence” means no action is taken. It falls to neighbours to collect the evidence and start the protracted process all over again.

We are aware of at least one case where an enforcement notice has been significantly breached and as far as we understand, no action has been taken by the City of Edinburgh Council despite regular requests from the family affected.

There has been no assistance provided by the Scottish Government in relation to the request by Edinburgh City Council to for additional powers to meet their obligations for almost a year. This is breaching the Human Rights of residents.

The procedures in place to protect the peace and privacy of our homes are not being met by City of Edinburgh Council nor the Scottish Government.

Furthermore, the requirement on Certificates of Lawfulness to inform those with “an interest in the land” never appears to have been carried out so neighbours are not given their right to comment on these applications.

Several people have commented that the Community Safety Team deals with issues with a short-term let as a neighbour dispute rather than legitimate concern about an unlawful business operating from a home.

Currently, the complaints logged by the Local Authorities will be wholly under represented by the numbers as neighbours are reporting issues to the owners or platforms like Airbnb. People deciding to sell up rather than live next to short-term lets are also less likely to fully complain through enforcements as they do not want their address to be listed for the purpose of selling their homes. An easy to use quick response system is essential to discourage unlawful short-term lets and anti-social behaviour. Currently the burden of proof falls on those whose amenity is compromised, when clearly those wishing to operate business in residential properties should have to prove, before commencement of trading, that there will be no impact from their activities.

11. Do you have any comments on safety issues related to short-term lets?

Short-term lets must be subject to safety checks.

12. Do you have any comments on eligibility for non-domestic rates?

The rules here are sufficient, but many businesses, perhaps the majority in Edinburgh, simply ignore these.

13. Do you have any comments on the additional eligibility requirements recommended by the Barclay Review?

Short-term lets should pay non-domestic rates as any other businesses. We do not support eligibility of self-catering accommodation for the Small Business Bonus Scheme.

14. Do you have any comments on the eligibility of self-catering accommodation for the Small Business Bonus Scheme?

We do not support eligibility of self-catering accommodation for the Small Business Bonus Scheme.

15. Do you have any other comments on taxation relating to short-term lets?

As above.

16. Do you have any additions or amendments to the proposed design principles?

Residents have human rights. The legal cases at the end of this document demonstrate that short-term lets have breached residents' rights to: Protocol 1- Peaceful enjoyment of their property; and Article 8 - Respect for private and family life. The impact on housing affordability breaches Article 25 - Right to housing. The Human Right PANEL approach would ensure that the policy aligns with existing laws.

- **Participation** - People should be involved in decisions that affect their rights.
- **Accountability** - There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong.
- **Non-Discrimination and Equality** - All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.

- **Empowerment** - Everyone should understand their rights and be fully supported to take part in developing policy and practices which affect their lives.
- **Legality** - Approaches should be grounded in the legal rights that are set out in domestic and international laws.

In short, the Scottish Government must not create a framework of regulation that does not have these at its core.

17. Do you have any comments on the proposed scope of a regulatory framework?

We recommend a two-tier licensing system:

- a. **First tier (Home sharing)** – This gives an entire home sharing allowance of four licensed lets in a year. For people letting a room, while living on site, a set number of days could be implemented. Most would be eligible for this, assuming basic conditions are met.
- b. **Second tier (Commercial or more intensive letting)** - Requires more stringent checks, and planning permission or a certificate of lawfulness for over four lets a year.

It should be illegal to advertise a property without a valid license.

It may be useful to consider the main contact as a person to be vetted for licensing on a personal basis, just as the licensing of alcohol is based around the person being fit to carry out the role and the location being suitable.

18. Do you have any comments on the controls or conditions which councils should be able to set through a registration or licensing regime?

As described above.

Owners should be able apply for these licenses on-line.

19. Do you have any comments on whether a licensing scheme and/or market-based approach, and any associated charges, should apply to all types of short-term lets and whether conditions and/or charges

should vary according to the type of property, its location or the number of rooms?

The licensing scheme should apply to all types of short-term lets as listed in the answer to Q17. Zoning should not be considered as it will add unnecessary bureaucracy for Local Authorities and create layers of inequality for residents.

The price of the license should cover the operation of the licensing system and its enforcement.

The second-tier license is more stringent and so would need to be more expensive.

20. Do you have any comments on the effectiveness of a days per year limit in meeting the Scottish Government's objectives?

We are hugely concerned that a days per year limit system will be impossible to monitor and will continue to motivate high-turnover, high-disruption letting. Furthermore, the 45-day limit recommended by the City of Edinburgh Council is incompatible with current case law.

We suggest the Scottish Government employs a lets based limit, which provide a fixed number of short-term lets rather than days.

A licensed allowance of four lets allows people to supplement their income very generously while still protecting residential amenity. Four lets would enable, for example, a three week let over major festival times, a two week let over the summer, a five day let over Easter and a five day let over New Year. The income is the same, but the disruption is far less.

Residential amenity is protected by law. The existing case law informs how the first-tier home sharing allowance should be set without impacting neighbouring amenity. There are two cases which are helpful here: Ratcliffe Terrace in Edinburgh found 30 days of lets over 14 lets unlawful; Nemcova v Fairfield in London found seven lets over one year unlawful. A smart allowance of four licensed lets is a lawful compromise.

One three week let is so much less disruptive than 10 two-day lets with same day changeovers. Licensed allowances protect amenity even when multiple flats are using their allowance at the same time as is likely during the busier summer and local festivals period.

Only a few cities have attempted to use a limit based on a number of days. The experience has been challenging. London limits have been described as “ineffective”. The deputy mayor for housing in Paris states “Airbnb does not respect the law”. Amsterdam has reduced their sharing allowance to 30 days after 60 days was found to be ineffective. Recently ten European cities wrote to the European Union for help to flight AirBnB expansion.

We point to the large number of cities who find short-term letting incompatible with residential living, particularly in flats. Short-term letting in apartments is prohibited in New York (in buildings with more than three units), Barcelona, Palma, Mallorca, Istanbul, Singapore and Hong Kong to name a few.

We believe that the Scottish Government can be a world leader in using resident led, rights based legislation to ensure peaceful, private and safe communities, while promoting sustainable and positive tourism. A lets-based framework for home-sharing is easily enforceable, motivates genuine home sharing and makes unlawful activity easier to spot and act on.

21. Do you have any comments on how regulations should deal with commercial hosts?

As described in (Q17).

22. Do you have any comments on who should be subject to enforcement and sanctions?

There must be much faster and proactive enforcement, with heavy sanctions. Enforcement can be funded by fees for commercial licenses, and fines for those who advertise without a proper license, or who exceed their license terms.

The lack of compliance by short-term letting businesses with the planning system demonstrates the existing lack of motivation to voluntarily comply with current policies and law.

Smarter and more proactive enforcement could be achieved for example by performing reconciliations between those properties registered for non-domestic rates, and those holding planning permissions.

23. Do you have any other comments on short-term lets not covered in your answers to the above?

The framing of this consultation has come from the industries that benefit from the 'collaborative' economy. Collaborative is an incorrect word for this type of industry as the neighbours and wider communities who have suffered the ill effects of short-term lets have had no choice.

The Scottish Expert Advisory Panel on the Collaborative Economy does not have the expertise or the experience of residents who have lived with short-term lets. Therefore, it has not taken into account the health and wellbeing of residents, or how the industry interacts with existing legal Human Rights and policies.

The focus for the National Performance Framework has only looked at economy and community. It has missed out the vital aspects of how short-term letting affects the other outcomes, particularly; children, young people, healthier lives, inequalities, sustainable places, crime, and people maintaining independence as they get older.

Further to the National Performance Framework, reference should be made to:

- Fairer Scotland Action Plan
- A Fairer Scotland for Disabled People
- Public Health Priorities for Scotland
- Convention on the Rights of Persons with Disabilities, particularly Articles 9, 19, 22
- National Health and Wellbeing Outcomes
- The Reform of Adult Social Care Support, An Investment in Scotland's People, Society, and Economy.
- A Connected Scotland: our strategy for tackling social isolation and loneliness and building stronger social connections

We would suggest that policies and legal changes are co-produced with residents with lived experience to ensure that they are fit for purpose, as recommended by the Commission on the Future Delivery of Public Services and laid out in the Community Empowerment Act (Scotland) 2015.

Below is a summary of the existing planning appeals and case law:

Summary of DPEA decisions (planning appeals) in Flatted Properties

✓ 2019 - Flat 4/3, 20 St Andrews Square, Glasgow, G1 5PQ

- “All told, I conclude that, whilst the number of people occupying the flat at any one time might not be significantly greater than when it was occupied as a mainstream dwelling, the character of occupation is significantly different as it results in a succession of visitors, who are not known to permanent residents, having access to the communal (but still private) lobbies, lifts and stairs of this group of flats. I therefore find that a material change of use has occurred.”
- I have no reason to believe that the management of this flat for visitor accommodation is not of a high quality, but I do not consider that this is relevant to the question of whether a material change of use has occurred.

✓ 2019 - Flat 14, 6 Pilrig Heights, Edinburgh EH6 5BF

- “For a mainstream flat it is reasonably likely that the neighbours living on the same floor would know each other, at least by sight. In this case, however, they would be faced with a regular and frequent turnover of strangers appearing in the common area serving the six flats on the second floor.”
- “The fact that entry to the block is via an external keypad, to which a succession of strangers would be given the access code, could in my view also reduce the sense of security for long term residents.”

✓ 2019 - 7-8 Baxters Place, Edinburgh, EH1 3AF

- “...the occupation of the premises as a whole, and of each unit individually, is significantly different from that which would arise at individual flats occupied by permanent residents.”

✓ 2018 - 1081 Sauchiehall Street, Flat 3/2, Glasgow, G3 7UE

- “...the inevitability of permanent residents regularly encountering strangers in communal (but still private) areas of the building, is a further indication that the nature of the use of the flat for short-term

letting markedly differs from that of other residential flats in the same building.”

✓ **2018 - 63/2 Bread Street, ✓ 63/3 Bread Street, ✓ 63/11 Bread Street, Edinburgh, EH3 9AH**

- “the number of arrivals and departures, the likelihood of increased noisy activity late in the evening, increased activity as a result of the cleaning of the property and the likelihood of an increased use of the communal drying area, would be greater than that would be expected...”

✓ **2018 - 2F2, 52 Morningside Road, Edinburgh, EH10 4QP**

- “...the property is akin to guest house accommodation... alters the character of the tenement.”

✓ **2018 - Flat 8 19 Old Fishmarket Close, Edinburgh, EH1 1RW**

- “... there is an important distinction to draw between external ambient noise, which is a characteristic of a city centre location such as this, and sources of noise and disturbance from within the building itself.

✗ **2018 - 17 Old Fishmarket Close, Edinburgh, EH1 1RW**

- “...the proposal would represent a material change of use which requires planning permission... I find it particularly significant that the flat benefits from its own external door.”
- “Objections raised in representations to the application referred to the lack of available residential accommodation in the Old Town... In the absence of any policy or evidential basis for considering this matter further, this is not an issue which I consider can be pivotal to my assessment in this case.

✓ **2018 - Flat 8 , 22 Newhalls Road, South Queensferry, EH30 9TA**

- “I have some sympathy with the concern that the short-term occupants would have access to the common parts in particular the hallway and the garden.” - **108 days letting.**

✓ **2018 - Flat 15, 71 Ratcliffe Terrace, Edinburgh, EH9 1SU**

- “In 2018, therefore, the 14 periods of short-stay commercial visitor use took place over period of some 22 weekends... I consider this pattern of use to be significant as weekends are the time when residents of 71 Ratcliffe Terrace will be most likely to spend time at home with a reasonable expectation that they will be able to enjoy the amenity of their flats with a minimum of disturbance...” - **44 days in 2017, 30 days in 2018.**

✓ **2018 - 3F1, 14 Chancelot Terrace, Edinburgh. EH6 4SS**

- “A material change in the character of a use may be caused by circumstances that subsist for a significant period of time but not all of the time... has had a material effect upon the character and intensity of the established residential use, as well as upon the potential for noise and disturbance...” - **134 days letting**

✗ **2018 - Flat 1, 1 South Gyle Mains, Edinburgh EH12 9HS**

- This case allows an appeal, dismissing the relevance of the Gallowgate case stating that it was the combination of the subdivision of a duplex apartment into two SSCVAs that constituted a change of use.
- ✓ Co-owners of the building were not consulted despite obligation to notify those with a “interest in the land”.
- ✓ Neighbours have reported antisocial behaviour and requested enforcement.

✓ **2015, 2016 - Flat 5, 2 Eyre Place, Edinburgh, EH3 5EP**

- The short-term nature of lets, common access, and layout of the block increasing conflict between customers and permanent residents are material factors affecting residential amenity.

✓ **2013 - Flat 1/3, 332 Gallowgate, Glasgow G4 0TX**

- “short-term lets are more likely to attract people who have no responsibility for the property other than paying the going rate, which is at odds with the quieter lifestyle of the more permanent tenants or owners nearby.

Summary of Case Law - Enforcing Title Deeds

✓ **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.”

✗ 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.”