

# The Legal Stuff

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# DPEA (Planning Appeal) Decisions

These are appeal decisions relating to refused planning applications or enforcements where the owner has appealed to the Scottish Government to have these decisions overruled.

## Flatted Properties with Communal Spaces (98% cases refuse authorisation)

### ✓ 2021 - [5A Leopold Place, London Road, Edinburgh, EH7 5JW](#)

- Whilst I acknowledge that the appellant has 'house rules' in order to minimise any disturbance to neighbours and has installed a CCTV doorbell to monitor who enters the property, the appellant does not reside at the property and therefore is unable to have complete control over the behaviour of guests. This is irrespective of the demographic that the appellant seeks to attract as guests. As referred to above, given the communal entrance and shared hallway, I consider that guests having to check out during the early morning would have the potential to cause disturbance.

### ✗ 2021 - [1F1 16 Johnston Terrace, Edinburgh, EH1 2PR](#)

- This reporter allows the appeal. This is only the second DPEA case in history to authorise a short-term let in a tenement sharing space with other properties.

### ✓ 2021 - [1F2](#), ✓ [2F1](#), ✓ [2F2](#) and ✓ [3F1, 68B Grassmarket, Edinburgh, EH1 2JR](#)

- I accept that permanent residents may also make noise. However, they tend to keep their chattels in their homes and would be unlikely to move them with the frequency of regularly changing guests and potentially at unsociable hours of the day. This level and frequency of movement, with associated noise disturbance, would differ from typical residential circumstances.
- The evidence shows that guests check themselves in using a lockbox on the building exterior to obtain the keys to the security door, communal space and appeal flat. The appellant does not contest this. The submitted photographs confirm the presence of lockboxes and I saw these on my site inspection. This represents a reduction in physical security at the property. The potential frequency of changing guests introduces various new, non-permanent residents into the secure communal areas of the property with regularity. This would change the level of actual and perceived security for permanent residents in a manner that would not otherwise be the case under typical residential circumstances. Whilst permanent residents may receive guests they would remain in control of physical security.

### ✓ 2020 - [Flat 1, 9 Elsie Inglis Way, Edinburgh, EH7 5FQ](#)

- I do not accept that if only one neighbouring property, in closest proximity, is directly affected by such access arrangements, that this somehow makes the use of the flat for short stay commercial visitor accommodation any more acceptable.
- Given the frequency and pattern of commercial visitor lettings at this property, the numbers of people that have stayed and the potential for up to six people to have stayed at any one time, as well as the property's relationship with other flats within the block, and the potential for increased noise and disturbance to the detriment of neighbouring properties, I consider that this resulted in a significant variation from normal residential activity. I find that the use of the property for short stay commercial visitor accommodation constituted a material change of use which would have required planning permission.

### ✓ 2020 - [Flat 8, 33 Ocean Drive, Edinburgh, EH6 6JL](#)

- I have found at paragraph 6 above that the alleged breach of planning control, that is the unauthorised change of use from residential use to use as short-stay visitor accommodation, has occurred. The enforcement notice has been served with the purpose of remedying this breach by requiring the appellant to cease the use of the premises as short stay visitor accommodation. Only the cessation of the unauthorised use would address that requirement.

### ✓ 2020 - [39 Greendyke Street, Flat 0/2, Glasgow, G1 5PS](#)

- I consider it likely that there would be more noise than would be typical of a residential flat, given the number of guests and the timing, frequency and duration of stays. In terms of arrivals and departures, I accept that disturbance to other residents of the building would likely be limited, given that the property at appeal is on the ground floor. However, arrival times may occur at unsociably late hours, and I consider it likely that the increased comings and goings of guests with their luggage would be likely to result in more disturbance to the neighbouring flat than would arise from typical residents.

✓ 2020 - [1F1, 4 Drumdryan Street, Edinburgh, EH3 9LA](#)

- I find that the frequent movement by guests with their luggage, at various times, along the communal landing and stairwell, as well as the necessity for the servicing of this first floor flat, is a pattern of behaviour and activity beyond that which may otherwise be typical from the use of a residential flat of this size. Therefore, I do not consider that the pattern of use would be broadly similar to that of a mainstream flat being occupied by a permanent or long term tenant.
- The short stay lets take place primarily, but not exclusively, during a three to five month period over the summer with the longer lets over the remaining months. I find that the matters (use as short stay commercial visitor accommodation) as stated in the enforcement notice, to involve a breach of planning control, have occurred. - **summer letting only.**

✓ 2020 - [Flat 5, 46 North Castle Street, Edinburgh, EH2 3BN](#)

- In the absence of planning permission, cessation of the current use as short stay commercial visitor accommodation is a reasonable remedy to the breach of planning control that has occurred.

✓ 2020 - [Flat 5, 10 Western Harbour Midway, Edinburgh, EH6 6PT](#)

- From the evidence before me, including the potential impact upon residential amenity, I find no reason to disagree with the council that the use of the appeal premises as a short term holiday let constitutes a breach of planning control.
- Enforcement notices apply to the property rather than the owners. The enforcement notice would restrict short term commercial lets by any future owners.

✓ 2020 - [1F4, 17 Dalgety Street, Edinburgh, EH7 5UN](#)

- Each change is accompanied by a meet and greet activity, and subsequent apartment cleaning and servicing. Within the confines of a communal entrance lobby, stair and landing this differs significantly from a normal pattern of occupation. Notwithstanding the careful management of the activity by the appellant the intensity of use with four occupants in a small one bedroom apartment and the nature of the short stay itinerant visitors with late night arrivals and early morning departures to the airport increases the likelihood of noisy and anti-social behaviour detrimental to the amenity of other residents.

✓ 2020 - [Flat 2, 11 Oxford Terrace, Edinburgh, EH4 1PX](#)

- I am clear that a pattern of short-term commercial letting of single nights or a few days for up to six occupants can result, in this case, in an adverse impact on residential amenity. This arises from the presence of many strangers in the communal lobby, the frequency of changeover of occupants whose arrival with luggage and at unsocial hours can cause noise, and the added frequent occurrence of service visits for maintenance and cleaning. The appellant states that there is no direct access to the ground floor apartments from the communal entrance lobby. There is however still a party wall to the habitable rooms of these apartments. Whilst I note that there is only one flat accessed from each level noise from late night access via the stair well would carry upwards to the upper floor apartments.

✓ 2020 - [Pf1, 65 Prince Regent Street, Edinburgh, EH6 4AP](#)

- In the absence of planning permission, cessation of the current use is a reasonable remedy to the breach of planning control that has occurred.
- One month from the date of this notice would allow the appellant sufficient time to cease all advertising of the property to guests and to cancel all bookings. It would also allow guests the chance to rebook elsewhere and allow the appellant to honour any booking commitments within that month that could not be cancelled at short notice.

✓ 2020 - [Flat 1/1, 25 Westminster Terrace, Glasgow, G3 7RU](#)

- There is no doubt in my mind that short term commercial residential letting inherently involves a greater level of noise generation and the potential for increased disturbance to surrounding residents than long term letting or other forms of residential tenure. The shared entrance and the situation of the apartment means that there is the potential for such a level of disturbance with noise of arrivals and departures, the repeated presence of strangers in the communal entrance and the need for frequent cleaning and servicing of the apartment on each change of tenant. I consider that such a pattern of short term letting in this instance constitutes a material change of use for which planning permission is required.

✓ 2020 - [Flat 3/3, 220 Howard Street, Glasgow, G1 5HE](#)

- Having nine people in the flat would undoubtedly generate more noise than a typical family or couple which is what the flat was designed to accommodate. The appellant states that he checks in his guests personally and explains to them about being a considerate neighbour. Despite this, there has been a complaint and

subsequent representation received from a resident within the building of which the property forms part which would suggest that the use has had an impact on neighbouring residents.

✓ 2020 - [148/2 Albert Street, Edinburgh, EH7 5LT](#)

- I conclude therefore that the short-term commercial letting of the property described above results in a significant variation from normal residential activity to such an extent that it represents a material change of use requiring planning permission. No such permission exists therefore the enforcement notice is appropriate.

✓ 2020 - [13/2 Balfour Street, Edinburgh, EH6 5DG](#)

- The council maintain that the apartment is being used for short term letting and is available on commercial short-term letting websites like Airbnb and Gumtree. The owner does not live at the site and the property is available for short term lettings from as little as a two-night stay and advertised to accommodate up to 6 people. These short-term tenants arrive and stay at the apartment on a regular basis throughout the year. Access is via the shared entrance door to the street.

✓ 2020 - [Flat 4F3, 22 Haymarket Terrace, Edinburgh, EH12 5JZ](#)

- I note that a complaint has been received by the council from a resident due to disturbance from the activities of guests using the flat. I find that the use of the flat for short term lets results in a degree of change which represents a material change of use requiring planning permission.
- The accommodation within the flat consists of a communal kitchen and bathroom with four separate locked double bedrooms which are available for short term let. The enforcement notice refers to three bedrooms but the appellant advises that an additional bedroom was formed following the submission of the appeal - **first “ghost hotel” closure, four rooms independently let, no onsite supervision.**

✓ 2020 - [Flat 9, 6 Succoth Court, Edinburgh, EH12 6BY](#)

- The appellant argues that the flat is being/would be let for short term commercial visitor accommodation only between June and September. The rest of the year it would be occupied by family members. This may be so. However, four months are equivalent to one third of the year, during which time the flat could be almost constantly occupied by frequently changing parties who may or may not be part of the same household. The fact that short stay commercial visitor accommodation takes place for only part of the year does not mean that it does not take place or that a change of use has not occurred. That timeframe is sufficiently long to result in an impact on residential amenity that would be different from a typical residential experience that would otherwise be the case - **100 days letting.**

✓ 2019 - [5/9 Castle Wynd South, Edinburgh, EH1 2JT](#)

- Taking all this together, due to the nature and location of the flatted development, the proximity and relationship between the individual flats within the block, in particular the shared access and communal stairs, and the fact that the property is on the top floor, I consider that the use of the property for short stay commercial visitor accommodation does constitute a material change of use which would require planning permission.”

✓ 2019 - [1F1 33 Milton Street, Edinburgh, EH8 8HB](#)

- I also saw the external key deposit/collection boxes which give non-permanent residents (guests) access to the security door and communal space. Whilst permanent residents may also receive guests they would still remain in control of physical security. The use of the appeal property by guests using the key deposit represents a reduction in physical security at the property. The potential frequency of changing guests would introduce various new, non-permanent residents into the secure communal areas of the property with regularity. This would change the level of actual and perceived security for permanent residents in a manner that would not otherwise be the case under typical residential circumstances.
- The regularity of occupant turnover in these circumstances would require frequently changing guests to each learn and observe the behaviours sought. This places permanent residents in a different situation to typical residential circumstances.
- Communal bins were located on the street. Use of bins is a normal residential function. However, the number of guests in an otherwise smaller flat and the frequency of turnover would have some impact on the frequency of journeys to the bins and also the volume of waste over time. I find that the change of use I have identified would be likely to have some effect on the provision of public services such as bins and parking.

✓ 2019 - [1F, 11 Royal Circus, Edinburgh, EH3 6TL](#)

- In this case any noise and activity associated with guests and service staff would affect the permanent residents of the flats above and below who share the communal internal space. The communal entrance door is situated directly adjacent to the door and windows of the flats at number 13 Royal Circus and is in

close proximity to the basement flat at Number 11B. Residents of those properties may also experience noise and disturbance, albeit to a lesser degree.

✓ 2019 - [Flat 4/3, 70 Miller Street, Glasgow, G1 1DT](#)

- The numbers of people potentially using the flat, its proximity to other flats and the probable greater extent of coming and going creates the conditions where lack of consideration for neighbours, particularly through noise nuisance, including noise late in the evening, is more likely than if the flat had been occupied over a longer period by a single household.

✓ 2019 - [Gf 33 Northumberland Street, Edinburgh, EH3 6LR](#)

- In this case I have already found that the proposed letting arrangements specified in the application would constitute a material change of use requiring planning permission. I do not therefore afford any weight to the appellant's assertion that such management arrangements, specified in the use certificate, would mitigate against harm to residential amenity. For the reasons given above I consider that they would not mitigate that harm.

✓ 2019 - [5/6 Castle Wynd South, Edinburgh EH1 2JT](#)

- "While the flat was being used as a sole or main residence, it would have generated the same level of activity as any other similar flats in the block. The comings and goings of permanent residents on a day to day basis would have been familiar to the neighbours, but it is the changes in the character of the new use, together with its impact on neighbours, that will determine whether the change of use is material and that planning permission is required for the use to continue. At the time the notice was served, the flat was being used for commercial short term lettings for up to 6 people which, with the regular change overs of visitors, is very different from use of the flat as a dwelling."

✓ 2019 - [3F2, 22 Haymarket Terrace](#) ✓ [Flat 3F3, 22 Haymarket Terrace, Edinburgh, EH12 5JZ](#)

- "The Airbnb business model described above results in a degree of change which I consider represents a material change of use requiring planning permission. No such permission exists therefore the enforcement notice is appropriate."
- "There is no acceptable period for the continuation of a loss of amenity arising from excess disturbance to existing residents."

✓ 2019 - [Flat 1, 8 Baxters Place, Edinburgh, EH1 3AF](#)

- "The presence of so many strangers could introduce concerns over security which, even if not well founded, would inevitably detract from the amenity of the occupants of the other five flats. This would be materially different to what would be the case if the flat's occupants remained the same for months or even years, as one could reasonably expect if it were occupied in accordance with its planning permission."
- The subject of the application: use of an existing residential property for short stay commercial visitor letting by people living together as a family (maximum six persons, **minimum seven nights per let**).

✓ 2019 - [Flat 1/1, 1 Crichton Place, Glasgow, G21 1AY](#)

- "Access to the common stair is by means of a door that is kept locked. The common stair is thus private space and will give some added sense of security to residents."
- "The present use of the appeal flat for short-term lets is likely to result in normal residents regularly encountering strangers, often with luggage, on the common stair. Such occurrences are likely to be more disturbing than encountering the comings and goings of normal residents. Any spirit of community and any sense of security would be reduced."

✓ 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."

- ✓ 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 - [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.



## Examples with main door access, which confirm the change of use, and/or discuss the impact on neighbours in other buildings.

### ✓ 2021 - [An Teagh Gael, The Lane, Dullatur, G68 0AU](#)

- Such gatherings or celebrations, whether described as a party or not, are likely to lead to additional activity, noise or disturbance at the property particularly at the weekends and in the evenings... These conclusions regarding the scale, character and regularity of the letting activity lead me to conclude that the short term letting is an ongoing commercial activity integrated with the appellants' occupancy of the property but carried out in a way that is not ancillary to the lawful dwellinghouse use.

### ✓ 2021 - [6 Campbell's Close, 87 Canongate, Edinburgh, EH8 8JJ](#)

- The appeal flat does not share an internal access stair with other flats. But the external steps used for its access pass very close to noise-sensitive parts of other residential properties. I assess this case on its own merits, and I believe that on balance it would not accord with policy Hou 7 of the Edinburgh Local Development Plan (2016). This says that changes of use which would have a materially detrimental effect on the living conditions of nearby residents will not be permitted.

### ✓ 2020 - [Flat 1, 9 Elsie Inglis Way, Edinburgh, EH7 5FQ](#)

- I am not persuaded that the use of the French doors, via this space, is practical or indeed appropriate given the communal nature of the landscaping and given there is a clearly demarcated footpath to the communal entrance, only metres away. I am also not persuaded that the suggested use, only, of the French doors to the front of the property by short stay commercial visitors would avoid disturbance to neighbours in the adjacent ground floor flat. This is due to the proximity of the French doors of the appeal property to the nearest window in the adjacent flat and due to the potential number of visitors arriving and departing, the frequency of arrivals and departures and the times of arrivals and departures. Similarly, I am not persuaded that this would avoid disturbance to neighbours in the flat above which has French doors (and Juliet balcony) directly above the French doors to the appeal property.

### ✓ 2020 - [7 Lochmill Holdings, Antermony Road, Milton Of Campsie, G66 8AE](#)

- The council points out that the proximity of the holiday homes to the house at 7 Lochmill Holdings could lead to noise and disruption for residents at number 7. I agree that people often behave differently in holiday homes than they would at home. Holiday homes can also often be used for parties or social events when more noise could be expected. Frequent changeovers of guests would also mean more coming and going than would be normal in mainstream houses. Consequently, I agree with the council that the proximity of the holiday homes to number 7 could well lead to a reduction in residential amenity for residents in the latter house.

### ✓ 2020 - [24 Craiglockhart Avenue, Edinburgh, EH14 1HX](#)

- Given the proximity of the appeal site to adjoining residential properties located to the north, south and east of the site, evident from the Ordnance Survey plan attached to the enforcement notice, I consider that the conclusion of the council in this regard is reasonable. Consequently, I also consider that permanent discontinuation of the use, as required by the notice, is necessary to protect the living conditions of neighbours.
- Consequently, the appellant has been aware for over 16 months that the use is unauthorised so appreciated the risk he was taking inviting bookings in April 2020.

### ✓ 2019 - [Land At 2 Viewbank Road, Bonnyrigg, Midlothian, EH19 2HB](#)

- "The notice relates to the unauthorised material change of use of a studio building from use for domestic purposes to use as a residential unit for short-term letting, forming a separate unit of residential accommodation from the dwellinghouse on the same land.
- I note the representation submitted on behalf of local residents which raises concerns regarding the impact of the short term letting use on the neighbourhood.

### ✓ 2019 - [Greenloaning, The Loan, West Linton, EH46 7HE](#)

- "...The house is accessed from an unsurfaced road in the north-east part of West Linton and is in an area characterised by large, in the main, detached houses set in substantial garden grounds in a semi-rural part of the village... the unauthorised use of 'Greenloaning' has an unacceptable impact on the character of the established amenity in this generally quiet part of West Linton."

✓ 2019 - [1E, 11 Royal Circus, Edinburgh, EH3 6TL](#)

- “The communal entrance door is situated directly adjacent to the door and windows of the flats at number 13 Royal Circus and is in close proximity to the basement flat at Number 11B. Residents of those properties may also experience noise and disturbance, albeit to a lesser degree.”

✓ 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 - [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.

✓ 2013 - See also [Moore v Secretary of State for Communities and Local Government and Suffolk District Council](#) discussed below.

## Key Boxes

✓ 2013 - [2F3, 1 Upper Bow, Edinburgh, EH1 2JN](#)

- I find that the key safe boxes detract from the appearance of this listed building, and fail to preserve its features of architectural or historic interest. I find no compelling reason why listed building consent should be granted for their retention. Consequently, the only appropriate measure to alleviate their effect on the building is their removal, as required by the notice.

## Appeals on Planning Decisions to the Court of Session

✓ 2020 - [Michael Gerrard Cameron v Scottish Ministers \[2020\] CSIH 6XA60/19](#)

- This is an appeal against the decision of a reporter appointed by the Scottish Ministers dated 25 April 2019 which upheld an enforcement notice issued by Scottish Borders Council. The notice concerned a breach of planning control in respect of a property “Greenloaning” (sometimes known as Linton Lodge) in West Linton; the basis being a material change of use from a residential dwelling to “short-stay commercial visitor accommodation”, and this in the absence of the necessary planning permission.
- The court detects no flaw or legal error in the reporter’s analysis and reasoning as summarised earlier. It is well established that a use which is incidental to a primary use is subsumed into that primary use. Furthermore, if such a use intensifies to become the main or only use of the subjects, in general that will amount to a material change of use requiring planning permission.

✓ 2019 - [Mr and Mrs Ahmad v Glasgow City Council \[2019\] CSIH 44 XA106/18](#)

- It is evident that the appellants feel frustrated at the refusal of what they consider to be a worthwhile proposal. However, we reiterate the point made at the beginning of this opinion: it is for the local planning authority to determine the merits of applications made in respect of their areas. Should they make an error as to the extent of their legal powers or should they fail to comply with a procedural requirement that has adverse consequences for an applicant, then this court may be applied to in order to provide a remedy. But if they make no such errors this court cannot interfere with their decisions; matters of planning judgment are for planning authorities, not for the court.



# Summary of Case Law - Enforcing Title Deeds

In **Scotland** it is necessary to prove both “title” (a breach of title deeds), and “interest” (the breach has material detriment to the “value” or “enjoyment” of the property).

Title seems to be a given, guidance on what constitutes “material” detriment is limited. Most legal firms have little experience with STLs and it is important that they are informed of the most recent cases.

Most home insurance policies include cover for legal expenses for breaches of title deeds.

## Civil Cases in Scotland and England

- ✓ **2020** - [City of Westminster v Madhukar Kothari LON/00BK/LBC/2019/0087](#)
  - It is compellingly clear from the documentary evidence produced by the Applicants that the premises have been used for short term holiday lets via both Booking.com and AirBnB.
  - This constitutes the use of the premises as a business in breach of Clause 18 of the Seventh Schedule. Furthermore this sort of short term letting runs contrary to the requirement in Clause 18 that the occupier uses the premises as a single private flat for residential purposes only.
- ✓ **2019** - [Bevan House Management Company Ltd v Denis Becker LON/00AC/LBC/2019/0010](#)
  - There were 7 reviews between August 2018 and January 2019 and 15 in total.
  - The Tribunal finds that this was in breach of the sub clause of the lease which required the Respondent or his sub tenant to use the premises as a private residence only.
  - Accordingly the letting of the premises was in breach of clause 22, in part, which states-: “or whereby any insurance for the time being affected on the Estate or any part thereof may be rendered void or voidable or whereby the rate of premium may be increased.”
- ✓ **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 most relevant case to short-term letting in Scotland.
- ✗ **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** - Most of the Scottish case law examples refer to detached properties, with owners/carers living onsite. It is likely to be easier to prove detriment in shared buildings with unsupervised lets.
- **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.