

Subject: Short Term lets – Planning position

Purpose of Briefing Note

The purpose of this Briefing note is to provide an update on the current position of the Planning Authority relative to Short Term lets following the continuation of a Report on a proposed consultation on this subject at the Council meeting in December 2022.

Requirement for planning permission

For clarity, there is a statutory requirement for planning permission to be obtained for “development” as set out in section 28 of the Town and Country Planning (Scotland) Act 1997. There are 2 aspects to “development”: physical changes (eg. building works) and material changes of use (TCPA section 26). As there is no statutory definition of “material change of use” it is for the Planning Authority to determine whether any change in the proposed use is material, and therefore requires planning permission. That determination is based on the fact and degree of the particular circumstances of each case.

Use Classes

The Town & Country Planning (Use Classes)(Scotland) Order 1997 identifies dwellinghouse as being Class 9, while flatted properties are Sui Generis (outwith a specific Use Class). Therefore it is for the Planning Authority to judge on each individual case if the proposed Short Term Let, considering all the relevant factors, changes the use of the premises to such an extent that Planning permission is required. This is considered on a case by case basis for each property.

Consideration of Planning Applications

The aim of the proposed consultation had been to allow public engagement in the formulation of the criteria, in the form of a design guidance, to be used to assess planning applications for short term let proposals.

In the absence of such specific guidance, planning applications are currently being assessed in the context of National Planning Framework 4 (NPF4) and the South Ayrshire Council Local Development Plan 2, and this is a perfectly competent and acceptable legal position.

Supplementary Guidance Planning Policy - delayed

Given the [Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022](#) has not yet been fully implemented, and Short Term let premises are currently in the process of obtaining licences, it has been decided that the preparation of a Supplementary Guidance document would be premature at this time. The need for a Supplementary Guidance document will be reconsidered by the Planning Authority in January 2024

Short Term Lets prior to October 2022

With regards to properties which have operated as a Short Term Let without the benefit of Planning Permission prior to October 2022, if the applicant can demonstrate that the Short Term Let has been in operation for a continuous period of 10 years or more and the use is ongoing they may apply to the Planning Authority for a Certificate of Lawfulness for an existing use, to continue operating as a short term let.

With regards to properties which have operated as a Short Term Let without the benefit of Planning Permission prior to October 2022, but for less than 10 years, owners will be advised to seek confirmation in writing from the Planning Authority that no planning enforcement action will be taken against their property or they may apply for retrospective planning permission.

Members will note that Planning enforcement is a discretionary matter and it is for the Planning Authority to determine if enforcement action should be taken on any breach of Planning control.

In considering such “*no enforcement action*” requests, the Planning Authority shall take account of all relevant considerations, including the following:

- the length of time the unit has been used as a Short Term let
- Any previous correspondence with the Planning Authority indicating that Planning permission was not required
- The volume and nature of any formal complaints to Planning about the use of the property.
- Planning Legislation
- Scottish Government Planning policy and guidance.
- South Ayrshire Council Planning policy and guidance.
- The degree of harm being caused to public amenity.
- Whether such action is in the public interest
- Other legislation which may regulate the use of the property.

If it is considered that the Planning Authority deems that enforcement action would be required then the applicant may be advised to make an application for planning permission for the change of use to a Short Term Let. Said application would be determined in the normal manner.

Outcomes

- The Planning Authority will continue to assess each enquiry for a proposed Short Term Let on the merits of each case, when determining if planning permission is required
- Planning applications for Short Term Lets will continue to be assessed in the normal manner in line with legislation, against NPF4, LDP2 and the relevant material planning considerations
- Applicants will be advised to seek Certificates of Lawfulness for Short Term let properties over 10 years old
- When deemed appropriate, the Planning Authority will issue “no enforcement action “ letters to applicants in relation to unauthorised Short Term Let properties.
- Applicants can continue to seek planning permission in order to formalise a pre-October 2022 short term let.
- The need for a Supplementary Guidance document on this topic will be reconsidered by the Planning Authority in January 2024.