

Delegated Decision

1 June 2023



Government Consultation on the Introduction of a use class for short term lets and associated permitted development rights

Ordinary Decision

Amy Harhoff, Corporate Director of Regeneration, Economy and Growth

Councillor Elizabeth Scott, Cabinet Portfolio Holder for Economic Regeneration and Partnerships

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 This report seeks approval from the Corporate Director of Regeneration, Economy and Growth for the submission of a response to The Department for Levelling Up, Housing and Communities (DLUHC) consultation on proposals to introduce a new use class for short term lets and a new type of permitted development right that would allow the change of use from a dwellinghouse to a short term let and vice versa.

Executive Summary

- 2 DLUHC are consulting on proposals to introduce a new use class for short term lets and a new permitted development right, which allow development to occur without the need for planning permission. The consultation closes on 7 June 2023. It covers:
 - The introduction of a new use class for short term lets.
 - The potential introduction of a new permitted development right for the change of use from a dwellinghouse to a short term let.

- The potential introduction of a new permitted development right for the change of use from a short term let to a dwellinghouse.
 - How a flexibility for homeowners to let out their home for some nights in a calendar year could be provided through either change to the dwellinghouse use class or an additional permitted development right.
 - The introduction of a planning application fee for the development of new build short term lets.
- 3 The Council's response supports the introduction of a new use class for short term lets and opposes the introduction of a related permitted development right. In parts of the County, short term lets can impact on the availability of housing and demand for local amenities. A new use class will enable us to better control this.
- 4 Our response also suggests that it would be beneficial to clearly define how long homeowners can rent out their home for, and this should be through a change to the use class order. Currently, homeowners can let out their homes through platforms such as Airbnb, but it is challenging to demonstrate at what point this becomes a change of use. A shorter period of 30 days is preferred to help manage amenity impacts on neighbouring residents.
- 5 If agreed by REG Management Team, the Council's response will be submitted to DLUHC using the delegated powers of Corporate Director of Regeneration, Economy and Growth before the deadline of 9 June 2023.

Recommendation

- 6 The Corporate Director of Regeneration, Economy and Growth is recommended to:
- (a) agree that Appendix 2 of this report constitute the Council's formal response to the government consultation on reforms to the use class for short term lets and a new permitted development right.

Background

- 7 The Department for Levelling Up, Housing and Communities (DLUHC) are consulting on proposals to introduce a new use class for short term lets and a new permitted development right. In certain areas, such as coastal towns, national parks and some cities, there are concerns second homes and short term lets are negatively impacting on the availability and affordability of homes for local people and demand for local services.
- 8 Equally, whilst the rise in platforms such as Airbnb has introduced flexibility for homeowners to let out their home for short periods, this has elicited concern in terms of the social dynamics and amenity impacts on local communities.

Short Term Lets

- 9 The Town and Country (Use Classes) Order groups uses of land and buildings into categories known as 'use classes.' Homes typically fall within 'C3 Dwellinghouses' use class regardless of whether they are first or second homes. It is proposed to introduce a new use class for short term lets, to be known as C5, defined as: "the use of a dwellinghouse that is not a sole or main residence for temporary sleeping accommodation for the purpose of holiday, leisure, recreation, business or other travel."
- 10 Bed and Breakfasts (B&Bs), hostels and hotels, with no significant element of care, fall within a separate use class 'C1 Hotels,' and this will not change under the proposals.
- 11 The new proposed short term let use class, namely C5, could not be removed, or amended by the Local Planning Authority. New build properties developed for the purpose of short term let will have to go through the planning process for approval, so that they can secure planning permission for such development. Where an existing property meets the C5 classification as a short term let, planning permission would not be required. If subsequently someone wanted to change their property from C3 to C5 or vice versa, planning permission for change of use would be required. The change of use through the new C5 use class would always require planning permission regardless of whether there is a local issue or not.
- 12 A register of short term lets will be introduced, subject to consultation, which will help Local Planning Authorities know which properties are being let out in their area. This is part of a separate [consultation](#). Visit [County Durham](#) are preparing the response and we have been liaising with them.

Permitted Development Rights

- 13 Permitted Development Rights are a national grant of planning permission including for the material change of use. It is proposed that permitted development rights could be introduced for a change of use from a dwellinghouse to a short term let and vice versa.
- 14 Where an overconcentration of short term lets is an issue, Local Planning Authorities could remove a permitted development right by making an Article 4 direction in line with national policy set out in paragraph 53 of the NPPF. This would be resource intensive and would require evidence that the Article 4 direction would apply to the smallest geographical area possible and be necessary to protect local amenity or the well-being of an area.
- 15 The [consultation](#) on the registration scheme for short term lets will help determine if there is a local issue with an over-concentration of short term lets in a specific area.

Planning Application Fees

- 16 It is proposed that where new build short term lets are developed, a planning application fee for each short term let, equivalent to that for a new dwelling, would apply. This would be delivered through a future amendment to the fees regulation. Where a permitted development right has been removed by making an Article 4 direction, the standard fee for a planning application change of use would apply.

Flexibility to let out your own home

- 17 The consultation seeks views as to whether homeowners should be given flexibility for C3 dwelling houses to be let out for a number of nights, for example 30, 60 or 90 nights in a calendar year. This could be through a further permitted development right or an amendment to the C3 dwellinghouse use class description. Currently, homeowners can let out their homes through platforms such as Airbnb, but it is challenging to demonstrate at what point when this becomes a change of use.

Consultation Response

- 18 The Council's response supports the introduction of a new use class for short term lets. In parts of the County, short term lets can impact on the availability of housing and demand for local amenities. A new use class will enable us to better control this.
- 19 The Council opposes the introduction of a related permitted development right due to the resource implications of taking forward

an Article 4 direction, which would delay the Council from acting on this issue.

- 20 The Council would support clarification on the definition of how long homeowners can let out their home for through a change to the use class order. A shorter period of 30 days is preferred to help manage amenity impacts on neighbouring residents.

Next Steps

- 21 If agreed by REG Management Team, the Council's response will be submitted to DLUHC using the delegated powers of Corporate Director of Regeneration, Economy and Growth before the deadline of 9th June 2023.
- 22 Following the close of the consultation on 7 June 2023 the Government intends to make changes to the Town and Country Planning (Use Classes Order) 1987, as amended and the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, as amended when parliamentary time allows.

Background papers

- [Introduction of a use class for short term lets and associated permitted development rights](#)

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Appendix 1: Implications

Legal Implications

The proposal will result in changes to the Town and Country Planning (Use Classes Order) 1987, as amended and the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, as amended.

Finance

There are no financial implications in responding to the consultation.

If permitted development rights are introduced, as is currently the case, no planning application would be required. Therefore, this scenario would have no financial implications. A Local Planning Authority could take forward an Article 4 direction to remove a permitted development right, and where a planning application is made, a fee could be secured.

If a new use class is introduced without an associated permitted development right, planning permission would be required and a fee for each new build short term let, equivalent to that for a new dwelling, would apply. A fee would also be secured for a change of use planning application.

Consultation

DLUHC published consultation proposals on 12 April 2023 and representations can be made on the proposals until 7 June 2023.

There is also a separate consultation on a [registration scheme for short term lets](#). The Department for Culture, Media and Sport published consultation proposals on the 12 April 2023 and representations can be made on the proposals until the 7 June 2023. Visit County Durham are preparing the response and we have been liaising with them.

Equality and Diversity / Public Sector Equality Duty

The Council acknowledges that, in exercising its functions, it has a legal duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. This duty applies to all people defined as having protected characteristics under that legislation. The Act also applies to DLUHC. The consultation seeks comments on any potential impacts that might arise under the Public Sector Equality Duty as a result of the proposals in the consultation.

Climate Change

Whilst this consultation does not specifically address climate change, this is a thread running through both national planning policy and County Durham Plan. As such the planning service has an important role in securing sustainable development and helping to address climate change.

Human Rights

Human Rights issues are relevant to the consultation and in particular Article 8 which protects people's right to respect for their private life, family life and home and Protocol 1, Article 1 which protects a person's right to enjoy their property peacefully.

Crime and Disorder

None.

Staffing

None in responding to this consultation.

If the use class and permitted development right are introduced jointly, we may wish to take forward an Article 4 direction for parts of the County which will have resource implications. Whilst this may result in an increase in planning applications, a fee could be secured.

Accommodation

None.

Risk

Not applicable.

Procurement

None.

Appendix 2: Proposed Consultation Response

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

Q1. Do you agree that the planning system could be used to help to manage the increase in short term lets?

Yes. The planning system could help, in principle, with a new use class and supporting local plan policies.

Q2. Do you agree with the introduction of a new use class for short term lets?

Yes. In parts of the Durham Dales, short term lets are putting pressure on the availability of residential accommodation. This impacts on housing affordability and local services, including the demand for local schools. A new use class will help existing residents, particularly in terms of managing impacts from noise and nuisance.

A new use class will also help to control the quality of visitor accommodation and the need to protect short term lets as a form of visitor accommodation in certain areas. As well as there being a demand for housing, there is also a demand for visitor accommodation. Platforms such as Airbnb and short term lets have impacted on businesses providing visitor accommodation since they can operate with lower overheads due to fewer regulations. A new use class would help control this, support sustainable communities and enable us to balance the need to provide visitor accommodation and residential housing at a local level.

Q3. Do you agree with the description and definition of a short term let for the purpose of the new use class?

Yes and no. We agree with the definition but believe the description could be misinterpreted. The description should better reflect that the use class applies to second homes, to distinguish between situations where someone rents out their main residence for a short period of time.

The use of 'short' in the definition is a misnomer and instead the use of temporary is more applicable.

Q4. Do you have any comments about how the new C5 short term let use class will operate?

Yes. It will be subject to local authorities developing policies in local plans. Local authorities may need to apply a threshold policy approach whereby if short term lets exceed a percentage in a given area, development of further short term lets would

be restricted. A distinct use class will also enable enforcement of properties operating as short term lets without planning permission.

Q5. Do you consider there should be specific arrangements for certain accommodation as a result of the short term let use class?

No. Some student accommodation is rented out as visitor accommodation outside of term time. The use class C5 would not impact on this by virtue of its definition. The Council considers other forms of accommodation are addressed adequately by the use class order.

Q6. Do you agree that there should be a new permitted development right for the change of use from a C3 dwellinghouse to a C5 short term let (a)

No. It would mean local authorities would need to take forward Article 4 directions and demonstrate that they would apply to the smallest geographical area possible and are necessary to avoid wholly unacceptable adverse impacts. In County Durham, short term lets are pepper potted in rural areas so there would need to be a significant level of analysis to prove we are applying an Article 4 direction to the smallest geographical area possible. Without a registration scheme for short term lets it would be challenging to evidence existing levels in a given area.

To demonstrate a wholly unacceptable adverse impact there needs to be evidence there is a significant issue, so by the time the Article 4 is confirmed it is almost too late. Local authorities could act more immediately without a permitted development right.

Q7. Do you agree that there should be a new permitted development right for the change of use from a C5 short term let to a C3 dwellinghouse (b)

Yes. This will enable us to protect visitor accommodation where it is required to meet a specific need.

Q8. Do you agree that the permitted development rights should not be subject to any limitations or conditions?

No. Notwithstanding our concerns above, if government does go ahead with permitted development rights, there should be conditions around the number of occupants as a higher number of occupants can have a more significant impact on the amenity of residents nearby. It would additionally increase pressure on local streets due to more cars parking in the locality.

Q9. Do you agree that the local planning authority should be notified when either of the two permitted development rights for change of use to a short term let (a) or from a short term let (b) are used?

No. If a permitted development right, it would not be beneficial as we won't have any control. The proposal for a short term let registration process might be a better source of data in terms of monitoring the number of short term lets.

Q10. Do you have any comments about other potential planning approaches?

No.

Q11. Do you agree that we should expressly provide a flexibility for homeowners to let out their homes (C3 dwellinghouses)?

Yes. This will be beneficial as it would provide greater clarity to homeowners and neighbouring residents on what is considered acceptable. It would also allow enforcement activity.

The definition of C3 should also reflect that this is someone's main residence or sole home to make the distinction that C5 is applicable to second homes.

Q12. If so, should this flexibility be for:

i. 30 nights in a calendar year; or

ii. 60 nights in a calendar year; or

iii. 90 nights in a calendar year

We consider 30 nights is appropriate given potential amenity impacts on adjoining residents and the need to maintain the character of the property. 30 nights balances the ability of occupiers to make a modest income from their property whilst also protecting the amenity of adjoining residents. If this were to apply to someone's sole home, they would be most likely to rent it out when they themselves are on holiday and in this context, 30 days seems reasonable.

Whilst accommodation through Airbnb and similar platforms can contribute to visitor accommodation, they can also take business from other forms of visitor accommodation to their detriment. A 30-day limit would thereby be in the interest of supporting visitor accommodation.

Q13. Q.13 Should this flexibility be provided through:

i) A permitted development right for use of a C3 dwellinghouse as temporary sleeping accommodation for up to a defined number of nights in a calendar year

ii) An amendment to the C3 dwellinghouse use class to allow them to be let for up to a defined number of nights in a calendar year.

As C5 is to be introduced through a change in the use class order, we consider there is a need to review the definition of C3 for clarity and consistency and it would make sense to build this change into that review.

The definition of C3 needs to be changed to understand how it is distinct from C5 i.e., where C5 is applicable to second homes, C3 should be the main or sole residence.

Q14. Do you agree that a planning application fee equivalent to each new dwellinghouse should apply to applications for each new build short term let?

Yes. This would seem proportionate to the matters requiring consideration and the process to be followed.

Q15. Do you agree with the proposed approach to the permitted development rights for dwellinghouses (Part 1) and minor operations (Part 2)?

No. We disagree that short term lets should be able to be extended under permitted development rights. This would allow them to be occupied by an increased number of occupants which would result in different amenity impacts. In the case of residential developments, extension under permitted development rights are generally to accommodate members of the same family so less likely to result in different amenity impacts.

Q16. Do you have any further comments you wish to make on the proposed planning changes in this consultation document?

No.

Q17. Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could give rise to any impacts on people who share a protected characteristic? (Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation).

Don't know.

Q18. Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could impact on:

- a) businesses**
- b) local planning authorities**
- c) communities?**

Yes. A new use class could be beneficial to existing businesses who struggle to compete with platforms, such as Airbnb, which allow people to rent out properties without the associated overheads.

For Local Planning Authorities, it could result in additional work initially with people applying for certificates of lawful development. If there is a permitted development right, significant work will be required to take forward Article 4 directions. If only a new use class is introduced, there may be a slight increase in planning applications, but we do not anticipate this would be significant and in any case the local planning authority could secure a fee.

For communities, it would be beneficial in terms of enabling Local Planning Authorities to protect residential housing to ensure affordable housing is available for the community and local services are supported. It would additionally reduce different amenity impacts on local communities as we would be able to better control concentrations of these uses.