

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Planning, Housing & Economic Development Policy Development & Scrutiny Panel	
MEETING/ DECISION DATE:	11th September 2018	EXECUTIVE FORWARD PLAN REFERENCE:
TITLE:	Short Term Lets	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
<ul style="list-style-type: none">• <i>House of Commons All Party Parliamentary Group for Tourism, Leisure and the Hospitality Industry – Inquiry into the Sharing Economy – July 2018</i>		

1 THE ISSUE

- 1.1 Concerns have been raised by residents and local businesses about the growth in unregulated short term holiday lets in Bath and North East Somerset particularly in respect of the impact on neighbourhoods through anti-social behaviour, traffic and congestion, waste management and noise, the potential impact on the local housing market and the potential impact on the licenced hotel and guest house sector.
- 1.2 In looking at this matter consideration has been given to licencing, business rates and the planning position regarding short term lets. Consideration has also been given to the observations and recommendations set out in the *House of Commons All Party Parliamentary Group for Tourism, Leisure and the Hospitality Industry – Inquiry into the Sharing Economy* published in July 2018 (a copy of which is attached at appendix 1).

2 RECOMMENDATION

- 2.1 The panel is asked to note the considerations and issues set out in this report.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 None at present however if new or amended legislation comes into effect this could have implications in terms of staffing and resourcing effective monitoring and enforcement.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The relevant planning legislation is contained in the Town and Country Planning Act, 1990 and the Town and Country Planning (Use Classes) Order, 1987 (as amended). Licencing considerations are enshrined in the Housing Act, 2004. Property valuations for both council tax and business rates are the responsibility of a national body, the Valuation Office Agency (VOA).

5 THE REPORT

- 5.1 The most recent Visitor Accommodation Study (2016) indicated that there were around 880 properties registered as being available on various booking websites in the Bath & North East Somerset area. This included whole properties and spare rooms). Research is currently being undertaken by the Council to update the Visitor Accommodation Strategy in order to establish an accurate assessment of the scale of the issue and the potential impacts.
- 5.2 An analysis of open source data available on www.airdna.co indicates there are currently 1108 active rentals within Bath (note the 2016 study covered the whole district not just Bath).
- 5.3 Of the total listed on www.airdna.co 63% (696) relate to whole dwellings, the remaining 37% (412) relate to rooms within existing dwellings. 57% of the listed properties are owned by persons or companies operating two or more rentals whilst 43% listed belong to "single listing hosts". A more detailed assessment of the current situation will be provided in the updated Visitor Accommodation Strategy however it indicates that the use/demand has increased since the 2016 study.
- 5.4 A short term let can be considered anything from a day to 6 months and can include a range of activities including holiday rentals or provision of 'conventional' domestic accommodation.
- 5.5 Whilst the concerns raised around the rise of the short term rental economy generally relate to the impact on the holiday rental market, Airbnb and other online booking agencies can also be used to secure accommodation on a short term basis for people working away from their normal domestic area or to provide accommodation for people looking to move to an area. The online booking market is not therefore solely limited to the provision of an alternative form of holiday accommodation.
- 5.6 Consideration has been given to the motion debated at Full Council on the 12th July 2018 and to the following potential options: (1) A change to the Use Class Order with the introduction of a new use class to differentiate these properties from dwelling houses; (2) the introduction of a limit on the number of days short

term rentals can be used for; (3) a change to business rates; or (4) a change to licencing.

- 5.7 All of these considerations would require specific legislation via central Government. It should be borne in mind that these changes are not within the remit of the Council and could not be introduced unilaterally.

Current Use Class Position

- 5.8 There is no clear legal distinction between the use of a property as a domestic residence (a house) and its use as a short-term holiday let which poses issues for the enforcement and regulation of such uses under Planning.

- 5.9 A small dwelling (less than 6 unrelated individuals) in use as a short term rental is still classified as a dwellinghouse. Both scenarios fall into Use Class C3 of the Use Class Order. According to www.airdna.co 991 of the total 1108 available properties in Bath (90% of the total) offer 3 or fewer rooms indicating that the vast majority of short term rentals in Bath do not constitute a material change of use.

- 5.10 The use of larger properties (more than 6 unrelated individuals) can still fall into Use Class C3 but can also trigger a change of use depending on the mix and relationship of occupants; the material characteristics of the use; and any material harm caused by the use. The use of larger properties tends to be the greatest cause of complaint and are often referred to as “party houses”. According to www.airdna.co 117 of the total 1108 available properties in Bath (10% of the total) offer 4 or more rooms. Of those larger properties, the Planning Department has received complaints regarding the use of 8 properties district wide, 6 of which are located in Bath.

Change to Use Class Order

- 5.11 The introduction of a new use class could mean anyone wishing to operate a house as a short term holiday let may require planning permission however it is likely that any new use class would be accompanied by permitted development provisions under the General Permitted Development Order (GPDO).

(Note: when the Government introduced Use Class C4 in 2010 in relation to HMOs, the change of use from a C3 dwelling to a C4 HMO was deemed to be permitted development under the GPDO – this required the Council to make an Article 4 Direction to remove those Permitted Development rights in order to control the use class. An Article 4 Direction would take time to prepare and requires a 12 month notice period – under the indirect direction rules – during which time other properties could change use without the need for permission. Between 2012 and 2013 there was a marked increase in the numbers of HMOs operating in Bath which were converted after the decision to make the Direction and before the Direction took effect. A similar scenario could result in relation to short term lets).

- 5.12 Any new use class could not be applied retrospectively to any property currently in use as a short term holiday let prior to the date of the new legislation

(or prior to an Article 4 Direction taking effect – if necessary). The c.1100 properties identified via www.airdna.co would be unaffected by a new use class and such a change would not control or deal with the existing situation.

- 5.13 The benefits of a new use class could be limited. It would not stop the current position, but it could give the Council the control to direct where such properties are located in the future. If a new use class were introduced, it is likely to have a significant resource implication for the Development Management service in terms of the creation of an Article 4 Direction, change to Policy, administering planning applications and investigating reported planning breaches. Appropriate resources would need to be made available and the implications would need to be carefully considered against any potential benefit.

Introduction of Limit on Use

- 5.14 There has been discussion regarding the “90 day limit” that is in force in London and whether a similar limit could be introduced in Bath & North East Somerset.
- 5.15 The powers in London limiting the number of days a short term rental can be used for stems from devolved powers to the Greater London Authority. Section 25 of The Greater London Council (General Powers) Act 1973 stated that any property used for temporary sleeping accommodation for less than 90-days per year required planning permission. The Act was relaxed by the Devolution Act, 2015 meaning that any property could be used for up to 90 days as a short term rental without the need for planning permission. The provision within the Devolution Act relating to this specific issue applies to the Greater London Authorities only and carries no weight outside that geographical area.
- 5.16 To gain a similar power in Bath & North East Somerset is likely to require a further amendment to the Devolution Act however this may be better lobbied via WECA at a devolved level.
- 5.17 A 90 day limit could still see a property rented for up to 45 weekends per year; this would not significantly address any potential disturbance/nuisance issues currently experienced.
- 5.18 There is no power to make a property owner return a dwelling to a domestic use when not being used as a holiday rental. A limit on usage would not address the potential impact short term rentals may be having on the housing market.
- 5.19 Additional resources would need to be made available and compared to other forms of regulation, such a limit is likely to be of limited benefit. Whilst the APPG inquiry recommends the Government provide Local Authorities with powers to set their own rule (including “*the ability to set the maximum number of days per annum that a property can be used for tourism accommodation*”) the report notes that enforcement of the 90-day rule has proven virtually impossible for many local authorities in London. If a limit were to be introduced it would be difficult to effectively monitor and enforce the usage of properties as owners can advertise on multiple booking sites or go direct to market and evidentially it would be difficult to prove when the limit has been breached.

Business Rates/Tax Compliance

- 5.20 The decision as to whether a property falls to be assessed as domestic or non-domestic is solely a matter for the Valuation Office Agency to consider and the Council has no control over this decision.
- 5.21 Whether a property used for short term holiday lets falls to be assessed as Non-Domestic and subject to Business Rates depends on whether the owner intends to make the premises available for commercial letting for 140 days of the year or more.
- 5.22 The financial impact on the Council of such properties moving from Council Tax to Business Rates is difficult to measure.
- 5.23 Properties subject to business rates can be eligible for small business rates relief. In the case of a business with a rateable value of £12,000.00 the council would award £5760.00 in relief. At the moment the only income the Council would receive is from the government's compensatory grant related to changes in the Small Business Rate Relief scheme announced as part of the 2017 Autumn Statement, however it is not known how long that will continue.
- 5.24 Consideration should also be given to the fact that empty non-domestic premises are subject to a 3 month exemption from Business Rates, and in the case of listed buildings, the exemption is unlimited. With domestic premises, Council Tax is payable whether or not the property is occupied. (This would be relevant in consideration of the 90 day limit).
- 5.25 Furthermore, under Council Tax, the Council can take steps to bring long term empty domestic premises into occupation by applying a Council Tax premium; there is no provision within the law to do this for non-domestic premises.
- 5.26 In financial terms, given the likelihood of Small Business Rate Relief applying and the exemptions given to empty properties, there is unlikely to be any financial benefit to the Council in charging Business Rates on this type of property.
- 5.27 With regard to tax, under the Government's Rent a Room scheme, owner-occupiers or tenants who let out furnished accommodation to a lodger in their main home are allowed to earn up to £7,500 a year tax-free.
- 5.28 In their inquiry, The APPG noted anecdotal evidence concerning whether the correct level of tax was being paid by users of the sharing economy and whether the appropriate level of VAT was being applied however concluded there was little compelling evidence to suggest appropriate tax was not being paid.
- 5.29 The Inquiry found *"The lack of information regarding the level of tax paid by people using the sharing economy does, again, highlight the issue of transparency within the sector. This is something that could also be resolved through the introduction of a statutory registration scheme by using the principle of conditionality in the registrations process. Conditionality would require people listing their properties to provide their tax details as part of the registration"*

process. In addition to ensuring that people operator tourism accommodation paid the right level of tax, this requirement would also resolve the issue of operators listing properties on a number of different platforms”.

- 5.30 HMRC have launched a consultation on this matter however the findings of that consultation are yet to be published.

Licencing

- 5.31 The Housing Act 2004 increased Local Housing Authorities’ abilities to regulate the private rented sector by introducing three forms of licensing: mandatory licensing of HMOs, additional licensing of HMOs, and selective licensing of the private rented sector.

- 5.32 Licensing is primarily about ensuring tenant safety rather than controlling the number or location of property types – if a property meets the specific standard conditions, a licence will likely be granted.

- 5.33 The Housing Act powers are restricted to where the residential accommodation is being occupied as a person’s “sole or main residence”. This therefore excludes property occupied on a temporary and generally commercial basis, such as guest houses, hotels and short term holiday lets.

- 5.34 Government has defined exemptions to “sole or main-residence” in relation to student and refuge accommodation but this exemption has not been extended to the short term (holiday) rental market.

- 5.35 The recommendations of the APPG inquiry could pave the way for a licensing scheme for short-term lets set at a local level, however at this stage this is only a recommendation and would need a new Act of Parliament (or amendment to existing). Additional resources would need to be made available to cover the additional work required to monitor and issue licences.

APPG Inquiry into the Sharing Economy

- 5.36 In July 2018 the All Party Parliamentary Group (APPG) for Tourism, Leisure and the Hospitality Industry published its inquiry into the sharing economy. The full report is available at Appendix 1 however the key observations and recommendations are summarised as follows:

- 5.37 The inquiry considered the benefits of the ‘sharing economy’ to include a provision of increased capacity, greater customer choice and enhanced visitor experiences as well as the financial benefits to the economy as a whole however it recognises more is needed to be done to protect customer safety, maintain a level regulatory playing field across the tourism industry, take into account the needs of local communities and ensure that all operators of tourism accommodation are paying the appropriate level of taxation.

- 5.38 The inquiry noted that the concept of being able to “*live like a local*” provides a “unique and enhanced customer experience”, and provides additional revenue to local businesses but this must not be to the detriment of the local community. One of the main issues identified is that whereas planning legislation

traditionally creates distinct and separate tourism accommodation zones and residential accommodation zones in destinations, sharing economy platforms are blurring this distinction. The Inquiry recommends that *“the Government urgently assess whether local enforcement agencies have adequate resources to carry out safety inspections of tourism accommodation businesses. This has significant implications for large towns and cities where the provision of sharing economy accommodation in high rises and houses in multiple occupation is becoming more prevalent”*.

- 5.39 While finding that the wider legislation that applies to accommodation businesses is fit for purpose, the inquiry identified significant issues regarding enforcement. One of the biggest issues associated with properties listed on sharing economy platforms is that regulatory authorities are not able to locate sharing economy accommodation providers, making it difficult to implement an effective inspection regime. Listings on sharing economy platforms often do not provide information on the exact location of a property until a booking is made and data protection laws prevent them from supplying data on the location of properties to enforcement authorities.
- 5.40 One of the proposals put forward was to create a level playing field was mass deregulation. The proposition being that, if it is unnecessary to regulate the sharing economy accommodation, then the Government should consider creating a level playing field by deregulating all small B&Bs and self-catering properties. However, the Panel rejected this argument on the grounds that all consumers should be afforded basic safety standards regardless of the type of accommodation, the cost of the accommodation or how often the accommodation is rented to consumers.
- 5.41 In respect of concerns regarding taxation issues, HMRC have launched a consultation on tax compliance related to this issue. The findings of the consultation were not available at the time the Inquiry concluded.
- 5.42 Having considered the various issues raised during the Inquiry, the panel made recommendations which are likely to be considered by Government in due course. The recommendations are:
- (1) *the Culture Secretary launch a consultation on using his powers under the Development of Tourism Act 1969 to establish a low-cost statutory registration scheme for tourism accommodation businesses. Such a scheme could be devolved to councils and would help resolve the main issues identified by this Inquiry. Namely, it would:*
 - *Help ensure that all businesses complied with regulations*
 - *Provide enforcement officers with a database of tourism accommodation properties so that they could target their resources to those properties they deem to be the highest risk*
 - *Provide councils with greater ability to manage tourism in their area*
 - *Provide HMRC with a means by which to ensure that all businesses pay the appropriate level of taxation.*
 - (2) *That the Government provide Local Authorities with powers to set rules regarding the use of residential properties for Tourism Accommodation so that local solutions can be developed that balance the benefits generated by*

sharing economy accommodation with needs of local residents. These powers include:

- *The ability to set the maximum number of days per annum that a property can be used for tourism accommodation*
- *The ability to require the owner of the property to be present if a property is used for tourism accommodation*

As part of the registration process, operators of tourism accommodation businesses would have to provide a certain level of basic information such as:

- *The location of the property*
- *The address and contact details of the person operating the business*
- *Details of their public liability insurance*
- *A copy of their fire safety assessment*
- *A copy of their Gas Safe certificate (if appropriate)*

We believe that such a scheme, coupled with Government providing Local Authorities with the necessary powers to set rules regarding the use of residential properties for tourism accommodation, would provide an efficient and effective low-cost mechanism to find local solutions to the issues associated with sharing economy accommodation while allowing the sector, and the tourism industry as a whole, to grow in a sustainable manner.

5.43 Having regard to the APPG inquiry it is clear that this is a matter Government are giving serious consideration to. As set out, in order for Bath & North East Somerset Council to introduce any form of regulation or control over this sector will require a change to primary legislation or new centralised legislation; there are no provisions currently for the Council to unilaterally bring forward control.

6 RATIONALE

6.1 It is not possible to recommend one or other course of action or to introduce a specific policy relating to this matter without a change to primary legislation.

7 OTHER OPTIONS CONSIDERED

7.1 None

8 CONSULTATION

8.1 In preparing the background to this report discussions were had with colleagues in Bath & North East Somerset Council's Business Rates Team and Housing Licencing Team and externally with Avon and Somerset Fire and Rescue.

8.2 A motion on this matter was discussed at Full Council on the 12th June 2018.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<i>Rich Stott – Team Manager, Planning & Enforcement - 01225 477434</i>
Background papers	<i>House of Commons All Party Parliamentary Group for Tourism, Leisure and the Hospitality Industry – Inquiry into the Sharing Economy – July 2018</i>
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