

East Devon District Council responses to the DLUHC consultation on 'Introduction of a use class for short-term lets and associated permitted development rights'

### **Q.1 Do you agree that the planning system could be used to help to manage the increase in short-term lets?**

Yes/No/Don't know.

The Government's proposals are too late to prevent losses of dwelling houses for principal accommodation to short-term lets that have already happened, or may happen before new legislation comes into effect. But changing the planning system to control the future loss of principal residence dwellinghouses to short-term lets could at least prevent the situation from getting worse.

The increase in short-term let guest accommodation to date has already occurred but it is less clear how much further the short-term let market will expand. The supply side of holiday let accommodation in East Devon is saturated with many owners having experienced significant vacancies even across high season over the last two years. Cost of living is most commonly cited alongside a slump in European visitors. This, alongside higher mortgage costs may constrain the transition from C3 dwellinghouses to short-term let guest accommodation in the short term.

Growth to date has largely occurred through the application of the use classes and permitted development legislation operating at the time. This constrained the degree of intervention in the short term-lets rental market. Much of the growth in East Devon has been and will be from change of use from dwellinghouses for example to self-contained accommodation or rooms/ bed and breakfast. Some occurred as short-term holiday lets in the high season with 6 months Assured Short hold Tenancy for the rest of the year. Most did not need planning permission for the short-term let because it was not a material change of use based on the test of 'fact and degree'. Related issues such as noise and disturbance, or safety in the existing lets have been managed to some extent through other means.

Whether there is a need for the proposed planning changes and how these would benefit East Devon is not wholly clear. The lack of robust information about the number, location and concentration of short-term lets undermines the ability to assess the potential effectiveness of the proposed planning changes in addressing our concerns. The proposed national registration scheme could help to identify short-term let premises and units. Business rates could support the collation of evidence on existing lets that have transitioned from council tax to NNDR.

We have concerns about housing availability and affordability, the hollowing out of communities, housing the local labour force and changes in the local visitor economy in East Devon. The lack of both affordable housing suited to younger, working age residents, and a lack of available employment land for employers to grow in East Devon has played a major role in our age demographic changing so significantly in recent years. House prices are an acute local issue with direct labour market

implications. The East Devon house price to earnings ratio stood at 10.88 in 2021 , (now 10.16 in 2022), compared to 5.21 in 1997, and remains higher than the ratios in neighbouring Exeter and South Somerset.

However, uncertainty over the scale and location of short-term lets due to the lack of robust evidence at this time makes assessment of the related impacts challenging. It is unclear whether short-term lets are a key driver in East Devon. The impacts of short-term lets may be localised, and limited in nature and character, but it is difficult to disentangle their impact from other drivers of change that also impact on the local housing market and house-price inflation, not least second homes. It is likely that some second homes in the district are also used for short-term lets, further complicating the issue.

Nevertheless, even if the impacts are localised and limited, short-term lets are competing with other demands that are putting pressure on the local housing stock. Together this has led to house price inflation, with consequential adverse impacts on housing availability and affordability for local residents, resulting in further problems for housing the local labour supply to support the East Devon economy.

The Council notes that the consultation document proposes that existing short-term lets will have the status of the new C5 Use Class at the date when the legislation introducing the C5 Use Class comes in to effect, without the need to apply for planning permission. This may well result in a further increase in the number of C3 dwellinghouses changing from permanent use to short-term lets ahead of that date to avoid any requirement to submit planning applications subsequently.

East Devon District Council considers it would only be appropriate for the planning system to manage short-term lets, if

- a) There are sufficient resources to administer, manage, monitor and enforce the additional planning work; and
- b) There is also a short-term lettings registration system, to regulate matters such as safety, and to record short-term lets regularly (eg annual basis); and
- c) The information gathered through planning and registration is reliable; and
- d) The registration process can also be effectively monitored for compliance and enforced (the LPA will need access to the register information at an accommodation unit level. Aggregated data would be insufficient.

It is unnecessary for the planning system to manage short-term lets that are simply used for infrequent, short-term 'swapping' or 'sharing'. Where a home owner rents out an entire property as a short-term let for a limited period (swapping) is not a concern. For example, residents renting out their home for short periods of absence such as a family holiday. Similarly, where a home owner or occupier rents out a spare bedroom – short or long term - while remaining in residence (sharing), is not of particular concern. In both cases, the long term principal residence use of the dwelling is maintained.

The Council is concerned about short-term lets where a property is offered for rent for significant periods of the year, meaning that it is no longer used as a principal place of residence, particularly if it is permanently lost as a dwellinghouse. Similarly,

the Council is concerned where an owner is not living in the property and does not adequately manage their impact on neighbouring properties and occupants, such as noise, disturbance and parking.

The Council would be concerned if there were further significant loss of homes available for principal residence. It would undermine the supply and affordability of housing in East Devon, particularly in locations that are already attractive to second home owners. Through engaging with the emerging local plan, local communities have already expressed their concerns about the 'hollowing out' of communities in some locations, notably in some coastal settlement and rural areas. They perceive this 'hollowing out' to be caused by a mix of short-term lets and second homes. They are particularly concerned that this undermines housing affordability and community cohesion through raising house prices beyond levels that local people can afford.

## **Q.2 Do you agree with the introduction of a new use class for short-term lets?**

Yes/No/Don't know.

East Devon District Council considers that a new use class for short-term lets would enable the Local Planning Authority to have more control over short-term lets particularly when they would cause the loss of the permanent use of dwellinghouses, but that its use should be subject to flexibility and restrictions (see Council responses to Qs. 4, 6, 7, 8 and 12).

## **Q.3 Do you agree with the description and definition of a short-term let for the purpose of the new use class?**

Yes/No/Don't know.

The proposed definition of short-term let use class in Paragraph 20 of the consultation document is "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".

East Devon District Council considers that the definition is unclear and ambiguous for the following reasons:

1. The word "accommodation" is unclear and ambiguous because there is no reference to the number of short-term let "units".

A C3 dwellinghouse is a single unit of housing accommodation. But the C5 use class definition refers to "temporary sleeping **accommodation** for the purposes of holiday, leisure, recreation, business or other travel". It does not make clear whether the C5 use means only one unit of temporary sleeping accommodation, or one or more units

A property used for short-term let accommodation could contain more than one short-term let "unit". The issue of properties containing more than one unit of temporary sleeping accommodation is raised in the DCMS consultation on

short-term lets registration, about what is to be registered (landlords, or properties, or units).

2. Para 20 of the consultation documents states that “we want to ensure that the definition of a short-term let use class for planning purposes captures the range of activities above” . That is a reference to Para 19 which states “Some short-term lets may be let out for a limited period while the owner themselves go on holiday. Others may be properties that provide for a series of lets for holidays etc. or very short-term overnight sleeping accommodation including renting an individual bedroom while the owners are in situ.” This at least implies that the existing dwellinghouse could be let out in whole or part. East Devon District Council considers the phrase “*that is not a sole or main residence*” is ambiguous and capable of more than one interpretation . Does it mean
  - a) the property is currently either a second home or is an investment property currently used for long term rental; ie this use class does not apply if the existing use is a dwellinghouse for sole or main residence?; OR
  - b) the temporary sleeping accommodation occupies all of the dwelling house (and therefore there is no residue that could be used as a sole or main residence)? OR
  - c) the temporary sleeping accommodation could be in part of a dwelling house (and therefore that part is not in sole or main residence) but the remaining part of the dwellinghouse could remain in use as a dwellinghouse? Some dwellinghouses are of sufficient size for part to be used as one or more C5 units, and for the residue of the property still to be able to be used as a dwellinghouse.

The District Council's main concern is if the short-term letting results in the complete and long term/permanent loss of a dwellinghouse. If part of an existing dwelling can continue to be used as a principal residence in the long term, then the Council's concerns focus on the impact on neighbours, not the impact on the wider community.

The definition of short-term lets for planning purposes has to be clear otherwise the proposals for PD rights and in particular the GPDO change proposed in paragraph 31b) from C5 back to C3 proposed will have unforeseen consequences. See the Council's response to Q4.

Government needs to consider carefully how to amend the definition so that its meaning is clear.

#### **Q.4 Do you have any comments about how the new C5 short-term let use class will operate?**

**Yes/No/Don't know.**

East Devon District Council is concerned that there will be a lack of control as a result of the definition (see response to Q3), in conjunction with the proposed PD rights for changing from C5 to C3. (see response to Q7).

A single C3 dwellinghouse changed to a single C5 unit could change back to C3 without having to apply for planning permission. This would not be a problem, especially as it would bring a unit back into long term, permanent use as a dwellinghouse.

But if, for example, a single C3 dwellinghouse changes to two C5 units (through planning permission or PD rights), it could then change back to two C3 dwellinghouses under PD rights if the GPDO was changed as proposed in para 31b). In doing so it would create one additional dwelling 'by the backdoor' without having to apply for planning permission for the subdivision of a dwelling, or change of use to 2 dwellings. The Council considers that the loss of local control by this circumvention of the planning system is unacceptable.

The Government needs to consider carefully how it can clarify the C5 use class definition so that its meaning is clear and unambiguous, and how to clarify the PD right proposed in para 31b) to ensure that in combination the C5 use class and the PD right do not result in the unintended consequence of providing an uncontrolled backdoor route to creating additional C3 dwellinghouses without proper planning control.

**Q.5 Do you consider there should be specific arrangements for certain accommodation as a result of the short-term let use class?**

Yes/No/Don't know.

East Devon District Council - No comment

**Q.6 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)**

Yes/No/Don't know.

Introducing a new permitted development right adds to the Council's workload

East Devon District Council wants to have sufficient control over development where the change of use to C5 short-term lets would result in the loss of the long term use of a permanent dwelling house.

The Council agrees that if the new C5 use class is introduced there would be a need for flexibility in areas where short-term lets are not an issue. Without the PD right, the Council would have to determine more planning applications and this would increase the Council's workload, putting further pressure on its already stretched planning resources. The Council wants to have the local control to choose whether to remove

PD rights in areas where short-term lets are an issue (see our response to Q13). The issue could also be addressed in Neighbourhood Plans.

If the new C5 Use Class and new PD rights are introduced, the Council would have to carefully assess the resource implications of the means available to target any control. The Council requests that Government carefully considers how best it can enable LPAs to achieve such control without putting undue, onerous pressures on the Council's already stretched resources.

**Q.7 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** /No/Don't know.

East Devon District Council agrees that there should be a new permitted development right for the change of use of a C5 short-term let to a C3 dwelling house, but only if the C5 unit had previously comprised a complete C3 dwelling. Changing back to C3 would return that unit to C3 use. It might make the dwelling available for permanent residential use, through either adding to the dwelling stock or at least negating the temporary loss to short-term let. (Please see our response to Q9 on the need for the Council to monitor net changes to dwelling stock and HFRR statistical submissions to Government). Without the PD right, the Council would have to determine more planning applications and this would increase the Council's workload, putting further pressure on its already stretched planning resources.

However, the Council is concerned that this option could be used to create additional C3 dwellinghouses without the appropriate control through the determination of planning applications. See the Council's comments on Q4. The PD right should not enable additional dwellinghouses to be created without the submission of a planning application to the LPA.

Furthermore we have concerns if the right to change from C5 to C3 is unconstrained. In the countryside, the Council imposes conditions restricting holiday let use so that it cannot be used for C3 dwellinghouse purposes. It is unclear whether the proposed PD rights would override the previous planning condition.

**Q.8 Do you agree that the permitted development rights not be subject to any limitations or conditions?**

Yes/**No**/Don't know.

East Devon District Council is concerned about the potential impact of additional short-term lets in the AONBs in our district. The proposed PD rights relating to short-term lets should be removed from areas within the designated AONBs, thereby ensuring that the Council has local control in those areas.

**Q.9 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?**

Yes/No/Don't know.

East Devon District Council is concerned that the proposal for a notification process relating to changes resulting from use of PD rights from C3 to C5 and vice-versa is unrealistic. If there is no effective mechanism to require notification or there are insufficient resources to enforce compliance then the Council will not have sufficient control. There is no planning fee, so the burden for checking compliance would fall on the Council. We consider that the scale of work needed to identify changes of use in the absence of notification would be substantial and likely to put a disproportionate pressure on our already stretched resources.

The Council considers that owners of the C3 and C5 units should notify the LPA in a reliable and timely way, that provides evidence about which properties or part-properties have 'flipped' between C3 and C5 (including a map and description of the change which makes clear the number of C5 units, not just the property). This will enable the LPA to monitor changes to the amount of residential dwellings and the short-term lets in the district. We need this evidence for our housing monitoring audit trail, to assess the net change in dwelling supply over the local plan period. We may need to apply planning judgement about whether the 'flip' does or does not lead to a loss or gain of a dwellinghouse.

As well as data used for monitoring the delivery of housing policy, the LPA also submits statistics annually to Government on gains and losses of dwellings. Government should consider the need to update the methodology/guidance for the Housing Flow Reconciliation Returns, and whether gains and losses from flips between C3 and C5 are included in the HFFR submissions, and on what basis gains/losses are to be recorded and counted as permanent or temporary.

Notification data about 'flips' between C3 and C5, for individual properties/ part properties is useful in providing information about changes to dwelling stock. But it does not provide information on the total number of dwellings or short-term lets at the housing monitoring point (31 March is the monitoring point each year for HFRR purposes. The tax year point of 5 April is used for SBRR purposes). The Council will therefore need a reliable starting point for the identification of individual C5 and C3 units in the District at the date when the legislation introducing C5 comes into effect, if this makes C5 uses 'lawful' for planning purposes at that point.

The Council is considering raising concerns in response to the DCMS consultation on the short-term lets registration scheme, emphasising the need for the Council to have access to and use of the data collected for registration for its planning, housing and tourism/economy functions. It is not sufficient for the Council only to have access to aggregated data (aggregated to District/Ward/Parish) as this would preclude our access to property specific data.

**Q.10 Do you have any comments about other potential planning approaches?**

Yes/No

The East Devon District Council's Tourism Strategy supports enabling quality developments by focussing on sustainability and accessibility. It strikes a good balance for an area facing some of the issues the current DLUHC consultation proposals are seeking to address. Linking this approach to planning policy is a way to maintain the supply of affordable housing which might otherwise be put forward for less strategy compliant short term let use.

An alternative approach would be to make the permitted change of use from C3 to C5 subject to a prior approval process for the number of days and number and type of units that could be let to be agreed. Transitional arrangements could then make it a requirement that in order to benefit from this permitted development existing short term lets have to apply by a certain date or the permitted development right does not apply and they default back to C3. Any future increase to the number of units or days to then be agreed via a subsequent application.

This could leave authorities with the option of saying prior approval is not required in areas where there is not considered to be an issue with short term lets and yet continue to monitor the situation with the required data to hand. Authorities could then respond saying prior approval is required where there is known to be an issue.

This approach would establish the acceptability of short term lets but ensure that the local planning authority maintain control over the extent of it in any given location with the ability to refuse prior approval where it would be harmful thus negating the need for an article 4 direction.

This approach would also ensure that the LPA understand what is permitted in each case and ensure appropriate enforcement can take place if the agreed number of days and number/type of units is exceeded. This approach would however create a substantial burden for local planning authorities and would require additional new burdens funding to start with a requisite application fee for the prior notification to cover the costs to the authority.

It would also ensure that the property owner has evidence about the property's planning status as C3 dwellinghouse or C5 short-term let accommodation. This would be essential for example if the property were being sold.

**Q.11 Do you agree that we should expressly provide a flexibility for homeowners to let out their homes (C3 dwellinghouses)?**

Yes/No/Don't know.

East Devon District Council considers that a blanket approach that requires planning permission for all changes from C3 housing to C5 short-term lets and vice versa is not appropriate. It would be unduly onerous and demanding on Council resources. Therefore the planning system needs to provide a degree of flexibility for homeowners to let out their homes. However, the need to clarify the definition of



short-term lets and the PD rights because of the risk that additional C3 dwellinghouses could be created without appropriate planning control is set out in our responses to Q4 and Q7.

**Q.12 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**

- i. No
- ii. Yes
- iii. No

Of the three proposed PD flexibility options, the Council considers that a maximum of 60 nights total per year provides an appropriate balance between flexibility and control, and between reaping the benefits of short-term and holiday lets sustainably, and protecting the long-term interests of local communities and holidaymakers in East Devon. It also enables the homeowner to have realistic prospects of income from short-term lets in the context of East Devon and its tourism offer.

**30 nights** is just above the '28 day- rule' for the permitted development temporary use of land for any purpose without the need to make an application for planning permission. Net earnings from 30 nights per year may not be sufficiently attractive for some homeowners, particularly if the sector is regulated. Registration/administration and operational costs may deter them from making short-term lets available for only a few days a year. It is then likely that more planning applications for change of use to C5 would then be submitted, so that they can let the unit(s) out over a much longer period. A 30 nights' threshold would see a disproportionate increase in the LPA's development management workload compared to a 60 or 90 nights' threshold.

The Council considers that a 30 days threshold is more likely to trigger a significant number of planning applications and/or enforcement or retrospective applications, rather than deterring homeowners from using their property for short-term lets.

**60 nights** The Council considers that 60 nights provides sufficient flexibility. East Devon is a highly attractive area for tourism, culture and leisure. High season is linked to school holidays (about 13 weeks), ie late-July/August/early-September, Easter, Christmas and the half terms in February, May, October, as evidenced by the 'high season' tourist accommodation prices. The strongest demand for tourism accommodation, and therefore the ability to maximise income earned from short-term lets, is in the high season, but there are other opportunities to earn income. For example:

- 60 nights is 8.5 weeks, equating to about 65% of our high season. 100% occupancy is unlikely but 65% is realistic. It also enables the owner to enjoy some high season residency. If the resident homeowners are absent, and renting out for 65% of the high season, this could still provide them with a substantial income;

- Alternatively, where short-term lets target 'weekend breaks' then if the resident homeowners are absent every other weekend plus bank-holidays this would equate to 60 days in a year, and again provide a substantial income.

The Council is mindful that recent tax changes mean that second homeowners have to prove that their property is let out for at least 70 days a year in order to be able to apply to the Council to access small business (non domestic) rates relief. Otherwise they pay council tax, ie as a dwelling house that is used as a second home with PD short-term lets, not as a business for commercial letting. A 60 nights PD flexibility is still shorter than the timeframe for Small Business Rates Relief. Under the recent tax changes, the homeowner would already have to provide evidence to the Council that second home was rented out for holiday let for at least 70 days in calendar year in order to access SBRR. It would be helpful for data to be shared efficiently within the Council for monitoring purposes subject to data protection requirements.

**90 nights** is likely to encourage the retention of or development of additional short-term lets operating on a commercial basis, with the loss of housing for permanent residential use. The Council considers that more than 60 nights in total in a calendar year would extend the period of short-term let use to such an extent that it is akin to commercial letting. It reduces the time when the homeowner is living in the local community in the mid and low season, adding to the perception of 'hollowing out'. Consequently, the Council considers that more than 60 nights would mean that the property is no longer being used as a 'residential home'.

**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.**

East Devon District Council prefers option i) ie flexibility provided through the permitted development right. This allows the LPA to choose whether to control the use in locations where short-term lets are an issue. We do not want any uncertainty to be added to the existing operation of Use Class C3.

**Q.14 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/No/Don't know.**

East Devon District Council agrees that a planning application fee equivalent to each new dwelling house should apply to each and every new build short let unit. The fee needs to be realistic in covering the costs of administering and processing the

planning application, mindful of the impacts to be assessed, and the likely concerns about the development. We anticipate such applications may generate a significant number of responses from the local communities.

Again, there needs to be clarity about the term 'short-term let'. Does this refer to the property, which could contain more than one temporary sleeping accommodation unit, or does it mean each and every temporary sleeping accommodation unit.

**Q.15 Do you agree with the proposed approach to the permitted development rights for dwellinghouses (Part 1) and minor operations (Part 2)?**

Yes/No/Don't know.

There appears to be no reason why short term let properties should not benefit from these permitted development rights other than where the proposed extension or alteration would create additional self-contained letting units. If this is not controlled then new dwellings could be created "by the back door" if there is to be a permitted development to move from C5 back to C3.

**Q.16 Do you have any further comments you wish to make on the proposed planning changes in this consultation document?**

Yes/No

It is difficult to comment on these proposals in the absence of more information on the extent of short term lets in the district and some analysis of the impacts it is having. There may therefore be some benefit in introducing a registration scheme in the first instance so that this can be better understood and evidence gathered of the extent of the issue before considering changes to the planning system.

Local planning authorities would only ultimately gain control over short term lets if they make an Article 4 direction, however these are costly and time consuming to make and require substantial evidence that can only be obtained through the registration of short-term lets. In addition compensation could be due where permission is refused or greater restrictions imposed by condition than would otherwise have applied. The cost and resource implications for local planning authorities through this approach is therefore substantial and may prevent authorities from being able to act even where it can be demonstrated that short term lets are causing issues.

**Q.17 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).**

Yes/No/Don't know.

**Q.18 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/No/Don't know.**

a) **Businesses** Yes, the proposals will require homeowners, including second homeowners, wanting to use their property as a business ie for commercial short-term lettings to apply for planning permission for C5 use where the number of days exceeds the PD threshold. Limiting the PD rights to 60 days mitigates the impact, enabling the use to encompass much of the high season in our area. It's too soon to be able to provide a representative view from NNDR registered holiday accommodation providers and representative visitor economy organisations as they're still formulating their own responses. But the East Devon District Council responses set out in this submission is a balanced approach.

b) **Local planning authorities**, - Yes, there will be resource implications for the LPAs. Planning fees should cover the costs related to relevant planning applications, but otherwise there is no provision for other costs related to PD rights, making of an Article 4 direction, monitoring and compliance/enforcement.

c) **Communities**, Yes, communities should benefit from greater control of short-term lets, but their expectations will need to be managed regarding changes arising from PD rights.