

Report to: **Strategic Planning Committee**



Date of Meeting: Tuesday 9 June 2023

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Exemption applied: None

Review date for release N/A

Proposed response to the Government consultations on short-term lets

Report summary:

This report advises that the Government has consulted on two sets of proposals about short-term let guest accommodation. The first proposes changes to the Use Class Order, the General Permitted Development Order and to planning fees. The second relates to options for a registration scheme for short-term lets. The proposals are relevant to East Devon. In this report we look at their potential implications for development management and plan-making, focused on housing, tourism and the economy. Officers advise that a timely response to the consultations has been submitted, after consultation with Portfolio Holders. Those responses are mindful of community concerns about the impacts of short-term lets on housing supply, Members' concerns about housing affordability, and the Council's objectives for a resilient economy. They carefully balance the benefits of short-term lets with their wider impacts on local communities and the guest accommodation sector.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

1. Strategic Planning Committee note the assessment and the detailed responses to the Government consultations on short-term lets that are set out in this report.

Reason for recommendation:

To ensure members are aware of concerns highlighted by officers and to note the detailed technical response submitted on behalf of this council to Government.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning

- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

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Climate change Low Impact

Risk: Low Risk; .

Links to background information

The consultation document 'Introduction of a use class for short-term lets and associated permitted development rights' published by the Department for Levelling Up, Housing and Communities (DLUHC) can be seen at : [Introduction of a use class for short-term lets and associated permitted development rights - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/introduction-of-a-use-class-for-short-term-lets-and-associated-permitted-development-rights)

The consultation document 'Consultation on a registration scheme for short-term lets in England' published by the Department for Culture, Media and Sport (DCMS) can be seen at [Consultation on a registration scheme for short-term lets in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/consultation-on-a-registration-scheme-for-short-term-lets-in-england)

The Tourism Recovery Plan July 2021 Department for Digital, Culture, Media and Sport
[The Tourism Recovery Plan \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000000/tourism-recovery-plan-july-2021.pdf)

Link to Council Plan

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

1. Current Government consultations

- 1.1 On 12 April 2023, the Government launched two separate consultations related to short-term lets which are a type of guest accommodation. The Government has invited views and responses to a range of questions. The closing date for both consultations is 7 June 2023.
- 1.2 Due to the need to meet the consultation deadlines, detailed responses were submitted to the Government before this Committee meets, but they were prepared in consultation with the Portfolio Holders for: Strategic Planning; Homes and Communities; Economy and Assets; and Tourism, Sport, Leisure and Culture.
- 1.3 The Government's consultations cover the following:
 - a) The Department for Levelling Up, Housing and Communities are consulting on 'Introduction of a use class for short-term lets and associated permitted development rights'. The scope of the consultation is to address concerns in certain areas about the increase in the numbers of short-term lets and the impact this can have on the sustainability of communities and the availability and affordability of homes for local people. The consultation seeks views on proposals for:
 - The introduction of a new use class for short-term lets (C5)

- The potential introduction of a new permitted development (PD) 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 a number of nights in a calendar year could be provided through either changes 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.

b) The Department for Culture, Media and Sport has published a 'Consultation on a registration scheme for short-term lets in England'. It is consulting on 3 high level possible approaches to a registration scheme. As well as helping to regulate this part of the guest accommodation sector (more on this in Section 10 of this report), the scheme aims to build a picture of how many short-term lets there are and where they are located, to help understand the impact of short-term lets on communities. The options are :

1. An opt-in scheme for local authorities, with the framework set nationally; or
2. An opt-in scheme for local authorities with the framework set nationally, and a review point to determine whether to expand the scheme to mandatory; or
3. A mandatory national scheme, administered by one of: the English Tourist Board, local authorities, or another competent authority.

1.4 A commitment to introduce a registration scheme in England was introduced through an amendment to the Levelling Up and Regeneration Bill in December 2022. The scheme is expected to be operational in 2024. The proposed registration scheme focuses on short-term lets so would not apply to hotels, hostels or B&Bs.

1.5 Subject to the outcome of the consultations, the planning changes would be introduced through secondary legislation later in 2023 and would apply in England only. However, the consultation document is somewhat confusing about which types of short-term let fall within the scope of the change. For example, whether B&Bs will be Use Class C5 (ie not C1 - Hotels) and whether it covers the self-contained holiday let of part of a dwelling where the residue can still be used as a sole or main residence.

2. Relevance to East Devon and the District Council

2.1 The changes proposed in these consultations are relevant to the district and to East Devon District Council, and are of interest to this Committee for the following reasons:

- Strategic and local planning – potential for new policies on short-term lets in local and neighbourhood plans, possible use of an Article 4 direction to restrict changes of use of properties to short-term lets, new evidence (eg data from the register; and impacts), and need for monitoring. Future reports to this Committee will consider whether including a policy on short-term lets in the local plan is warranted

- Development management – potential changes to the Use Class Order and to permitted development as mechanisms for planning to manage short-term lets; changes to planning application fees
- Housing – impacts of proposals on access to and affordability of housing, on the rental housing market, and supply of housing for emergency accommodation
- Economic development – impacts of proposals for example on tourism accommodation, the visitor economy and on housing the local labour force
- Corporate – implications for delivering corporate plan objectives on housing, economy and communities; and the implications of the Council managing a short-term lets register if the Government pursues this option.

2.2 The DLUHC consultation document makes clear the LPAs and neighbourhood planning groups would be able to set out relevant policies in their local or neighbourhood plan the circumstances where they would support, or not, new short-term lets as defined by the new class that would achieve the appropriate balance for their area. Any future planning applications for new build short-term lets or for the change of use to a short-term let where the permitted development rights have been removed, would be determined in accordance with the development plan and other material considerations.

2.3 The proposals will have implications for our wider visitor economy. An initial understanding is that the proposed new C5 Use Class and PD changes are perceived as much more complex and potentially contentious than the proposed register.

2.4 This report therefore draws Members' attention to the key proposals and their implications. It focuses on how they may help or hinder achieving the Councils' objectives set out in the Corporate Plan and the emerging Local Plan. Based on this, the report identifies why the Council should respond to the consultations. Recommended detailed responses are set out in Appendix A to this report.

3. Background

Market changes

3.1 Short-term lets are a type of guest accommodation. They don't just apply to entire single properties available for rent, but also live-in "hosts" that want to generate some income out of their spare room but not as a 'long term let'.

3.2 Short-term lets are an integral part of the infrastructure of the UK's visitor economy. In East Devon, holiday cottages, home stays and self-catering apartments have been a mainstay for holiday makers for years. Short-term lets also cater for the needs of those travelling for work or people in need of overnight accommodation, largely in urban areas to date but available in other places.

3.3 The short-term let sector has evolved in the last 10-15 years. The emergence of the 'sharing' economy and the growth of digital platforms are at the heart of this change. Online platforms include Airbnb, Vrbo UK, HouseTrip, Under the Doormat, and One

Fine Stay. They provide marketplaces connecting people who want to rent out their properties or spare rooms with people seeking short-term accommodation. They operate as 'digital service providers' and 'peer-to-peer' accommodation services, not as real estate management. There has been a major expansion in the number and range of accommodation suppliers operating. Short-term lets are an increasingly popular solution for visitor accommodation. The shape of the market altered as demand grew, with 'hotspots' intensifying in some areas, as the market evolved.

- 3.4 Part of the rise in short-term let listings occurred before 2020. But the pandemic and the rise of the 'staycation', has been a driver of change. Combined with concerns about the cost of living, it is strengthening the market for domestic holidays focused on rural and coastal areas.
- 3.5 New technology is another driver. It means that now not only can anyone book, but anyone can turn their extra space into a hosting business. Accommodation hosts include 'individual hosts' as well as 'professional hosts'. Some homeowners are attracted to using their property for short-term lets. They are keen to rent out their dwellings or rooms to earn income. As well as being unregulated with lower costs and red-tape, short-term lets have been seen as a lucrative alternative to long term rentals. The short-term rental model also attracts some investors due to higher returns, and changes to the tax system for landlords further encourages investors.
- 3.6 However, future housing market corrections may occur, in terms of future changes to housing supply and demand. First, as the market adjusts to changing interest rates and house price inflation caused by increased competition of accommodation. Second, because there is a degree of 'illiquidity' with related lags in the local housing market. Housing is an illiquid consumer asset because it is not easily sub-divided to release cash. But the return to holidaying abroad and the more recent shock of the cost of living crisis, may lead to some short let holiday accommodation coming back on to the market in the future. This is then available for short-term emergency housing accommodation or for long term private rent or sale.
- 3.7 Other changes may impact on the long term rental sector. For example higher standards for energy efficiency for long term lets being introduced next year may result in some owners moving into short-term lets if standards are not raised in that sector. In response to concerns about creating a 'level playing field', the DCMS consultation on the registration scheme includes questions about which regulations should be satisfied in order for a property to be registered.

Benefits

- 3.8 Changes in this sector can bring benefits such as increased consumer choice, increased income for individual home-owners, and visitor spend benefitting the local economy. Unsurprisingly, the digital platforms, trade associations and stakeholders/ 'hosts' have highlighted a range of benefits Airbnb¹ for example recently asserted that 'the vast majority of UK Hosts share one home', and 'almost four in 10 say the earnings help them afford the rising cost of living'. However, a research briefing report

to the House of Commons in 2022² noted that 58% of listings on Airbnb in the UK are for an entire room or shared room within a home. The online 'peer-to-peer' platforms make it easier for homeowners to make a room or two available. This is a positive contribution to the holiday accommodation stock, as well as a benefit to the owner through the income potential that could be achieved.

- 3.9 The tourism sector was particularly hard hit by Covid-19. The Government's consultations relating to short-term lets are set within the UK Government's wider, post-pandemic, Tourism Recovery Plan, as opportunities to boost the economy. The Council's corporate plan acknowledges the economic and social value of tourism to the local economy and the wealth that is generated in this sector. It recognises the importance of collaborative working to drive recovery for the East Devon economy.
- 3.10 Consumers can benefit, through more choice of lettings, and potentially through some properties being lower cost. It can make staying away from home less costly so that more people can afford holidays and the benefits these provide eg for activity, enjoyment, health, well-being and social contact.

Concerns

- 3.11 The Corporate Plan emphasises that we are facing a housing crisis across the country. Prospective investors are competing against local people, and some are out competing them to purchase property in East Devon. Prices are forced up partly because of the demand for popular holiday destinations for second homes, as well as by in-migrants attracted to this area. Changes in the housing rental market, due in part to regulatory changes, have an impact, as do investors seeking returns, and the attraction of short-term lets. Home ownership and rising prices in the private rental sector are out of reach for many households in East Devon.
- 3.12 Responses to the Regulation 18 draft East Devon Local Plan consultation include comments on the adverse impacts of short-term let accommodation. Respondents are concerned that short-term lets reduce the availability and affordability of housing in East Devon for local people, and make the housing crisis worse. Some are concerned about the combined impact of second homes and short-term lets. The Local Plan and evidence base is already addressing issues about affordable housing and second homes, but we will need to consider extending our evidence, analysis and policy responses to encompass short-term lets. Responses to comments submitted on the draft plan will be the subject of a future report to this Committee.
- 3.13 Commentary and wider analysis of the UK by Lichfields in 2022³ concludes that as more stock is bought for short-term lets, the net supply of housing for local people falls. In areas where the demand for short-term lets has been particularly acute this has deepened the housing crisis.

² The Growth in short-term lettings (England) Jan 2022 [The growth in short-term lettings \(England\) - House of Commons Library \(parliament.uk\)](https://commons.parliament.uk/libraries/commons/2022/01/20220120-growth-in-short-term-lettings-England/)

³ Planning Matters – blog -30 August 2022 [Planning policy playing catch up: Call for evidence on short term lets in England \(lichfields.uk\)](https://www.lichfields.co.uk/blog/planning-policy-playing-catch-up-call-for-evidence-on-short-term-lets-in-england/)

3.14 The House of Commons Library Research Briefing paper 2022 on 'The growth in short-term lettings (England)' identified the following key concerns:

- Commercial operators using residential properties as letting businesses in breach of planning rules.
- The challenges local authorities face in taking planning enforcement action and the effect on local housing markets
- Negative effects on neighbours and local communities, for example from noise disturbance and anti-social behaviour.
- Taxation compliance and compliance with health and safety regulations.
- The implications for traditional short-term accommodation businesses such as hotels and bed and breakfast accommodation

3.15 The Government's 2023 consultations are the result of concerns raised about the potential impact of short-term lets, notably the impacts on:

- **The private rental housing market**, including local housing being converted to short-term lets, evictions and the termination of rental contracts, the rise in rents as demand from competing uses increases, and the loss of emergency accommodation as a solution to housing homeless households;
- **The general housing market**, due to competition for dwellings, and the temporary or permanent 'flipping' between second homes, short-term lets and principal residences. Some perceive this as driving up house prices, reducing housing availability and affordability, and in some locations as having wider impacts such as the 'hollowing out' of communities by undermining community cohesion, facilities and services, and loss of environmental qualities; and
- **The hospitality and tourism accommodation sector**, due to the lack of parity between sectors. Currently, short-term lets are not subject to the same level of regulation or taxation as hotels, guest houses, and B&Bs. Some see the lower prices of short lets as unfair, leading to a loss of business for regulated tourist accommodation, with related risks to the guests due to lower standards. Visitor spend may not increase, but simply transfer. Visitor experience may diminish if accommodation standards are lower than those in regulated accommodation.

Furthermore, loss of affordable dwellinghouses to short-term let accommodation or for other reasons is an issue in terms of providing housing for the employees of our visitor economy, including hospitality, retail and leisure, which is struggling to recruit locally. Controlling short-term let numbers is one way that we could better protect our local labour markets.

3.16 The impact of one short-term let on the wider community would probably not amount to much. But if this is repeated and concentrated in particular areas, far from helping to create a sustainable community, the cohesion of the local community could be eroded. This in turn could make the area a less pleasant place in which to live and work. It would be at odds with the National Planning Policy Framework's social objective to support strong, vibrant and healthy communities. Nor would it be consistent with the promotion of social interaction advocated in NPPF.

- 3.17 Members of this Committee regularly raise the issue of second homes and their impact on the available and affordability of housing supply to meet local need in East Devon. The Interim Housing Topic Paper already highlights this issue and the analysis is part of the emerging Local Plan's evidence base. It helps to underpin the draft plan's policies on the affordable housing requirement. A second topic paper on meeting affordable housing need will be produced before the Regulation 19 Local Plan is published. Officers also anticipate producing a topic paper on the economy.
- 3.18 Loss of amenity to neighbouring properties is another potential concern, covering the impact from: a transient pattern of occupancy, a pattern of related arrivals and departures, late nights/early morning movements, and 'intrusive revelry behaviour'. This can be evidence of the character of the use of the dwelling such that it is significantly different from that normally associated with a dwelling house.
- 3.19 The topic papers will need to consider the implications of short-term let guest accommodation on housing supply, availability and affordability. They will need to consider whether the proposals help us to reap the benefits of short-term and holiday lets sustainably, while also protecting the long-term interests of local communities and the visitor economy in East Devon.

Extent of the challenge in East Devon

- 3.20 The challenge lies in how to balance the benefits of short-term lets with a range of concerns about the impact of this growing sector of guest accommodation. We want to continue to welcome visitors to our beautiful part of the country, but the issue of availability and affordability of homes for people who live and work in East Devon is acute. We want to have a robust economy and to meet long term community needs.
- 3.21 The Government considers that there are issues about short-term lets that need addressing. This is the reason for the consultations. It acknowledges the lack of robust information. Whilst this raises issues that have some public traction and concern it does not automatically mean that this is a significant issue in East Devon.
- 3.22 The number and location of short-term let guest accommodation in East Devon is unclear. The information on short-term lets that we have now is anecdotal and incomplete. Searching on-line platforms is problematic, not least because of 'anonymity' (ie not showing the actual locations until a booking is made) and duplication as some properties are advertised on two or more platforms. 'Local knowledge' information provided by local plan consultation responses is patchy.
- 3.23 The data we do have suggests that there may be concentrations in some areas such as some parts of the coast, but even there we don't have robust evidence of a high level. The balance of the positive and negative impacts of short-term lets in the district is unclear at this time. And at this time we have no way to know how many second homes are also short-term lets, nor whether short-term let numbers have increased significantly, mindful of the long history of holiday lets in this area. It is possible that new short-term lets have not significantly increased the losses of C3 dwellinghouses used as principal accommodation. The critical issue may still be second homes.

3.24 Whether short-term lets are the real driver of higher house prices in this area, or just a smaller part of the bigger picture, they still compete for the available dwelling stock. They have consequences for housing affordability and availability, plus related consequences for housing local labour, and the visitor economy in East Devon.

4. Tax changes – implications for Council revenue

4.1 When the Government introduced changes in the tax system for landlords, the reforms did not consider the short-term market. Landlords saw short-term lets as a lucrative alternative to long term rentals. The rise of the staycation, combined with Covid business support grant schemes, made short-term letting profitable for home owners.

4.2 Furthermore, some owners of ‘second home’ residential properties may have avoided paying council tax. Up to 31 March 2023, if they made the property available for short-term holiday lets for a total of 140 nights or more per year, they could ask to have the property rated as a self-catering property and valued for business rates. The Valuation Office Agency works out the rateable value of the property based on its type, size, location, quality and how much income it’s likely to make from being let. But, if they earned below the rateable value of the property they could then claim small business rates relief (SBRR - 100% for a rateable value of less than £12,000, and a sliding scale discount for £12,001 to £15,000). They did not have to prove that the property was actually used for holiday lets in that year.

4.3 So it is possible that some second homes in East Devon were successfully claiming SBRR but not actually used for holiday lets and did not contribute toward paying a fair share towards local services. The Council would have lost revenue, reducing its ability to provide local services and deliver its Corporate Plan objectives. It is impossible to quantify how much was lost because of the lack of information about such rentals.

4.4 The Government has recently sought to close this tax loophole. To qualify for business rates from April 2023 the home owner must now provide evidence to the Council that the holiday lets are rented out for at least 70 days in the last tax year and that the property will be available to be rented for 140 days in the next. Otherwise they must pay council tax. This will help the Council to check on rentals to ensure that revenue is not lost.

4.5 This is a step in the right direction. However, it adds to the burden on the Council to operate, monitor and enforce the process. To gain further local control it also needs to be complemented by proportionate changes to planning.

5. Current planning legislation

5.1 The DLUHC consultation proposes changes to planning. Short-term lets is a somewhat grey area of planning law. Currently short-term lets have no specified Use Class but could fall into a number of classes. They are mostly considered under the ‘C3 dwellinghouses’ Use Class. Use Class C3 makes no distinction between whether the dwellinghouse is used as a sole or main home, for personal or commercial use, or

its tenure (rental or home ownership). However, if it is not an ancillary use, then Bed and Breakfast falls within Use Class C1.

- 5.2 Planning Practice Guidance explains that a material change of use is a matter of fact and degree, and cases will be determined on their individual merits. Whether the use of a dwelling for commercial letting as guest accommodation amounts to a material change of use is therefore a question of 'fact and degree' in each case. The answer depends upon the particular characteristics of the use as guest accommodation.
- 5.3 For example, where an entire property previously used as a family home is to be used as short-term holiday let accommodation by family groups, who during their stay constitute a single household, then the property is likely to fall into Use Class C3 and not need planning permission. But if the property is larger, with a larger number of guests, not constituting a single household during their stay, then this may well constitute a material change of use to a sui generis use, and need planning permission.
- 5.4 Change of use from a dwellinghouse to B&B which is not ancillary use will require planning approval. If the short-term let involves only part of the dwelling then the focus is currently on a broad test of whether there has been a material change of use. This depends for example on the number of existing bedrooms and how many are to be used for B&B. If the B&B element is ancillary then planning permission is not required, unless there is an existing planning condition precluding commercial use.
- 5.5 The Council determines whether planning permission is required. There is no statutory definition for a material change of use but it is related to the significance of change and the consequent impact on the use of land and buildings. In planning terms, a change in the way that a building is used or its operation, can equate to a material change in the character and use of the property. Demonstrating that a 'material change' of use has or would occur can be tricky and demanding on Council resources.
- 5.6 In England, outside of London⁴, unless there is a material change of use, planning permission is not required to change from a permanent residential unit to a short-term let. Short-term lets may be very short, of less than a week, sometimes no more than a night or two, with a high level of 'churn'. Currently, the challenge for the Council is to find the resources to identify and gather robust evidence about the significance of any change and impact, and to take enforcement action if necessary, for example about the following:
- Turnover frequency

⁴ Under the 2017 Deregulation Act, regulations relating to London, require planning permission in specific circumstances. In the capital, it is not permitted to rent out a residential premises for temporary sleeping accommodation for more than a total sum of 90 nights in a calendar year, without obtaining licence through the council, via a planning application. This means that in London, renting out residential premises for less than 90 days is not a material change, so does not need planning permission (but provided that the person renting out the property is liable for paying the Council Tax on the property).

- The degree of comings and goings, from people arriving, and unloading their things, packing and leaving, together with visits by cleaning staff in between visits
- Levels of noise and disturbance for occupiers of adjoining properties.
- Vehicular movements

5.7 Members are reminded that in addition to planning enforcement, there is some legislation available where complaints are received to help control short-term lets and impacts on neighbours such as:

- Environmental Health
- Council tax /Business Rates
- HMO licensing
- Fire Brigade/Building Control
- Leasehold breach action by managing agents
- Mortgage breach condition by lenders

6. Proposed changes to planning legislation

6.1 The key planning proposals in the DLUHC consultation are:

- The introduction of a new Use Class (C5) for short-term let accommodation
- New Permitted Development (PD) rights for change use from C3 residential to short-term let (& vice versa)
- Providing flexibility for homeowners to let out their home for a number of nights per year (consultation on 30, 60 or 90 nights pa); through PD or Use Class for use in areas where short-term lets is not an issue (including in Listed Buildings & AONBs); with notifications to the Local Planning Authority
- Introduction of planning application fee for new build short-term lets.

6.2 Members should note that the C5 Use Class would not apply to hotels, boarding and guest houses (Bed & Breakfast, Inn, Motels). These are covered by Use Class C1 and are subject to regulatory control. Furthermore, letting out room(s) to lodgers in a sole or main dwellinghouse will be unaffected by the introduction of Use Class C5.

6.3 Use Class C5 would allow the LPA to consider planning applications for new development of short-term lets. This would include second homes that are additionally let out for part of the year. The LPA could grant permission conditioned to the new class. The application submission, would provide evidence about the proposed change and impacts, including assessing issues such as detriment to the amenity of neighbours, as material considerations. This option should give greater local control.

6.4 But the proposed change would add to the Council's workload. Applications for changes of use from Use Class C3 to C5 and from C5 to C3 would need to be determined through the development management process.

- 6.5 Ideally, introducing the new use class would see alignment between planning status (C3/C5) and rating status (liable for Council Tax or National Non-Domestic Rates and eligibility for SBBR), depending on the number of nights the property is let per year. But exceptionally it is possible there could be some anomalies, depending on the option chosen for PD flexibility on the number of nights let in a calendar year.
- 6.6 If and when the new use class comes into effect, existing properties would fall into Use Class C5 where they meet the definition or remain as C3 dwellinghouse. Any re-classification at that point is not considered development, so property owners should not need to apply for planning permission where they meet the definition of short-term let. If the use is unclear, the owners could apply for a lawful development certificate to confirm the lawfulness of the use for planning purposes.
- 6.7 Monitoring planning decisions approving the change of use from C3 to C5 would enable the Council to track losses of dwelling houses. We anticipate that we might need to report these losses in the Council's annual statistical return to Government on housing supply changes (Housing Flow Reconciliation Return). However, this would add to the Council's monitoring workload.

7. Flexibility- New national permitted development rights

- 7.1 The consultation is also the opportunity to provide the Council's views on how best to give the local communities a greater ability to control the number of short-term lets in their area, mindful of the need to retain existing dwellinghouses to buy or to rent, and to facilitate short-term lets returning to such use.
- 7.2 The Government is considering whether to introduce new national permitted development rights where short-term lets are not a local issue. Areas would only see a change where the rights have been removed by making an Article 4 direction. The consultation is an opportunity to comment on 2 options:

a) Change of use from C3 dwellinghouse to C5 short-term let.

- If there is no local issue about short-term lets, then this allows for flexibility to use a property as a home or short-term let
Officer comments: Government proposes that LPAs 'should be notified' whenever this right for a change of use to a short-term let is used, but fails to specify the mechanism. The reliability of notification is in doubt. It might mean the Council has to rely on notification by the homeowner to keep track of losses of dwelling houses through the planning process. But there is no information about penalties for failing to notify the Council. The alternative would be reliance on data from the new register about short-term lets and making a planning judgement on whether this results in the temporary or permanent loss of a dwelling. Unfortunately, the DCMS consultation implies that registration data would be aggregated, making it impossible for a planning judgement to be made on an individual dwelling basis. The DLUHC consultation document also fails to set out how we could reliably report dwelling losses to C5 uses in the Council's annual statistical return to Government on housing supply (Housing Flow Reconciliation Return).

- If there is a local issue, then the PD right can be removed by the LPA making an Article 4 direction

Officer comments: At this time, the Council does not have robust evidence about the location of short-term lets to identify where there are specific local issues within East Devon, the scale of the issues, or to ensure that any Article 4 direction is applied to the smallest geographical area possible, as set out in NPPF. Members should note that Article 4 directions take time to make, and there is the risk that the Council may incur compensation costs.

We won't have this information unless and until the short-term lets register for each accommodation unit is available to the LPA.

- b) **Change of use from C5 short-term let to C3 dwellinghouse.** When the use class changes come into effect, this would allow those premises that fall into Use Class C5 to return to use as a dwellinghouse for rent or to buy without the need for a planning application. This right could be retained even if the Council chose to remove the PD right for change of use from C3 to C5 use.

Officer comments: Whilst this option could provide flexibility so that a short-term let can quickly 'flip' back to a dwellinghouse, it is unclear whether this would facilitate the move from short-term lets to 'more sustainable housing in the community' as asserted in the consultation document. It may simply release housing to second home use, or be sold at a price that is not affordable for many local people.

Furthermore, the same issue about reliability and access to 'notification' data that applies to losses under Option a) also applies to dwelling gains under Option b).

- 7.3 Officers have concerns that 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 residential purposes. It is unclear whether the PD rights would override the previous planning condition. Furthermore, the PD right could create additional C3 units, effectively through subdivision, without needing planning permission
- 7.4 Under Options a) and b), there are further questions about the robustness and availability of the register data, particularly if it is not maintained by the Council but by a national body.
- 7.5 We might also be challenged on the robustness of the housing supply data we submit annually to DLUHC, as well as our reliance on this data for plan making and development management purposes.
- 7.6 In the response to Q10 in Appendix A we suggest an alternative planning approach that would make the permitted change of use from C3 to C5 subject to a prior approval process. This could provide the LPA with a means of appropriate control of change from C3 to C5 and vice versa, and provide an evidence audit trail. It would also provide the property owner with evidence of the property's planning status, which is necessary for example if the property were to be sold.

8. Flexibility- to let out your own home

- 8.1 Government is also seeking views on whether there should be express provision for C3 dwellinghouses to be let out for a number of nights. It is consulting on whether the flexibility to do so could be provided either through changes to the C3 dwelling use class or an additional permitted development right.
- 8.2 A blanket approach to require 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.
- 8.3 Of the three PD options proposed by Government, Officers consider that using a C3 dwellinghouse for short-term letting for a maximum of 60 nights total per year without needing planning permission provides the optimum 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 enables the homeowner to have realistic prospects of income from short-term lets in the context of East Devon and its tourism offer.
- 8.4 Significantly more than 60 nights is likely to encourage the retention of or additional short-term lets operating on a commercial basis, with the loss of housing for permanent residential use. This is because the property can be rated as a self-catering property and valued for business rates if it has been rented out for at least 70 days in the last tax year, and available for letting for 140 nights in the next tax year.
- 8.5 30 nights would generate a much lower income than the other options. This may be sufficient for some owners, but not for all. It is reasonable to anticipate that it would be likely to trigger significantly more planning applications and/or enforcement or retrospective applications than the other two options. There is no evidence that this option would deter homeowners from using their property for short-term lets.
- 8.6 More detailed assessment of the 3 options (30, 60 and 90 nights) is set out in Appendix A to this report in the detailed response to Q12 in the DLUHC consultation.

9. Planning Fees

- 9.1 The DLUHC consultation proposes that where new build short-term lets are developed a planning application fee for each short-term let equivalent to that for new dwellinghouses would apply. This would be delivered through a future amendment to the fees regulations. Where the permitted development right has been removed by making an Article 4 direction, the standard fee for a planning application for the change of use would apply. This is necessary, and the fee will need to be paid at the time that the planning application is submitted.

10. The regulatory framework, the registration scheme and planning

- 10.1 The Government has identified concerns in the UK about inconsistencies in the current regulatory framework for the guest accommodation sector, and the need for a 'level playing field' across England. Unlike hotels and B&Bs, monitoring short-term lets' compliance with key health and safety regulations is difficult due to the lack of a regulatory framework and an authoritative data source.

- 10.2 The Council holds little evidence about short-term lets at this time. Letting agencies should undertake health and safety inspections, but at present when properties are let through on-line platforms there is no way of knowing whether a property meets minimum standards. Property anonymity and lack of oversight impact on other services, for example in knowing whether fire safety standards are complied with. It also means that there is no robust data on the location or number of short-term lets to inform development management or plan making.
- 10.3 DCMS set out its intentions in the Tourism Recovery Plan in June 2021 to consult on a Tourism Accommodation Registration Scheme in England. Following this, DCMS issued a call for evidence in 2022 to gather information on short-term lets. In light of the findings, Government committed to introduce a registration scheme in England by amending the Levelling Up and Regeneration Bill, as tabled in December 2022.
- “(1) The Secretary of State must by regulations make provision requiring or permitting the registration of specified short-term rental properties in England.”*
- 10.4 The DCMS has now consulted on options for a registration scheme for short-term lets. This will only apply to short-term lets and not to other types of guest accommodation. Members may wish to note that this is not a more interventionist approach such as a licencing scheme. The definition of short-term let for the register is in the Levelling Up and Regeneration Bill (see Section 12 of this report).
- 10.5 **DCMS are consulting on three possible approaches for a registration scheme**, as well as a range of more detailed questions on the design of the scheme, namely:
1. **An opt-in scheme for local authorities**, with the framework set nationally;;
 2. **An opt-in scheme for local authorities** with the framework set nationally, **and a review point to determine whether to expand the scheme to mandatory**;
 3. **A mandatory national scheme**, administered by one of: the English Tourist Board (VisitEngland), local authorities, or another competent authority.
- 10.6 Introducing a registration scheme raises issues wider than planning. Council Officers have been analysing the potential corporate implications of the scheme options. Any response to the DCMS consultation is separate from the responses to the DLUHC consultation set out in Appendix A of this report.
- 10.7 DCMS anticipate that the registration scheme would become operational in 2024. This is problematical for plan-making. It means that little or no evidence from a register could be available for some time to inform the preparation of a policy on short-term lets guest accommodation for the Regulation 19 ‘publication’ East Devon Local Plan.

11. Data availability and reliability

- 11.1 Officers are acutely aware of the need for more robust data about the short-term let sector in East Devon. We need this in order to assess the scale, distribution and nature of the impacts, and to use as evidence to justify future local plan policy or any Article 4 direction.

- 11.2 Concerns about data reliability on gains and losses of dwellings due to 'flipping' from C3 to C5 and vice versa are set out in sections 6 and 7 of this report to Committee. There are other concerns about properties where planning permissions granted for ancillary buildings (conditioned for use for the main dwelling only) are being let out for holiday accommodation. This is near impossible to police, due to the anonymity of short-let property on on-line platforms. It requires significant resource in planning enforcement to assess the extent and location of the accommodation units and any problems, let alone in taking action.
- 11.3 Whilst the Government could request that online platforms provide the requisite data to allow the extent of the sector to be accurately quantified, the ability to verify the information is highly problematical. There is nothing to stop an individual property or room being advertised on multiple rental platforms which can lead to over reporting. Alternatively, inaccurate data could lead to under-reporting and/or misclassifying accommodation units.
- 11.4 The DCMS consultation on a registration scheme provides one possibility of evidence on the extent and distribution of short-term let guest accommodation in East Devon. The ability of data gathered by a scheme to be useful to the Council would depend on a range of factors. For example, what information is gathered, who is responsible for gathering it and checking it, and how frequently it is updated. Various organisations could benefit from knowing how many short-term lets there are in a given area.
- 11.5 We agree that those registering short-term lets need to understand how the data they provide might ultimately be used. However, the DCMS consultation also indicates that this data could be provided in an aggregated form without providing personal details. Aggregating data to parish, ward and district level is helpful. But this precludes the LPA from having information at 'mission critical' levels for planning, notably at:
- Settlement level, for plan making purposes, and
 - Site specific and property-specific levels, for development management purposes and for housing development monitoring/national statistics submissions.
- 11.6 We are concerned that a registration scheme would not provide sufficiently timely and robust data such that the LPA can rely on it for plan making or development management if the data is not available to the Council at the individual accommodation unit level, or it is not updated annually and correctly, and cannot be used for planning purposes. We have shared these concerns with Officers for any separate response to the DCMS consultation.
- 11.7 We are also mindful that in some cases creating a short-term let under the proposed planning changes could still leave a dwelling of sufficient size which enables the principal residence use of the remaining part of the dwelling to continue on a long term basis. In other cases, it could involve the total loss of the principal residence use. Registration data would not identify loss or gains of dwellings. We would still need to make a planning judgement on whether a short-term let has led to an actual loss or

gain of a 'dwellinghouse'. It would be wholly unrealistic to expect or rely on 'hosts' registering their short-term lets to make such a planning judgement. Without the data and judgement, the Council could not make a robust assessment of the losses and gains of dwellinghouses to and from short-term let guest accommodation.

12. Definitions

12.1 The term "short-term let" can encompass a range of activity associated with a dwelling. Some short-term lets may be let out for a limited period while the owner is on holiday. Others may be properties that provide for a series of lets for holidays or very short-term overnight sleeping accommodation including renting an individual bedroom while the owners are in situ.

12.2 Business rates, council tax for second homes, HMRC and the proposed DCMS registration scheme differ in their definitions of this use of property. Estimates of the volume and growth of this sector vary, reflecting the variation in definition of a 'short-term let' and the lack of a single robust source of data.

12.3 The DCMS consultation defines a short-term let using the definition of 'short-term rental property' that is included in the government amendment to the Levelling Up and Regeneration Bill. It means:

"(a) a dwelling, or part of a dwelling, which is provided by a person ("the host") to another person ("the guest")— (i) for use by the guest as accommodation other than the guest's only or principal residence, (ii) in return for payment (whether or not by the guest), and (iii) in the course of a trade or business carried on by the host, and (b) any dwelling or premises, or part of a dwelling or premises, not falling within paragraph (a) which is specified for the purposes of this paragraph"

12.4 However, DLUHC is consulting on the description and definition of a short-term let for the purpose of a new class order (C5), to encompass the range of activities listed in paragraph 3.1 of this Committee report. That 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."

12.5 The definitions will therefore impact on the what property could be subject to the registration scheme, and what property could fall in to the new Use Class C5, subject to exemptions and any Article 4 direction or other means to manage development.

13. Response to the consultations

13.1 In light of the above analysis, Officers of East Devon District Council have concluded that there are sufficient concerns about the consultation proposals and their potential impact on East Devon, its communities, housing and economy to justify responding to the consultation on the planning changes.

13.2 Due to the need to meet the 7 June 2023 deadlines, Officers in consultation with Portfolio Holders have prepared responses to the DLUHC consultation and submitted them before the deadline. Members are therefore asked to note the submissions that are set out in Appendix A to this report.

Financial implications:

There are no financial implications at this stage.

Legal implications:

There are no legal implications other than as set out within the report.