

A neighbour's experience of 90 days whole-home short-term letting

The right to peaceful, private family life

The proposal to deregulate whole-home short-term letting to 90 days per annum regardless of property type does not protect the 'Right to peaceful enjoyment of your property' and 'Right to respect for private and family life' (Human Rights Act 1998) of neighbouring families in private properties with shared access, spaces and/or gardens.

While the right of owners to use property for profit must also be considered, Article 1 of Protocol 1 requires public authorities to strike a fair balance between the needs of the broader community and the rights of individual property owners. Furthermore, Article 8 obliges public authorities to take active steps to protect individuals' rights from systematic interference from third parties, for example private businesses.

There is a huge difference between the needs and impacts of families who wish to rent their home for a few weeks a year; and that of those purchasing property for commercial short-term letting.

What does 90 days look like? - A case study

The impact of 90 days of letting can be visualised in the attached diary extract from an Edinburgh short-term let operating in a small flatted building with communal entrance, spaces and garden.

90 days of letting was an occupancy of 60% over 5 months - only marginally lower than average hotel occupancy in Scotland, at 71%. Therefore, for almost half the year, neighbours lived next door to a de facto hotel which brought over one hundred transient pleasure-seeking customers (and their friends) into their homes, gardens and lives. Letting was concentrated in periods when families most wished to enjoy the privacy of their homes and gardens - weekends, school and public holidays. Most weeks the property was occupied by two, sometimes three different groups.

At this property, 40% of these 90 letting days were affected by incidents. These included issues relating to: waste disposal, parking issues, noise, people returning late at night, friends of customers shouting outside, verbal abuse, serious damage to property, intoxication, intrusion into private space, drinking and smoking in communal spaces, and tampering with residents' property.

While such anti-social incidents are useful attention-grabbers, there is another equally significant impact associated of sharing your home and spaces with strangers. The mental health charity MIND states: "If wherever you're living feels unsafe, uncomfortable or insecure, you might constantly feel stressed, anxious, panicked or depressed". This impact is very regularly reported by residents and felt strongest by those who are most vulnerable but under-appreciated by the media and authorities. Although most customers are not ill-intentioned, they simply have their own expectations about how they can use their "short-term let". They have paid handsomely to occupy the space and wish to use it to maximise their enjoyment. The payment of money seems to banish any conscience with regard to the invasion of privacy each let so obviously brings. They have no awareness of their impact, or that of the scores of groups who have preceded them. Indeed their behaviour is encouraged by the advertisements of profiteering websites and absentee hosts, who beseech them to "live like a local" and "belong anywhere".

Residents live with the mental health impacts of being unable to identify people in their shared home; an inability to comfortably use gardens when inhabited by strangers; stresses about the security of their property and the safety of their families.

Article 1 cites a right to 'peaceful enjoyment of your property' and Article 8 'respect for private and family life'. With 90 days of short-term lets over 5 months almost every day has been in contravention of these rights. Were there two or more adjacent short-term lets the problem would be magnified exponentially (270 days of letting on one family's doorstep perhaps?).

Current regulations - Title Conditions and Planning Permission

It is a common misconception that short-term lets (SSCVAs) are unregulated in Edinburgh. Short-term lets are already subject to planning regulations and restrictions in their title conditions. Unfortunately these are rarely attended to and are difficult/expensive to monitor and enforce.

Short-term lets are clearly referred to in the Edinburgh City Council Guidance for Businesses, and flatted properties are specifically prohibited from such a use. Planning applications are regularly turned down and there have been three enforcement notices served so far.

Regarding title conditions, there are two UK cases which specifically consider AirBnB-style short-term lettings and both cases find short-term lets in breach of common title conditions. Both cases took place in London and letting was already restricted by the 90 day Deregulation Act.

Nemcova v Fairfield Rents Ltd [2016] UKUT 303 (LC) was the landmark case which first concluded that short-term lets breach the "private residence" covenant. "Such a restriction is likely to have significant benefits for the lessees of the Building who would, we have no doubt, prefer to live with other owner-occupiers or long term tenants as opposed to those using a flat in the Building on a short term let for, perhaps, only a few days."

Flat A, 20 Nottingham Place, Westminster [2016] EWLVT LON_LV_FFT_00BK_0020. Short-term lets breached five common covenants: use as a private residence; subletting; nuisance and annoyance; depreciation of the character and reputation of the property; voiding communal insurances. "The presence of nearby hotels and hostels is a different matter to "constantly" having different unknown people coming in and out of the communal areas of a private residential building."

The proposed level of deregulation must not undermine the existing case law relating to our title conditions which protects the privacy and enjoyment of our shared homes.

Proposed amendment to proposed legislation - Balancing profit, peace and privacy.

In properties with shared spaces or gardens, whole-home short-term letting should be limited to 21 days and 5 lets per year to provide space for peaceful, predictable, private family life.

21 days gives ordinary families access to the sharing economy (they are currently excluded by the countless higher reviewing, more "polished" commercial lets) by letting over the Festival period or while they are on holiday. 21 days also gives responsible tourists the comforting knowledge that they are not contributing to a dwindling housing stock, and also gives them an authentic, positive experience in a genuine community not suffering from tourism fatigue.

References

- Human Rights: Human Lives, A Guide to the Human Rights Act for Public Authorities.
- Commission for Housing and Wellbeing. A blueprint for Scotland’s future, June 2015.
- Edinburgh City Council Guidance for Businesses
- Nemcova v Fairfield Rents Ltd [2016] UKUT 303 (LC)
- Flat A, 20 Nottingham Place, Westminster [2016] EWLVT LON_LV_FFT_00BK_0020.
- Scottish Accommodation Occupancy Survey, Visit Scotland, Annual Report 2016.

Appendix - What does 90 days of unrestricted letting look like?

	W	Th	F	S	S	M	T
April	5	6	7	8	9	10	11
April	12	13	14	15	16	17	18
April	19	20	21	22	23	24	25
April	26	27	28	29	30	1	2
May	3	4	5	6	7	8	9
May	10	11	12	13	14	15	16
May	17	18	19	20	21	22	23
May	24	25	26	27	28	29	30
May	31	1	2	3	4	5	6
June	7	8	9	10	11	12	13
June	14	15	16	17	18	19	20
June	21	22	23	24	25	26	27
June	28	29	30	1	2	3	4
July	5	6	7	8	9	10	11
July	12	13	14	15	16	17	18
July	19	20	21	22	23	24	25
July	26	27	28	29	30	31	1
August	2	3	4	5	6	7	8
August	9	10	11	12	13	14	15
August	16	17	18	19	20	21	22
August	23	24	25	26			

90 days of letting by a short-term let operating in a flatted property with communal entrance, spaces and gardens.

Red and orange are used to define different lets which run back to back with same day changeovers.

Average occupancy over 5 months and 90 days letting - 60%

Average hotel occupancy in Scotland - 71%*

*Visit Scotland. Scottish Accommodation Occupancy Survey, Annual Report 2016.