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# NORTH AYRSHIRE COUNCIL

30 September 2020

## Planning Committee

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**Title:** **Short-term Lets – Consultation a licensing scheme and planning control areas in Scotland**

**Purpose:** To inform Planning Committee of proposals for the regulation of short-term lets, including through the introduction of control areas.

**Recommendation:** It is recommended that Planning Committee agrees that the observations set out in paragraphs 2.15 to 2.17 of this report form the basis of a response to the Scottish Government on the proposed regulations introducing control areas for short-term lets.

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## 1. Executive Summary

- 1.1 Scottish Ministers have published a consultation seeking views on detailed proposals for the regulation of short-term lets, which will form the basis for secondary legislation to be laid in Parliament in December 2020.
- 1.2 Regulation of short-term lets is proposed through a new licencing regime and, under the provisions of the Planning (Scotland) Act 2019, the ability to create 'Control Areas' in which the use of a dwellinghouse for secondary letting will constitute a material change of use and require planning permission.
- 1.3 Should a planning authority wish to establish a 'Control Area' it is proposed that a similar process to that of designating a Conservation Area is followed, involving some form of consultation and notification to Ministers for approval.

## 2. Background

- 2.1 The Scottish Government is committed to ensuring that local authorities have appropriate regulatory powers to control short-term lets in a manner that balances the needs and concerns of the communities with wider economic and tourism interests.
- 2.2 In 2018, the Scottish Government undertook research and consultation to assess the evidence base and the impact, positive and negative, of short-term lets; identify the existing powers councils have; and explore whether further measures are required. It is now inviting views on detailed proposals for regulation.

### 2.3 Three interventions are proposed in relation to short-term lets:

- **Licensing** – to ensure short-term lets are safe and address issues faced by neighbours; and to facilitate local authorities in knowing and understanding what is happening in their area and handling complaints effectively.
- **Control areas** – to help manage high concentrations of secondary letting (where it affects the availability of residential housing and the character of a neighbourhood); to restrict or prevent short-term lets in places or types of building where it is not appropriate; and to help local authorities ensure that homes are used to best effect in their areas.
- **Taxation** – to make sure short-term lets make an appropriate contribution to local communities and support local services.

This short and focused consultation, which runs from 14 September to 16 October 2020, covers the definition of short-term lets; the establishment of a licensing scheme under the Civic Government (Scotland) Act 1982; and the establishment of control areas under the Planning (Scotland) Act 2019, with this paper focussing on the latter.

#### Definition of 'short-term let'

2.4 A clear definition of short-term lets that can be sensibly determined is needed so that the Licensing Order and Control Area Regulations are consistent; people know what is and is not covered; to avoid the potential for dispute; and to aid enforcement.

2.5 The consultation proposes to define a 'short-term let' as such when all of the following criteria are met:

- a) **residential** - the let is made to one or more guests for them to reside at the accommodation, for work or leisure purposes;
- b) **accommodation** – the accommodation is all or part of a house or flat or serviced apartment (but it is not on the premises of a hotel or other class 7 premises in the Use Classes Order). This includes a bed in a bedroom shared with other guests or a sofa bed in a living room but excludes unconventional dwellings such as caravans, pods and mobile dwellings such as canal boats;
- c) **temporary** - the accommodation is not the guests' only or principal home;
- d) **commercial** - the let is for commercial consideration (i.e. for money or benefit in kind to the host, such as provision of a service or reciprocal use of a property); and
- e) **excludes immediate family** – none of the guests are members of the same immediate family as the host or host's household (i.e. father, mother, brother, sister, son or daughter).

#### Licensing

2.6 All short-term lets will require a licence under the proposals, regardless of how many or few nights per year the accommodation is advertised for short-term let, or actually let. This approach is proposed to help protect the safety of guests in all circumstances and because it is easy to understand and enforce: all hosts will require a licence. The licensing system is to be delivered by local authorities.

- 2.7 The consultation proposes mandatory conditions, the majority of which relate to safety, including a requirement to meet the 'Repairing Standard' and a maximum occupancy; outlines that local authorities would also have discretionary powers to add licence conditions to address local needs and concerns; states that local authorities will be able to charge fees to cover the establishment and running costs associated with the licensing scheme, including monitoring and enforcement; and sets out key elements of the process for applying for a licence.
- 2.8 Subject to the Scottish Parliament approving the Licensing Order, local authorities will be able to implement a licensing scheme from 1 April 2021, initially on a discretionary basis, with all local authorities required have a live licensing scheme open to receive licensing applications by 1 April 2022.

### Control Area Regulations

- 2.9 The Planning (Scotland) Act 2019 introduced the provision to enable local authorities to designate control areas, where change of use planning permission would always be required to operate a short-term let. All short-term lets involving the letting of a room or rooms or the entire property – where the host does not normally live (also referred to as 'secondary letting') – will be in the scope of the proposed Control Area Regulations.
- 2.10 Currently, planning authorities consider on a case-by-case basis whether use of a dwellinghouse for secondary letting constitutes a material change of use requiring planning consent. The Control Area Regulations will allow planning authorities to designate all or part(s) of their area as a Control Area. Within such a designated area, the use of a dwellinghouse for secondary letting is always deemed to involve a material change of use and requires planning permission.
- 2.11 Also proposed is the removal of permitted development rights within Control Areas that would otherwise allow a dwellinghouse to be used for secondary letting for up to 28 days in any calendar year without a requirement for planning permission. It is considered this would undermine the purpose of establishing a control area, adds to the complexities of enforcement and is confusing for neighbours.
- 2.12 As a primary purpose of control areas is to help manage high concentrations of secondary letting, it is proposed that any planning permission which is granted would be valid for a default period of ten years (unless a longer or shorter period is set by the authority) but that local authorities should have the power to revoke planning permission after that time. This would prevent the exponential, unchecked increase in the number of properties which can be used for this purpose. Dwellinghouses used for secondary letting would be able to revert to residential use without planning permission.
- 2.13 In order to establish a Control Area, it is proposed that a similar process should be followed to that used to establish – or amend – a Conservation Area. This process requires some form of consultation, albeit not specified in legislation, and notification to Ministers for approval. Scottish Government consider that this approach strikes the right balance between, on the one hand, proper consultation and evidence gathering, and, on the other, avoiding unproductive bureaucracy and is appropriate as Control Areas would have a similar effect to Conservation Areas in making planning permission mandatory within them.

2.14 In terms of transitional arrangements where a Control Area is established, it is proposed that that local authorities have the power to set a grace period during which a host may submit a planning application for an existing secondary let and during which no enforcement action would be taken against them.

### Observations

2.15 Short-term let accommodation is an integral element of the visitor economy, and therefore important to the economy of North Ayrshire. It can also, however, cause issues, including the availability of affordable housing within local communities. It is not proposed to set out the conditions for establishing a Control Area, however, it would be helpful if Scottish Government had at least produced guidance – based on the research carried out to inform the proposed regulations – on the circumstances in which a Control Area may be usefully established. This would help inform the decision-making process; the type of evidence local authorities would need to collect; and help avoid any unrealistic expectations, including with local communities.

2.16 The Scottish Government suspects that there are a number of instances across Scotland of dwelling-houses operating as short-term lets without planning permission having been sought and that these cases will come to light as the licensing scheme is rolled out across Scotland, whether or not the property is within an established control area. That may be the case, however, as acknowledged by the paper, whether the use of a dwellinghouse for secondary letting constitutes a material change of use requiring planning consent is considered on a case-by-case basis. It could be a significant undertaking for a planning authority to review all licence applications and determine whether planning permission is required.

2.17 Where a Control Area is established, three main issues present themselves:

- i) **Policy Framework:** As stated in the consultation paper, the requirement to seek planning permission in a control area would not, of itself, imply any predisposition to refuse consent. Planning applications are required to be determined in accordance with the Development Plan. This raises the question as to whether it is appropriate to establish a Control Area ahead of the inclusion of policies relating to short-term lets within the relevant development plan. Not having clear and applicable policies to assess applications for short-term lets could lead to inconsistent decision-making. In a wider sense, it may be more appropriate to progress proposals to establish Control Areas alongside relevant policy wording as part of the preparation of a new Local Development Plan.
- ii) **Retrospectively applying the requirement for planning permission:** The transitional arrangements set out in the consultation indicate that – unlike in new Conservation Areas, for example – where a Control Area is established *existing* secondary lets would be required to seek consent. This could have a significant impact on established businesses and resource implications for local authorities. It is not common practice to retrospectively apply new planning policy or requirements on existing uses/development and it is questioned whether it is fair in this instance.
- iii) **Switching between a dwellinghouse and short-term let:** In many instances a property may be used both as a dwellinghouse and a short-term let, while not at the same time, within any given period (i.e. a house could be used as the ‘hosts’

principal home for six months of the year and as a short-term let for the other half of the year). It is proposed that dwellinghouses used for secondary letting can revert to residential use without planning permission but it is not clear whether a host would be required to reapply for change of use back to a short-term let every time; this would be a significant burden on the use of a property.

### **3. Proposals**

- 3.1 It is recommended that Planning Committee agrees that the observations set out in paragraphs 2.15 to 2.17, form the basis of a response to the Scottish Government on the proposed regulations introducing control areas for short-term lets.

### **4. Implications/Socio-economic Duty**

#### **Financial**

- 4.1 There are no financial implications arising from the introduction of short-term let control areas. Establishing a Control Area would be at the discretion of the Council, taking account of evidence and the views of local people. Should a Control Area be established, this is likely to lead to an increase in planning applications and, potentially, enforcement activity.

#### **Human Resources**

- 4.2 A potential increase in planning applications and enforcement complaints arising from the establishment of a Control Area could have human resources implications.

#### **Legal**

- 4.3 The consultation introduces the detail of a new regulatory system relating to the operation of short-term lets.

#### **Equality/Socio-economic**

- 4.4 None.

#### **Environmental and Sustainability**

- 4.5 None.

#### **Key Priorities**

- 4.6 Short-term let accommodation is an integral element of the visitor economy and is relevant to a number of the Council's key priorities, including an "inclusive, growing and enterprising economy" and "vibrant welcoming and attractive places". The Council Plan states we will develop North Ayrshire as a coastal and island destination attracting tourism investment and visitors. At the same time, affordable, modern and well-designed homes that meets residents' needs is also a key priority.

#### **Community Wealth Building**

4.7 None

## 5. Consultation

- 5.1 This committee item reports on and outlines a response to a current Scottish Government consultation on proposals for the definition and the establishment a licensing scheme and control areas for short-term lets. The purpose of the consultation is to help the Scottish Government ensure that legislation to be laid at the Scottish Parliament in December is as efficient and effective as possible. The Scottish Government is seeking comments which will assist in getting the details right, not the wider issues of whether to implement a licensing scheme or control areas, nor the broad framework of the approach.

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## Background Papers

None