

# Agenda Item 7

<b>Committee</b>	<b>Dated:</b>
Housing Management & Almshouses Sub-Committee	16/01/2017
<b>Subject:</b> Short Lets (Breach of Lease)	<b>Public</b>
<b>Report of:</b> Director of Community and Children's Services	<b>For Decision</b>

## Summary

A number of City of London residents have raised concerns with Estate Management staff regarding properties being used for short-term lets on the Airbnb website. Property owners can use this website to let out their properties on a short-term basis for a nightly rate. Using properties in this way raises a number of housing management issues including the potential for anti-social behaviour, communal security problems and breach of the terms of our standard lease.

The Barbican Estate management team has a procedure for dealing with properties used as short lets. This is proving effective and it is suggested that a similar approach should be adopted across the City's housing stock.

## Recommendation

Members are asked to:

- Endorse the approach and proposals as set out in paragraph 15 of this report, namely that leaseholders will be reminded of their obligations under their lease, with enforcement action to be taken in individual cases where breaches persist despite warnings.

## Main Report

### Background

1. The Airbnb website allows users to set themselves up as "hosts" and advertise available accommodation for short-term use in return for payment. Listings can be placed by hosts offering shared rooms, individual rooms or entire properties. Accommodation is advertised at a nightly rate, though some owners also offer weekly or monthly rates. Other websites offer a similar service, though Airbnb is considered the market-leader and is immensely popular in London.
2. The Airbnb website states that the average weekly income from an 'entire property' let for two guests in London is £959.00, so it is a potentially lucrative source of income for hosts, particularly in the City where demand for leisure and business short-term lets is high. A search of the Airbnb website shows numerous available properties on City of London estates ranging from a 1-bed apartment for £105.00 per night, to another 1-bed apartment for £255.00 per night<sup>1</sup>.

3. A debate is growing about the impact of Airbnb short-term lets on the local housing economy and communities within London. Research<sup>2</sup> suggests that around 240 properties are available in the City of London for short lets via Airbnb on an 'entire property' basis. Of these, 179 of the listings belong to hosts with multiple available properties. One argument is that these properties could be used to house those seeking longer-term tenancies in a crowded city with a competitive lettings market.
4. This report is concerned with the advertising of entire properties where the leaseholder is absent during the guest's stay, as opposed to guests staying in a spare room while the host remains resident in the property. The former arrangement is of greater concern, as the leaseholder is absent for the duration of the guest's stay. In many cases the host will not live in the property at all and will use it solely for short-term lets via Airbnb.
5. Many of the hosts offering City of London properties on Airbnb have received multiple reviews from past guests, meaning that they have allowed their homes to be used as short-term lets on many separate occasions.

## Current Position

### Tenancies

6. The position regarding tenants using their properties for short lets is governed by their tenancy agreement and is straightforward. Tenants are not permitted to sublet the whole of their home, though they may take in lodgers subject to obtaining permission first. Any resident claiming income-contingent benefits would also need to declare any income received from this arrangement to the relevant agency.

### Lease provisions

7. The City's powers as landlord are contained in Clause 4(8) of the standard lease which requires tenants to observe the covenants and restrictions in the Sixth Schedule to the lease. The following restrictions are relevant to short-term subletting:
  - *The tenant will not do or permit or suffer to be done in or upon the premises or any part thereof anything of an illegal or immoral nature or any act matter or thing which in the opinion of the Corporation may be or grow to be or become a danger nuisance or an annoyance to or to the prejudice of the Corporation its tenants or lessees or to the owners lessees or occupiers for the time being of any premises in the neighbourhood*

<sup>1</sup> Based on a search conducted on the Airbnb website on 1<sup>st</sup> December 2016

<sup>2</sup> [www.insideairbnb.com](http://www.insideairbnb.com) – a website that extracts publicly available data from Airbnb and presents it in statistical form

- *The tenant will not carry on or suffer to be carried on upon the premises any manufacture trade or business whatsoever but will use the premises as a private dwelling in the occupation of one individual only and his or her immediate family*<sup>3</sup>.

#### Nuisance and security concerns

8. Officers have been contacted by a number of residents who have become aware of properties on their estates being advertised on the Airbnb website. They have raised concerns about the security and nuisance implications of short-term letting on City estates, as well as unease around the loss of the community spirit gained from knowing your neighbours.
9. These concerns are quite general in nature and appear to be raised in anticipation of problems occurring, rather than in response to specific instances of anti-social or criminal behaviour, or breaches of security.
10. Concerns include:
  - Possible increase in anti-social behaviour, including noise, drunkenness, parties in properties or communal areas
  - Guests using flats for illegal or immoral purposes
  - Using a property for frequent short lets could constitute operating a commercial enterprise from the address, which is prohibited under the lease
  - Persistent use leading to loss of community cohesion and sense of safety
  - Guests not following 'estate rules' such as those relating to proper disposal of waste
  - Guests allowing access into block to non-residents
11. It should be noted that problems of this type can occur regardless of the basis on which a property is let, though it is arguable that these issues could be particularly acute if a property was used for frequent short lets.

#### Planning implications

12. Prior to May 2015, using a residential property for short-term or holiday letting required planning permission as it was considered a material change in use of the premises. The Deregulation Act 2015 amended the Greater London Council (General Powers) Act 1973 with the effect that properties may now be used as short-term lets for up to 90 days per year without the need for planning permission.

<sup>3</sup> A recent case in the Upper Tribunal (Lands Chamber) found that a lessee had breached her lease by repeatedly letting her flat on Airbnb as this contravened the requirement to use the property "as a private residence"; see *Nemcova v. Fairfield Rents Ltd* [2016] UKUT 303 (LC)

13. Airbnb recently announced plans to prevent London residents from letting their homes through their website for more than 90 days per year without 'official consent'. This would not prevent home owners using other means of organising short lets.

## Options

14. There are a number of options open to the City in responding to these issues. **Option one** is to do nothing and to respond to issues arising out of properties being let as short lets as and when they arise, using existing estate management procedures.
15. A **second option** is to raise awareness among residents about the implications of letting their homes in this way, making it clear that the City regards it as a breach of lease conditions. If evidence justifies the City taking action following any estate management issues being identified, a staged warning and enforcement process can be initiated. Whether action is initiated will be a question of fact and degree in each case.
16. The **third option** is to actively search for evidence of breaches of lease and to take a strict line in enforcing the leases of people letting properties through Airbnb, to prevent anticipated problems.

## Proposals

17. It is proposed that Officers will adopt the second option described in paragraph 14, which involves general reminders about lease obligations followed by staged warnings and then enforcement action if a breach of lease persists. This is intended to use resources effectively while ensuring that our response to the situation is proportionate.
18. Officers will send a general letter to leaseholders explaining the implications of using their properties for short lets. The Estate Management team will then monitor resident complaints and estate management issues to identify any "problem" properties. The leaseholders of these properties will then receive staged warnings should the breach of lease not be remedied. Enforcement action will then follow where this is proportionate.
19. Awareness can be further raised by discussing the subject at estate meetings or drop-in sessions, as well as estate-based publicity.

## Implications

20. The proposed approach can be incorporated into estate management procedures with minimal effort. No additional resources will be expended as Estate Managers frequently write to residents once estate management issues are identified. This process would simply follow a more distinct and trackable process.

## **Conclusion**

21. The use of leasehold properties for short lets is a matter of concern for residents, and could amount to a breach of lease or planning conditions. Evidence suggests that concerns are being raised in anticipation of problems happening, rather than as a response to incidents of nuisance behaviour.
22. A proportionate response involving awareness-raising and appropriate use of warnings should be adopted in order to balance the use of our resources with the nature and extent of the concerns raised by residents so far.

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## **HOUSING MANAGEMENT MINUTES**

**16 January 2017**

7. **SHORT LETS (BREACH OF LEASE)**

The Sub Committee considered a report of the Director of Community & Children's Services regarding leased properties being used for short-term lets. Members discussed the options presented in the report and agreed that option two be approved, to raise awareness among residents that the City regards letting of homes in this way is a breach of lease conditions and, following any estate management issues being identified, a staged warning and enforcement process be initiated. Whether action was initiated would be a question of fact and degree in each case. Members noted that staff training would be implemented to support this procedure.

**RESOLVED** – That Option Two be agreed: to raise awareness among residents that the City regards letting of homes in this way is a breach of lease conditions and, following any estate management issues being identified, a staged warning and enforcement process be initiated.