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| Subject: | Regulation of Short Term Holiday Lets | | |
| Date of Meeting: | 5th March 2020 | | |
| Report of: | Interim Director Housing Neighbourhoods and Communities | | |
| Contact Officer: | Name: | Jo Player | Tel: 29-2488 |
| | Email: | Jo.player@brighton-hove.gov.uk | |
| Ward(s) affected: | All | | |

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 Following a deputation to the Tourism Equalities culture and Communities Committee on 26th September 2019, officers were tasked with producing a report outlining what action could be taken to address large scale short term holiday lets in residential areas.
- 1.2 A Notice of Motion was also submitted to Full Council on 19th December and considered by this committee on 16th January. Committee agreed to the notice of motion and this report forms part of the response to that.

2. RECOMMENDATIONS:

- 2.1 Committee notes the content of this report
- 2.2 Committee agrees to officers using existing powers to investigate and respond to complaints about short term holiday lets, ensuring a co-ordinated approach to enforcement between services
- 2.3 Committee notes officers are actioning the requests in the Notice of Motion to lobby central Government for a national registration scheme and for enhanced enforcement powers for officers to deal with issues caused by these types of properties and to write to Air BnB regarding a consultation.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The increase in the use of short term holiday lets in the City has a potential impact on the availability of family homes and the amenities of residential areas, so much so that the Council has been looking into this as part of the preparation of the City Plan Part 2.
- 3.2 Officers, through discussions with police colleagues, are also aware that there has been a rise in a number of these properties being used for illegal activity such as drug supply.

- 3.3 Currently there is no definitive number of these types of properties in the City. Whilst many, such as occasional lets are used when the home owner is in residence and do not cause issues for the local community, large scale lets can do, creating issues of noise, rubbish accumulation and car parking. Information received from colleagues at East Sussex Fire and Rescue Service suggest that that there are approximately 1700 lets where the entire home is let, and approximately 1000 properties where someone can book a room in a person's residence. One booking company has stated that they have 3000 properties in the city and 60% of these are let out as an entire house. However there are also several other companies offering these types of short term lets.
- 3.4 In the last two years the Council's Environmental Protection team has received 12 complaints about these types of properties relating to noise issues. Two complaints have been received by the Anti Social Behaviour and Casework team, but these were received from the Environmental Protection team. No complaints have been received by City Clean, the corporate complaints team or parking services. However the complaints received all suggested that several Council services may have had a role to play in finding a suitable and longer term solution.
- 3.5 The Council has a duty under legislation to investigate all noise complaints. Statutory noise nuisance can include noise from people, music and plant and machinery. It is not a defined decibel level instead it is assessed having regard to the character, duration and frequency of the noise. Once a statutory noise nuisance has been established a noise abatement notice can be served and breaching this is a criminal offence, carrying a maximum sentence of an unlimited fine.
- 3.6 Residential properties can be used for short term accommodation and can still be deemed to be a residential use (C3 use class) and planning permission would not be required. London Authorities have specific legislation, which limits property owners to letting out their homes on short term lets to under 90 days.
- 3.7 In some cases, short term holiday lets can result in a material change of use from a C3 use to a sui generis use. Sui generis use is a term used to categorise buildings that do not fall within any particular use class for the purpose of planning permission. Whether a use was C3 or sui generis is a matter of fact and degree based on the particular characteristics of the use and would be unique to each particular case.
- 3.8 Appeal decisions involving other Local Planning Authorities have determined that the nature of the use could take the use out of C3. Any potential cases that were to be referred to the Planning Enforcement team would have to consider use/duration/frequency, where the service of a Planning Contravention Notice (PCN) may be appropriate to establish the nature of the operation.
- 3.9 Under the Anti-Social Behaviour, Crime and Policing Act 2014, the local authority can look at several enforcement tools to address issues that affect local communities. These include civil injunctions, community protection notices or closure orders. To date these have not been considered as a way of dealing with the issues caused by some large scale short term holiday lets.

- 3.10 **Civil Injunctions** – The legal test for a housing related civil injunction is that the conduct is capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises or the conduct is capable of causing nuisance or annoyance to any person.
- 3.11 The injunction can be used in situations where the owner or tenant of the property has allowed another person to engage in anti-social behaviour, as opposed to actively engaging in such behaviour themselves. For example, in a case where another person, such as a visitor or lodger, is or has been behaving anti-socially, the injunction could be used against the owner if applicable.
- 3.12 A civil injunction application can be made by both the local authority and the police. An agency seeking to apply for the injunction must produce evidence (to the civil standard of proof, that is, ‘on the balance of probabilities’) and satisfy the court that it is both “just and convenient” to grant the order.
- 3.13 There may be difficulty in evidencing this – it would require the neighbours to be prepared to come to Court possibly on multiple occasions. The landlord may seek to raise a defence that they have taken all reasonable steps and cannot be held liable for the actions of their tenants. Until this is tested in Court we will not be able to show how useful this route would be. Fines, costs and ultimately prison would be the sanctions.
- 3.14 **Community Protection Notices (CPN)** can be used to address behaviour that
- has a detrimental effect on the quality of life of those in the locality
 - is persistent or continuing nature; and
 - is unreasonable
- 3.15 A CPN can be issued against any person aged 16 or above, or to a body, including a business. Prior to issuing a CPN, a CPN warning letter must be served.
- 3.16 Before using CPNs to address anti-social behaviour associated with short-term holiday lets, the Local Authority will need to consider whether the owner of the property can be deemed responsible for the behaviour of guests. The three fold test is set out above and each element has to be satisfied. In the event that a notice is breached officers would have to summons the owner to court and if convicted are liable to a fine of up to £20,000. There is an appeal process both informally and formally.
- 3.17 **Closure Orders** - The court may make a closure order if it is satisfied:
- (a) that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or
- (b) that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or
- (c) that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises,

and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

The closure can be up to 3 months and officers can apply for a further extension of 3 months. The penalty for breach is a fine or imprisonment (up to 51 weeks).

- 3.18 The local authority must consult with Police before making a closure order application.
- 3.19 Under the Local Government Act 1972 Section 222(1) ("LGA") provides: "Where a local authority consider it expedient for the promotion or protection of the inhabitants of their area ... they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name". There is case law which permits a local authority to bring injunction proceedings in relation to nuisance, however the Higher Courts, have placed limitations on local authorities using this power, so while it is believed that this could be utilised, there has to be a note of caution.
- 3.20 Under the Localism Act 2011 there is a power in simple terms, to give councils the power to do anything an individual can do provided it is not prohibited by other legislation. Officers believe this could allow for a registration scheme for these types of properties. However it should be noted that this general duty comes with no enforcement powers. It might allow officers to have a better idea of the number of such properties in the City and where they are located. Sussex Police and East Sussex Fire and Rescue Service would welcome such a scheme. However with the number of properties identified above there would be resourcing implications in terms of staff to administer such a scheme.
- 3.21 There are no applicable Bye laws currently existing which could be utilised. Applying for such a Bye law would require Secretary of State approval. Public Space protection Orders are not applicable as these properties are not public spaces.
- 3.22 East Sussex Fire and Rescue Service have undertaken meetings with many short term holiday let providers in the Brighton and Hove area, to explain their jurisdictions under the Regulatory (Fire Safety) Order 2005. All premises must have a fire risk assessment completed, and any significant findings found must be completed in a suitable time frame. If a premises is deemed to be unsafe for people to sleep in then a prohibition notice can be served.
- 3.23 East Sussex Fire & Rescue Service are starting to audit the larger capacity premises managed by holiday letting companies and working through a list of known premises. If any complaints are made with regards these types of premises, an inspection will normally take place. The fire service would expect the benchmark standard in the sleeping accommodation guidance written by the Department of Local Government to be met within these types of premises¹.
- 3.24 Private sector housing licensing cannot be applied to short term holiday lets. The Housing Act 2004 sets the framework for licensing Houses in Multiple Occupation (mandatory and additional licensing schemes) and for selective

¹ www.gov.uk/government/publications/fire-safety-risk-assessment-sleeping-accommodation

licensing of other privately rented homes. To be covered under an HMO licensing scheme the property must be the occupiers' only or main residence. Therefore 'party houses' and short term holiday lets do not come under the licensing provision.

- 3.25 There are also a number of exemptions set out in the Selective Licensing of Houses (Specified Exemptions) (England) Order 2006. These exemptions include "a tenancy or licence that is granted to a person in relation to his occupancy of a house or dwelling as a holiday home". Therefore holiday lets do not come under the licensing provision and are beyond the scope of the scheme.
- 3.26 One short term holiday let company, Air BnB, provided a briefing note to councillors prior to the full council meeting in December 2019. In it, it states that during 2020 a dedicated line will be launched for city representatives and officials who can contact the company to raise issues. There is also to be a team to deal with complaints from neighbours regarding noise and nuisance. Sanctions are to range from 'host education strikes for moderate incidents as part of a three strikes you're out system or immediate removal from the platform for the most serious incidents' The company have also stated that they will be introducing enhanced guest standards and policies regarding party houses.
- 3.27 The Scottish Government announced in January 2020 that following a public consultation in 2019, it would introduce licensing for short-term lets, under the Civil Government (Scotland) Act 1982, with a mandatory safety component which will apply to all short-term lets across Scotland. Local authorities will also be given the discretion to put in place further conditions; to help tackle littering or overcrowding of properties, for example. Prioritise work to give local authorities the power to introduce short-term let control areas under powers in the Planning (Scotland) Act 2019.Undertake a review of the tax treatment of short-term lets, to ensure they make an appropriate contribution to the communities they operate in.
- 3.28 Where issues have been identified and brought to the council's attention investigations by relevant teams have been undertaken. In some cases these have resulted in noise abatement notices being served, action taken by East Sussex Fire and Rescue Service and interventions by the ASB team. Planning enforcement have also investigated whether or not there have been any change of use of properties. However it is recognised that enforcement action isn't always possible for specific cases and that officers need to work together more closely to ensure that all enforcement options are explored thoroughly.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 These are contained within the body of the report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 There has been no consultation in the compilation of this report. However if the option of a possible registration scheme is considered viable then public consultation .would take place.

6. CONCLUSION

- 6.1 It is recognised that whilst many short term holiday lets in the City do not have a major impact on the quality of life of local residents, some of the larger properties can and have done.
- 6.2 Legislation to deal with issues can be used more effectively to address some of the issues such as noise and ASB. However each case must be looked at on a case by cases basis and in some circumstances enforcement action will not be possible.
- 6.3 A local registration scheme will not allow for additional enforcement powers although it will allow for a better understanding of where these properties are located.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The costs of officer time involved in the investigation and response to complaints about short term holiday lets is met from within existing staffing budget resources.

Finance Officer Consulted: Michael Bentley

Date: 12/02/20

Legal Implications:

- 7.2 There is no directly applicable legislation in relation to short term lets save as set out in the body of the report.
- 7.3 None of the recommendations require further legal advice at this stage.

Lawyer Consulted: Simon Court

Date: 12th February 2020.

Equalities Implications:

- 7.3 None

Sustainability Implications:

There are no sustainability implications

SUPPORTING DOCUMENTATION

Appendices: None

Crime & Disorder Implications:

- 1.1 If used appropriately, the activities described in this report should enhance our capacity to tackle crime and disorder

Risk and Opportunity Management Implications:

- 1.2 _None

Public Health Implications:

- 1.3 None

Corporate / Citywide Implications:

- 1.4 Proper application of the powers will help to achieve fair enforcement of the law and help to protect the environment and public from rogue trading and illegal activity.

