

Committee:	Date:
Planning and Transportation	5 th November 2019
Subject: Update on Enforcement Monitoring Report	Public
Report of: Chief Planning Officer	For Information

Summary

On the 10 September 2019 an Annual Enforcement Monitoring Report was laid before Committee for information. Members resolved to note the report and the proposed actions to ensure the targets as set out in the Enforcement Plan SPD were met, and to reduce the number of cases older than a year by 25% by 1 April 2020. Furthermore, Members requested that officers review the issue of short-term lets and report back to committee for further consideration. In response, Members were advised that a procedure note for dealing with unauthorised short-term lets would be laid before committee for their consideration.

This report outlines the issues involved in dealing with short-term lets in residential premises and includes a procedure note outlining the enforcement process. Members are asked to note the report.

For Information

Planning Enforcement – short term lets

Background

1. On the 10 September 2019 an Annual Enforcement Monitoring Report was laid before Committee for information. Members resolved to note the report and the methodology to ensure the targets as set out in the Enforcement Plan SPD were met, and to reduce the number of cases older than a year by 25% at 1 April 2020.
2. Members requested that officers review the issue of short term lets and report back to committee. In response, Members were advised that a procedure note for dealing with unauthorised short term lets would be laid before committee (see Appendix 1).
3. There are currently 97 outstanding short term let cases affecting 135 properties. These enforcement complaints have arisen from both members of the public and Corporation staff.

Background Legislation

4. If a person lets their property for fewer than 90 consecutive nights but the cumulative total of all short-term lets of the property exceeds 90 nights in the same calendar year (i.e. January to December), planning permission is required. This is subject to a number of conditions as set out in Appendix 2. Guidance for the public is set out on the Corporation's web site:

[https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/Pages/ Short-term-letting.aspx](https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/Pages/Short-term-letting.aspx)

Policy and Guidance

5. The relevant policies are set out in the development plan which consists of the London Plan and the City of London Local Plan. Government policy is contained in the National Planning Policy Framework with guidance in Planning Practice Guidance.
6. Policies CS21, DM21.2, DM21.3, and DM21 of the Local Plan resist development that adversely affects the amenity of adjoining residents and present a security risk and resist the loss of permanent housing to short-term lets.

Consideration of planning applications

7. Short-term letting can cause conflict with long-term residents due to unfamiliarity with established practices, such as security precautions, waste disposal and acceptable noise levels. A high turnover of visitors and renters can reduce the sense of community and raise the fear of crime. The short-term letting of residential properties reduces the permanent housing stock impacting on the local housing supply. Therefore, any application for planning permission to provide short-term lets needs careful consideration having regard to the relevant policies in the development plan and any other material considerations.

Enforcement

8. If a short-term let use is implemented without planning permission it will constitute an unauthorised material change of use and may leave the offenders open to enforcement action.
9. The City Corporation, as the Local Planning Authority, has responsibility for taking enforcement action in the public interest. The power to issue an Enforcement Notice is discretionary and may be exercised where it appears to the City Corporation that there has been a breach of planning control and it is expedient to do so. Expediency requires having regard to the provisions of the development plan and to any other material considerations including case law and human rights.
10. The City Corporation is not required to take enforcement action because there is a breach of planning control and action will only be taken where there is demonstrable harm. Planning harm is not defined in the legislation but includes adverse impacts on amenity such as noise, fear of crime etc. If a person fails to comply with an Enforcement Notice requiring cessation of such a use, they could be liable on conviction to an unlimited fine and the court will have regard to any financial benefit which has or appears likely to accrue in consequence of the offence. The City Corporation's approach to enforcement is set out in the Enforcement Plan Supplementary Planning Document with a reference to short terms lets para. 5.2:
11. <https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/planning-enforcement/Pages/enforcement-plan.aspx>

Pro-active Approach to Enforcement of Unauthorised Short-Term Lets

12. Officers have been pro-active in trying to streamline the procedure, working closely with the Comptroller and City Solicitor's Department. A meeting was held with the City of Westminster and discussions/correspondence have taken place with the London Borough of Kensington and Chelsea to compare approaches and procedures. Officers work closely with other departments within the Corporation to provide a joined-up approach when dealing with short-term lets. They have also been proactive in responding to surveys and consultations and have supported the London Borough of Kensington and Chelsea recent lobbying efforts. As a result the following enforcement approach has been adopted.

Short-Term Let Enforcement Process

13. In checking compliance with the Acts, it is first established whether someone pays council tax. Thereafter the main issues in determining whether enforcement is appropriate centre around:
 - Establishing whether the permitted 90 nights per calendar year limit of short-term letting has been exceeded and,
 - If so, does the use give rise to demonstrable harm.
14. Establishing the number of nights a residential property is occupied on a short-term letting basis can be problematic. The initial investigation involves researching the planning history and, where relevant, information held by other departments, carrying out a Land Registry Search and checking letting websites. It should be noted that websites often do not identify a specific property or give an exact address until a booking is made and confirmed, hampering the investigation process.

15. At this stage the matter may be discussed with the complainant if appropriate. Occasionally the complainant may be monitoring the site, for example a concierge. However, in many cases the complainants are neighbours and ask to remain anonymous. Officers must be mindful that they should not ask the complainant to monitor the site as this could put the complainant at risk. Regardless, Officers try to keep the complainant informed of progress throughout the investigation.
16. A site visit is then made by an officer to the property. Frequently there is no response as the premises are often let out to tourists who leave early and return late. This stage rarely secures additional information and it is not a feasible method of monitoring short-term let use to prove the premises are being used in excess of the 90 nights limit; particularly given the resources available.
17. Following a Land Registry Search, a letter is sent to the alleged offender informing them that a complaint has been received alleging that a breach of planning control has occurred. The standard letter sets out the legislation and the issues for consideration with the option of either ceasing the breach or applying for planning permission (see Appendix 3). Sometimes a letter alone will resolve the matter.
18. If no response is received within 21 days and there is reason to believe that a breach of planning control has occurred, a Planning Contravention Notice (PCN) may be served. In the same way as an Enforcement Notice, a PCN will be served on anyone with an interest in the premises and will include the managing agent where known. Very often the use of a residential property on a short-term let basis can be a breach of the terms of the lease and can leave the premises uninsured. By contacting the Freeholder, it also gives them the opportunity to deal with the matter under the terms of the leases.
19. The PCN is a useful tool as it enables Officers to require information about ownership and use of the property and to invite interested parties to attend a meeting (see Appendix 4 PCN Questionnaire). A Notice should only be served if it appears that a breach of planning control has occurred, it cannot be used as a 'fishing exercise'. Failure to comply with the Notice within 21 days or knowingly or recklessly giving information which is false or misleading is an offence.
20. The service of a PCN is not straight forward and can be time consuming. Notices may be returned on the basis that people have gone away and there is often no response. To date, the City has not prosecuted anyone for non-compliance with a PCN as in those cases it was not considered in the public interest to do so.
21. When as much information as possible has been gathered, a decision is made as to whether it is expedient to enforce taking into account the provisions of the development plan and any other material considerations. The Enforcement Plan Supplementary Planning Document SPD sets out the approach in detail. It is at this point that officers have to be confident that an unauthorised material change of use has occurred.
22. The way the legislation is set up makes it very difficult for the local authority to enforce. Often, Officers are unable to gain sufficient information to satisfy themselves that it appears that a short-term let has been in use for more than 90 nights, even if it is likely the case. Without such evidence Officers cannot demonstrate a breach of planning control. If it is evident that a breach has

occurred, Officers need to demonstrate harm for it to be expedient to enforce. This often relies on the co-operation of other residents within a block which can be an issue if they wish to remain anonymous.

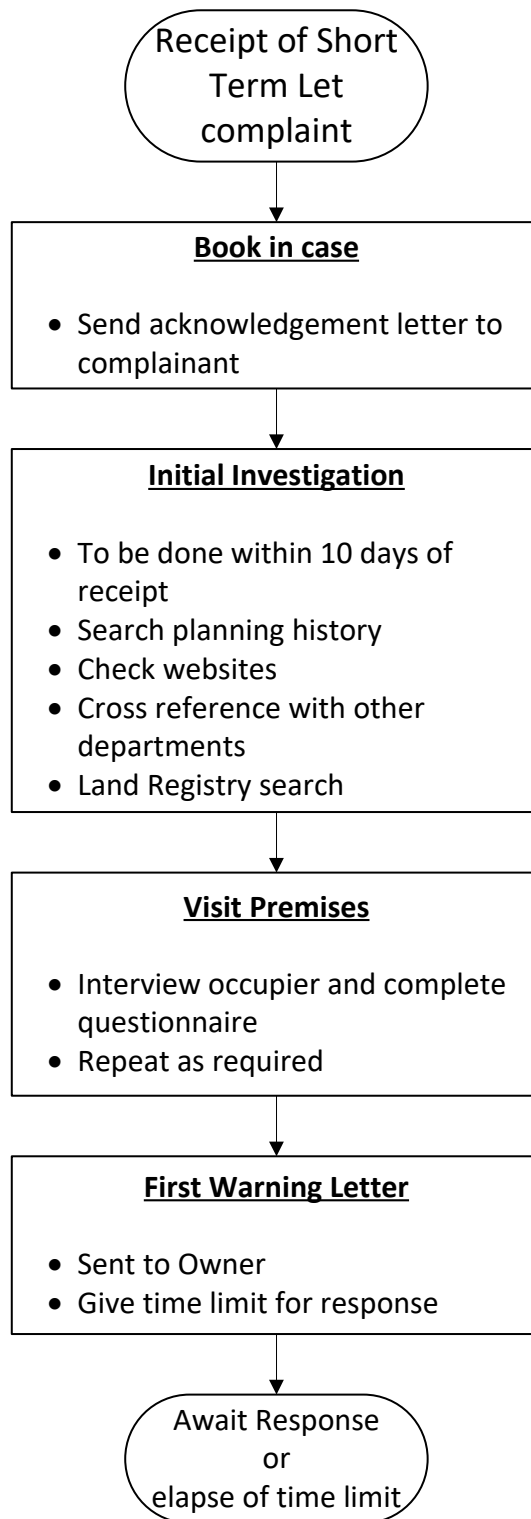
23. There are currently 97 short-term let cases. To deal with this backlog, Officers intend to make more use of Planning Contravention Notices to require relevant information and restructure and simplify the process to make it easier to issue them.

Conclusion

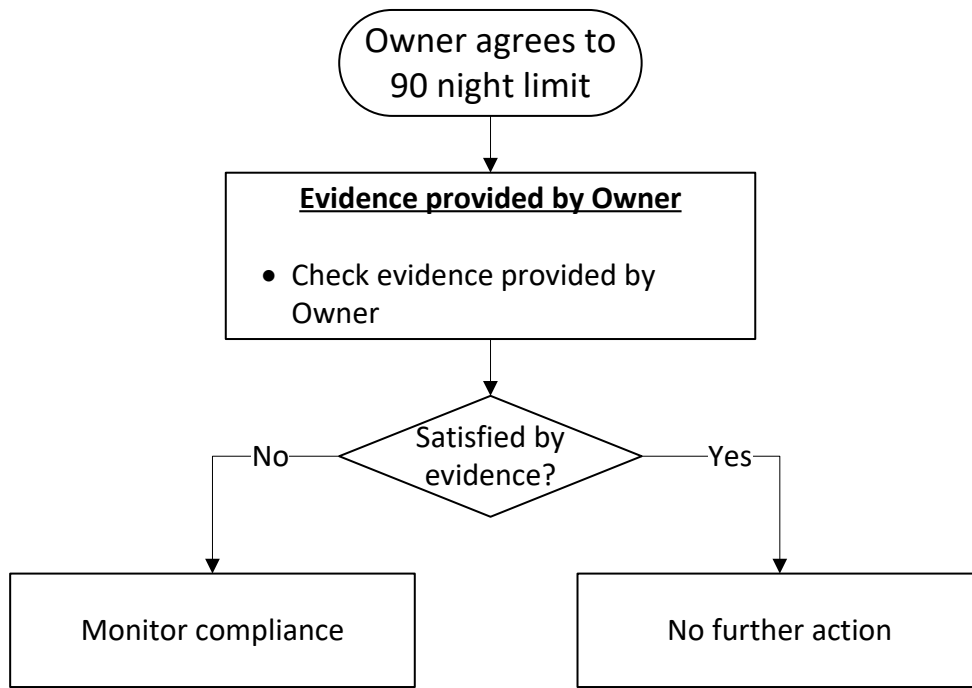
24. Members are asked to note the report.

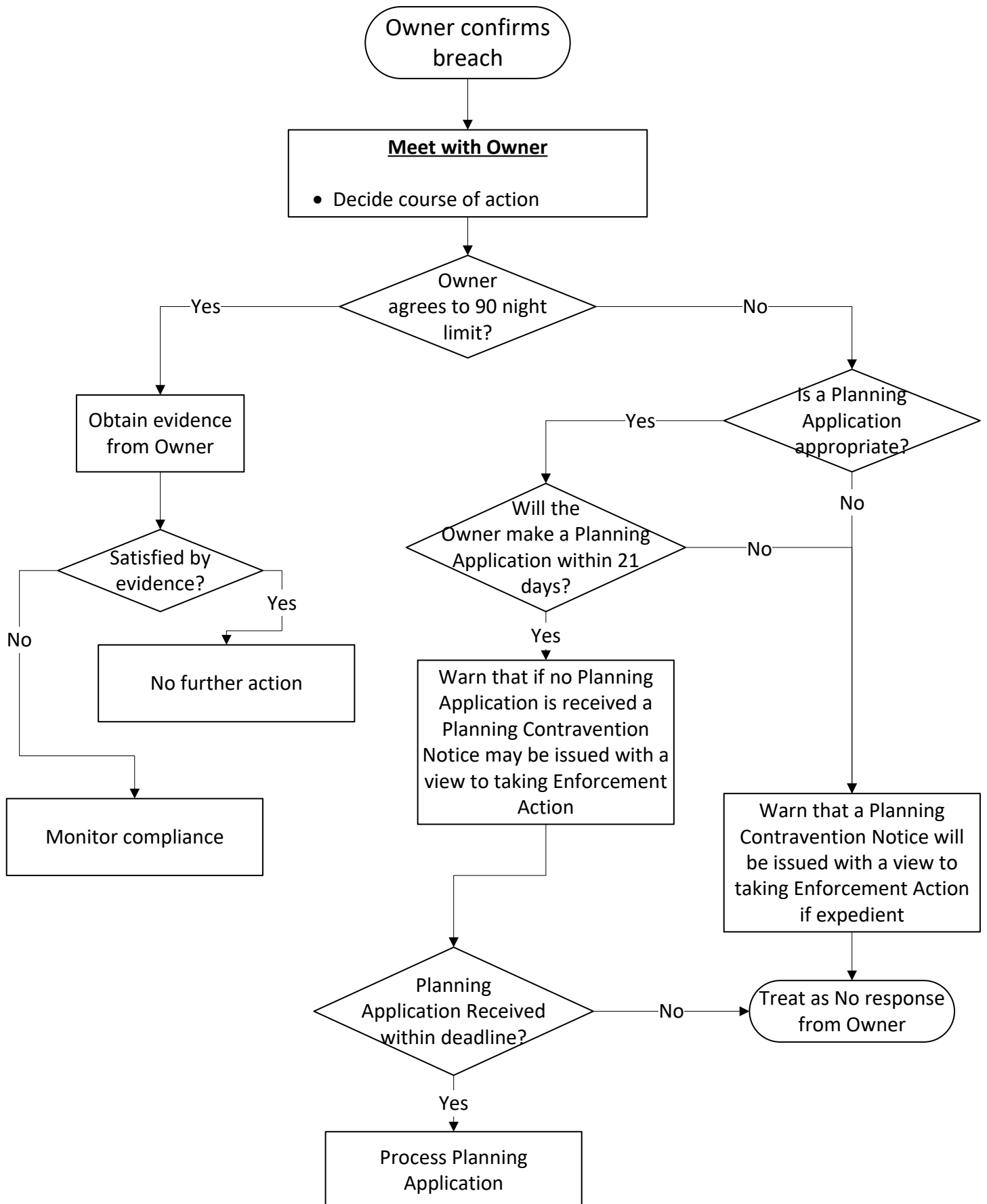
APPENDIX 1

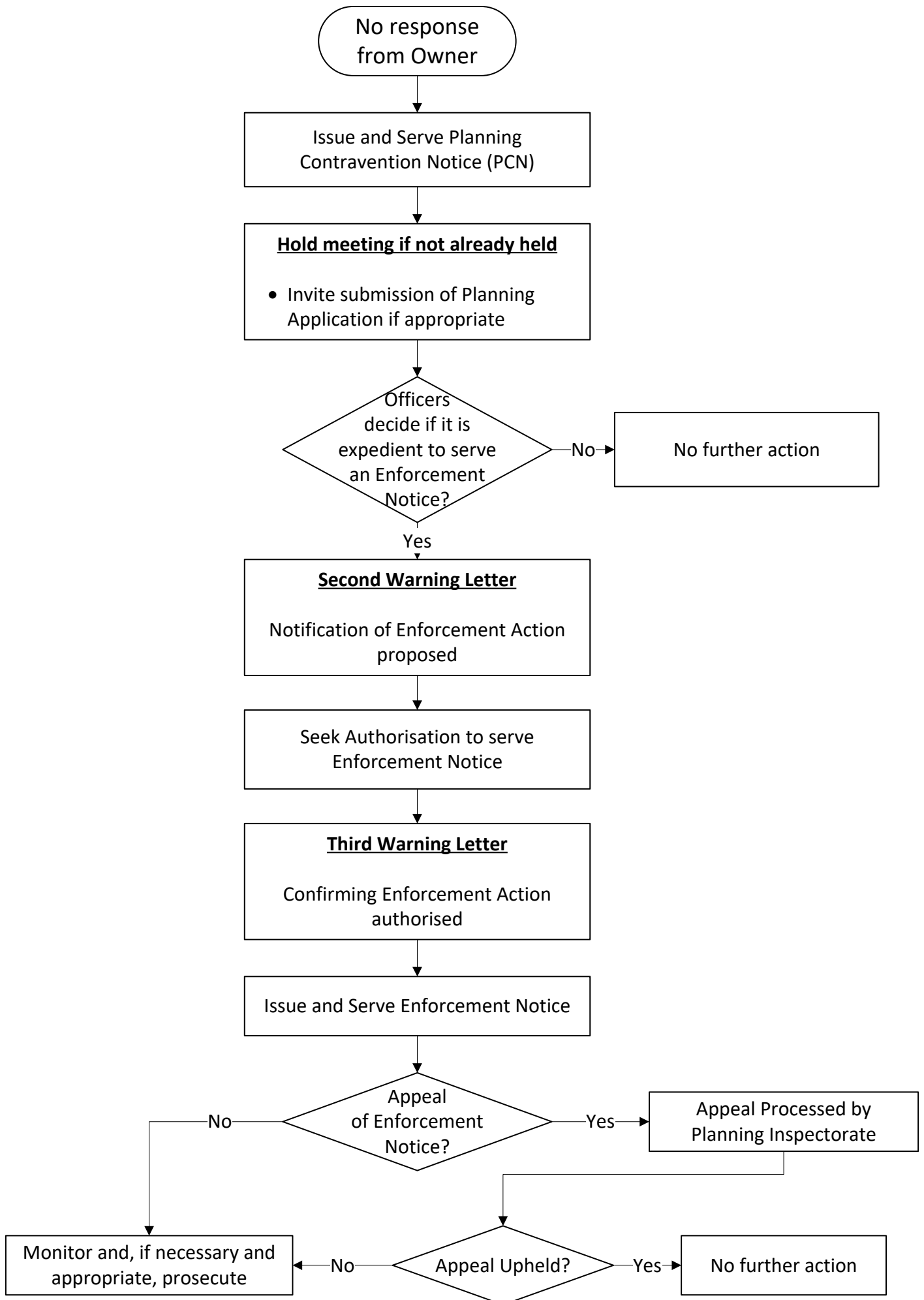
Procedure Note Short Term Lets



NB: Complainant to be kept informed throughout the process in accordance with the Enforcement Plan Supplementary Planning Document







APPENDIX 2

Legislation

Temporary sleeping accommodation is sleeping accommodation which is occupied by the same person for fewer than 90 consecutive nights and which is provided, (with or without services), for:

a consideration arising either by way of trade for money or money's worth, or by reason of the employment of the occupant, whether or not the relationship of landlord and tenant is thereby created.

The use of residential premises in the City as temporary sleeping accommodation is a material change of use which needs planning permission pursuant to Greater London Council (General Powers) Act 1973 (as amended) unless it benefits from the exception made by the Deregulation Act 2015.

The 2015 Act adds a section to the 1973 Act which provides that the use as temporary sleeping accommodation of a residential premise in the City does not constitute a change of use, (for which planning permission would be needed), if certain conditions are met.

The conditions are:

1. that the total number of nights of use as temporary sleeping accommodation is fewer than 90 nights in the same calendar year and
2. the person who provided the sleeping accommodation must be liable to pay council tax

If these two conditions are not met, using a residential premise for temporary sleeping accommodation is a material change of use which needs planning permission.

APPENDIX 3

First Letter

Department of the Built Environment

WAB Hampson OBE, BA (Hons), DipTP, MRTPI
Chief Planning Officer and Development Director

The Occupier/Owner

Telephone
Email

Our ref

Case Officer

Date

Dear Sir/Madam

Town and Country Planning Act 1990
The Greater London Council (General Powers) Act 1973 (as amended)
Deregulation Act 2015

It has come to my attention that the above property, which has planning permission as a permanent residential unit, is available to rent as temporary sleeping accommodation (commonly referred to as short-term let) through online booking services. This letter is to advise you of the planning restrictions associated with such activity and request that you contact the Planning Enforcement Case Officer within 21 days of the date of this letter to determine whether a breach of planning control has occurred.

What is Temporary Sleeping Accommodation?

Temporary sleeping accommodation is defined as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights and which is provided (with or without services) for a consideration arising either by way of trade for money or money's worth, or by reason of the employment of the occupant, whether or not the relationship of landlord and tenant is thereby created.

The Legislation

The use of residential premises in Greater London as temporary sleeping accommodation involves a material change of use requiring planning permission by virtue of Section 25 of the Greater London Council (General Powers) Act 1973 (as amended) unless it benefits from the new exception introduced by the Deregulation Act 2015 which came into force on 26th May 2015.

Section 44 of the Deregulation Act 2015 creates a new section 25A of the 1973 Act which provides that the use as temporary sleeping accommodation of any residential premises in Greater London does not constitute a change of use, (for which planning permission would be required), if certain conditions are met (the 'Exception'). The conditions are set out in subsections (2) and (3) of section 25A:

- Condition one - The sum of (a) the number of nights of use, and (b) the number of nights of any previous use of the same premises as temporary sleeping accommodation in the same calendar year, does not exceed ninety nights.
- Condition two - For each night counted under (a), the person who provided the sleeping accommodation must be liable to pay council tax (this includes people who are liable to council tax but are in receipt of a discount).

If the two conditions in the new exception are not met, use as temporary sleeping accommodation of residential premises involves a material change of use requiring planning permission as set out in section 25(1) of the 1973 Act.

What does this mean for me and what do I need to do?

Compliance

If you are the council tax payer for your property and you rent your apartment as temporary sleeping accommodation for a total number of nights that does not exceed 90 nights in a single calendar year (January to December) you are in compliance with the planning legislation outlined above.

To confirm this position, please Contact the Planning Enforcement Case Officer and ensure that any future short-term lettings do not exceed the specified limits or, subject to legislative changes, any limits that may be in force at the time.

Non-compliance

If you rent your apartment as temporary sleeping accommodation:

- (i) For a total number of nights that does not exceed 90 nights in a single calendar year (January to December) but you are not the council tax payer, you would not meet the conditions laid out in the new section 25A of the Greater London Council (General Powers) Act 1973 (as amended) and there would be a breach of planning control.

and/or

- (ii) You rent your property as temporary sleeping accommodation and the total number of nights rented exceeds 90 nights in a single calendar year (January to December) you would not meet the conditions laid out in the new section 25A of the Greater London Council (General Powers) Act 1973 (as amended) and there would be a breach of planning control.

In either case, if not appropriately addressed, the breach of planning control could lead to planning enforcement action and the potential for criminal prosecution.

Options to regularise the situation

Option 1.

Cease the use of the property as temporary sleeping accommodation for the remainder of the calendar year and/or return the property to permanent residential use i.e. single lets for periods in excess of 90 consecutive nights.

Ensure that any future short-term lettings do not exceed the specified limits.

Option 2.

If you wish to continue renting the apartment as temporary sleeping accommodation and you would not meet the conditions outlined in the new section 25A of the Greater London Council (General Powers) Act 1973 (as amended) i.e. you are not the council tax payer or the number of nights would exceed the 90 night limitation, you will need to make an application for planning permission.

Any planning application would need to demonstrate that the use of your apartment as temporary sleeping accommodation would not be contrary to the policies of the City of London Local Plan 2015 and, that the use would be operated without causing detriment to the residential amenity of the long-term residents of the building. Impacts on the amenity of long-term residents can be particularly marked from short-term lettings due to the different priorities of people on holiday. Conflict with long-term residents can arise because of unfamiliarity with established practices, such as, security precautions, waste disposal, and acceptable noise levels.

Guidance on making a planning application can be found on the City of London website:

<https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/planning-applications/submitting-planning-applications/Pages/application-forms-and-guidance-notes.aspx>

Please be aware that the planning process is public and consultative. Each planning application is considered on its own merits having regard to the development plan and any other material considerations. There is no guarantee that planning permission will be granted.

Conclusion

The advice outlined in this letter is intended to help you stay within the law and avoid the need for formal enforcement action and potential criminal prosecution. To further that aim and aid the ongoing investigation of this case, please contact the Planning Enforcement Case Officer either by email or on the direct dial number provided, to discuss how this matter may be satisfactorily resolved.

If no response is received within 21 days of the date of this letter it shall be assumed that the property is being operated in breach of the relevant legislation and authority shall be sought to instigate formal planning enforcement proceedings.

Yours faithfully

APPENDIX 4
Planning Contravention Notice Questionnaire

SCHEDULE 1

PLANNING CONTRAVENTION NOTICE DATED.....

PROPERTY: Flat

[In answer to the questions below, if a company please state registered name, address and company secretary. If a partnership please state names of all parties and addresses. Continue on a separate sheet if required]

1) Please state your name, permanent address and telephone number.

Ownership

2) What is your interest in the property and for how long have you held this interest? Are you the freeholder, leaseholder, tenant, sub-tenant or other. Please specify.

3) Who owns the property in a freehold capacity? Please provide the name(s) and address(es) of all freeholder(s) of the property.

4) Does anyone have a lease on the property? Please provided the name(s) and address(es) of all leases of the property.

5) Is there anyone else with a legal interest in the property e.g tenant, sub-tenant or other? If so, please state who has such interest and what their interest is?

6) Is there a mortgage or any other charge currently on the property? If so please provide details, including name(s) and address(es), of anyone who has granted a mortgage and the mortgagee(s).

Current Occupation

7) a) How is the property currently being occupied and how long has it been occupied in this capacity?

b) Please provide name(s) of all current occupiers of the property.

c) Is this their permanent address if not specify their permanent address, date of arrival and date expected to vacate the property.

Please provide copies of any tenancy or letting agreements covering this period

Temporary Sleeping Accommodation

8) a) Is the property currently being used as temporary sleeping accommodation for 90 consecutive nights or less in a calendar year as defined in the Planning Contravention Notice?

b) Is the property currently being used as temporary sleeping accommodation for more than 90 consecutive nights in a calendar year as defined in the Planning Contravention Notice?

9) When was the property last used for residential purposes as defined by Class C3 of the Town and Country Planning (Use Classes) Order 1987(as amended) i.e use as a dwelling house.

10) For the calendar year 1 January to 31 December please provide details of:

- a) number of lettings that have taken place
- b) length of each letting that has taken place including dates and names and addresses of the occupiers
- c) whether rent was paid on each occasion by the occupant and to whom and if the occupation was by reason of the employment of the occupant
- d) whether the person providing the sleeping accommodation paid the Council tax in each case
See Table 1 attached. Please provide answers to questions 10) a), b), c) and d) in boxes provided
- e) any residential use (Class C3) including dates, length of occupation and names and addresses of the occupiers

Please provide copies of any tenancy or letting agreements covering this period

11) For the calendar year 1 January until the date of service of the Notice please provide details of:

- a) number of lettings that have taken place to date
- b) length of each letting that has taken place including dates and names and addresses of the occupiers
- c) whether rent was paid on each occasion by the occupant and to whom and if the occupation was by reason of the employment of the occupant
- d) whether the person providing the sleeping accommodation paid the council tax in each case

See Table 2 attached. Please provide answers to questions 11) a), b), c) and d) in boxes provided

- e) any residential use (Class C3) including dates, length of occupation and names and addresses of the occupiers

Please provide copies of any tenancy or letting agreements covering this period

12) Have any tenancy agreements been signed to let/sublet at the property until the end of this year. If so please provide details of the length of stay.

Please provide copies of any tenancy or letting agreements covering this period

(13) Has the property been offered to let in its capacity as temporary sleeping accommodation by an Agent since January? If so please give dates and their name(s) and address(es) and telephone number(s).

I declare that the information I have provided in completing the above questionnaire is true and accurate to the best of my knowledge.

Name (Please print):

Signature:

Date:

*Please return completed questionnaire to:
Department of the Built Environment, Planning Enforcement, City of London, PO Box 270,
Guildhall, London EC2P 2EJ*

Table 1 - Questions (10) (a), (b), (c), and (d) Calendar year 1 January to 31 December

Number of Letting(s)	Date Occupied	Date Vacated	Names of occupier(s)	Address of Occupier(s)	Was rent paid on each occasion by the occupant Yes/No and to whom	Was the occupation by reason of employment of the occupant Yes/No	Was Council Tax paid by the person providing the accommodation Yes/No
1							
2							
3							
4							
5							

6							
7							
8							
9							
10							
11							
12							

Continue on a separate sheet

Table 2 - Questions (11) (a), (b), (c) and (d) Calendar year 1 January until the date of service of the Planning Contravention Notice

Number of Letting(s)	Date Occupied	Date Vacated	Names of occupier(s)	Address of Occupier(s)	Was rent paid on each occasion by the occupant Yes/No and to whom	Was the occupation by reason of employment of the occupant Yes/No	Was Council Tax paid by the person providing the accommodation Yes/No
1							
2							
3							
4							
5							

6							
7							
8							
9							
10							
11							
12							

Continue on a separate sheet