

Committee(s)	Dated:
Residents Consultation Committee – For Information Barbican Residential Committee – For Information	7 September 2015 14 September 2015
Subject: Lease Enforcement Issues – short-term holiday lets	Public
Report of: Director of Community and Children’s Services	For Information

Summary

At its meeting in June the Barbican Residential Committee asked that an update be provided setting out the position in respect of short-term letting following changes in legislation. This report sets out the actions to date including communications with leaseholders, advice from the Comptroller and City Solicitor, a joint workshop between the Barbican Estate Office (BEO) and the Residents Consultation Committee (RCC) and recommendations for proposals that Officers will be taking forward.

Recommendation

Officers will be taking forward the proposals as outlined in paragraph 15 of this report.

Members are asked to:

- Note the report and endorse the approach and proposals as set out in paragraph 15 of this report.

Main Report

Background

1. Previously if leaseholders wanted to short let flats in the Barbican for periods of less than 90 days, planning permission would be required. The reason for this was that the use as temporary sleeping accommodation of any residential premises in Greater London required a material change of use of the premises.
2. This was a London wide Planning stipulation rather than a lease issue. When the BEO became aware that a leaseholder was letting their flat out for a period of less than 90 days, they would make contact and advise them that they were in breach of the City of London’s Planning Policy.
3. In 2014 the Department of Communities and Local Government’s ‘*Review of Property Conditions in the Private Rented Sector*’, sought to scrap current

legislation whereby Londoners need to seek planning permission if they wanted to rent out their homes for any period less than three months. This matter was open for consultation and the City responded to the Government consultation.

4. The City objected to the proposed loss of local planning control in London over change of use from permanent housing to short-term lets (temporary sleeping accommodation). This was consistent with the City's policy position in the City Local Plan, where it states that; '*such changes would not normally be permitted within residential areas where it could result in poor residential amenity including excessive noise or disturbance*'. The results of a Barbican residents' survey and their clear majority against the proposed change, formed part of the response.

Current Position

5. In May 2015 S. 44 of the Deregulation Act 2015 inserted a new section into the Greater London Council (General Powers) Act 1973. This provided that use as temporary sleeping accommodation of residential premises in Greater London does not constitute change of use (for which planning consent is required) as long as (1) the number of nights use and (2) the number of nights of any previous use of the same premises as temporary sleeping accommodation in the same calendar year doesn't exceed 90 nights. Also that the person who provided the accommodation is liable to pay Council tax.
6. The City as local planning authority can ask the Secretary of State to agree to localised exemptions from the right to sublet short-term, in order to protect the amenity of the locality. The City's position is as follows:
 - *"Government statements have made it clear that such exemptions would only be allowed where there is a history of amenity issues and would not be appropriate in anticipation of such issues. It has also been stated that local exemptions might be relevant to particular problem dwellings and would not normally be applicable to whole estates or larger areas. There does not currently seem to be historic evidence that short-term lets have led to amenity issues in the Barbican and there seems to be no reason to suppose that the Barbican is sufficiently different to justify a local exemption. Therefore there is no intention at this stage for the local planning authority to seek a local exemption for any parts of the Barbican."*
7. Therefore, provided the criteria at paragraph 5 are met, and in the absence of the (unlikely) consent of the Secretary of State, the City as local planning authority lacks the power to prevent the use of residential flats at the Barbican for short lets.
8. The City's powers as landlord is included in Clause 4(8) of the standard Barbican long lease which requires tenants to observe the covenants and restrictions in the Sixth Schedule to the lease. The following Sixth Schedule restrictions are relevant to short-term subletting:

- *The tenant will not do or allow to be done in or on the premises anything whereby any insurance by the Corporation of the premises or the Building or any part thereof (or any property for the time being owned by the Corporation) may be vitiated or prejudiced nor without the consent of the Corporation do or allow to be done anything whereby any additional premium may become payable for the insurance of the premises or the Building or any such other property*
- *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*
- *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. (The City would argue that the use of short-term holiday letting websites is a clear breach of the letter and spirit of this clause. In the event that a court disagreed, the City would look to enforce other Schedule 6 restrictions).*

9. Following the legal advice above the BEO have set up a three stage enforcement process in dealing with short-term lettings:

- Stage 1 - writing to all leaseholders (including absentee landlords) in June 2015 to make them aware of a number of lease provisions including those related to short-term lettings
- Stage 2 - writing to the leaseholder advising them that, subject to the detail of any evidence, they are in breach of the covenants set out above and asking that the breaches are remedied within 7 days
- Stage 3 - if the breaches are not remedied to the satisfaction of the BEO then the Comptroller & City Solicitor be instructed to serve a Section 146 forfeiture notice on the leaseholder whereby they will be required to remedy the breaches or face forfeiture proceedings. This stage will occur where further instances of subletting are identified, subject to the detail of the evidence.

10. The BEO and the RCC presented a workshop in July 2015 for RCC members or their representatives. A representative from each block was encouraged to attend and there were 13 attendees.

11. The notes of the workshop were circulated to RCC members for comment in July and are included in Appendix 1.

12. Some of the general comments from the workshop about defining the problems were that :

- many of the problems already exist when standard sublets are badly managed or problematic, but that short-term lets could intensify these kinds of issues
- there were very few specific examples that residents were aware of where short-term letting had caused problems or that short-term letting was taking place
- in practice it would be difficult for any resident to differentiate between a normal subletting and a short-term holiday let, or even residents lending their flats, and short-term holiday lets. It was felt that any interventions must respect resident's rights to sublet normally, or to allow friends and relatives to borrow their flats
- some of the concerns raised over short-term lets, such as unintended disturbance to residents through lack of familiarity, security (especially tailgating) could also arise from both standard sublets and friends borrowing flats

Options

13. Some of the general comments from the workshop concerning resolving the issues were that:

- residents talking to visitors could promote two useful objectives – it could ensure visitors were familiar with the Barbican, block security etc. and less likely to cause disturbance or annoyance inadvertently, and second, it could provide evidence that a flat was being sublet repeatedly
- there were differing views on whether the policy and guidance from the BEO should be zero tolerance on all short-term lets, or to focus on avoiding nuisance from problems arising from excess – either flats given over to continual year-round short-term lets, or where there was a poor record of problems from a particular flat
- landlords who decide to let their flats year-round on short-term lets were considered the most serious problem, and it may also be easier to enforce against them as continuous short-term letting was not allowed in the recent legislative change either
- a long-leaseholder who has sublet their flat may not be aware that their tenants are subletting for weekends etc through holiday websites – the BEO could make landlords aware of this and suggest landlords specifically prohibit this
- House Groups could provide a useful point of contact for House Officers to approach if problems had been reported, but there was not enough information to act

14. Based on the comments in paragraph 13 and from the workshop there are a number of options for the BEO which include:

- further regular letters to leaseholders (as some may not be aware that tenants are subletting to short-term holiday let sites)
- regular email broadcasts to residents asking them to share evidence with the BEO
- regular contact with House Groups to share information and if necessary help to share evidence with the BEO
- produce '10 reasons to not rent your flat out for the weekend' document for residents including invalidating their insurance (both private contents and landlord buildings), fire safety (increasing risks associated with people using appliances in an unfamiliar environment, risks of possible flooding flats below not being covered by insurance, security of the building)
- briefing sessions with the front line staff eg Estate Concierge/Lobby Porters with guidance on dealing with potential issues from residents and visitors (security, keys) and sharing information with the BEO
- monitoring websites for potential regular reported repeat offenders
- more intensive monitoring of websites with investigations to attempt to identify flats (websites do not identify flats until members have made payment and the arrangements for keys. Therefore this is not an option)
- patrolling of resident balconies to attempt to identify flats from website photograph information (resource intensive and an invasion of residents privacy. Therefore this is not an option)
- patrolling the Estate and making investigations to attempt to identify visitors who may be staying on a short-term holiday let (resource intensive and difficult to differentiate between a normal subletting or even between residents lending their flats to friends and a short-term holiday let. Any interventions must respect residents' rights to sub-let normally or allow friends and relatives to 'borrow' their flats. Therefore this is not an option)

Proposals

15. Officers have started to progress the following measures (see appendix 2) :

- regular letters to leaseholders outlined as stage 1 of the 3 stage enforcement process in paragraph 9 (as some may not be aware that their tenants are subletting to short-term holiday let sites). This is followed by stages 2 and 3 as appropriate as detailed in paragraph 9.

- regular email broadcasts to residents asking them to share evidence with the BEO (there may be resource implications for the BEO)
- regular contact with House Groups to share information and if necessary help to share evidence with the BEO
- produce '10 reasons to not rent your flat out for the weekend' document for residents
- briefing sessions and guidance for frontline staff
- monitoring websites for potential regular reported repeat offenders

Implications

16. The City as local planning authority lacks the power to prevent the use of residential flats at the Barbican for short lets. However, the City retains powers as landlord under the terms of the standard lease to forfeit the lease for specified breaches, subject to the available evidence.

Conclusion

17. The recent changes in legislation have resulted in a number of issues and concerns surrounding short-term letting. Officers recognise the real concerns put forward by residents and have been robust in seeking to address this issue.

18. A number of measures have already been progressed following legal advice and the RCC workshop (see appendix 2) but Officers can only take legal action where lease provisions have been breached. However when any leaseholder is found to be in breach of these conditions action has and will be pursued rigorously.

19. In conclusion the workshop commented that were very few specific examples that residents were aware of where short-term letting had caused problems or that short-term letting was taking place.

Appendices

- Appendix 1 – RCC Workshop for dealing with short-term holiday lets – Notes
- Appendix 2 – Lease enforcement short-term holiday lets action update

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