An Roinn Tithíochta, Pleanála, Pobail agus Rialtais Áitiúil
Department of Housing, Planning, Community and Local Government

Rebuilding Ireland
Action Plan for Housing and Homelessness

To: Chief Executives, City and County Councils
CC: Directors of Planning Services, City and County Councils,
Senior Planners, City and County Councils,
CEO Housing Agency,
An Bord Pleanála.

Circular letter PL 12/2016
APH 6/2016

22 December 2016

Recent An Bord Pleanla Decision on Short Term Lettings

I have been asked by Mr. Simon Coveney, T.D., Minister for Housing, Planning, Community and Local Government to bring to your attention a recent determination by An Bord Pleanala in relation to a particular case[1], that the exclusive use of a residential apartment for short term holiday lettings is considered to be development under the Planning and Development Act 2000, as amended, and is not exempted development.

This determination is particularly relevant in the context of reports over recent months of the withdrawal of residential properties from the long-term rental market, in Dublin in particular, for use as short term holiday lettings which has consequential knock-on impacts on the wider availability of private rental accommodation for long-term letting.

In addition to bringing the above determination to the attention of planning authorities, the purpose of this Circular letter is additionally to ensure that they are aware of:

- the grounds on which the Board reached its decision;
- the planning implications in terms of the requirement for such commercial use of residential units to be the subject of an application for planning permission; and
- the importance of a proactive approach to planning enforcement generally in this regard.

In the particular case in question, the Board was requested under section 5 of the Planning Act to determine whether the use of an apartment for short term rental purposes, with the entire property rented on a year round basis for a series of short term holiday lettings (through an online rental service), constituted a change of use from a residential apartment to commercial use.

The issue had previously been considered by Dublin City Council which had declared that the year-round letting of the apartment in this manner did constitute a material change of use and was not exempt from planning legislation[2]. The letting company subsequently referred Dublin City Council's declaration to An Bord Pleanála for a final determination under the section 5 provisions with the Board confirming the original declaration of the Council.

[1] An Bord Pleanála reference number: RL3490
[2] Dublin City Council reference number: 0151/16

Grounds for the determination in question

Based on a number of considerations, including:

- the exclusive use of the apartment on a year round basis for short term commercial lettings,
- the absence of any permanent resident from any portion of the apartment, and
- submissions made by the letting company and those made by other residents of the area,

the Board concluded that in the circumstances of the specific case, the use of the apartment concerned constituted a material change of use and was not exempted development.

In this connection, the Board stated that the use of the apartment for short term holiday lettings raised planning considerations that are materially different to the planning considerations relating to the permitted use of an apartment as a normal place of residence, including:

(i) the extent and frequency of persons coming to and going from the apartment by both short term renters and servicing staff;
(ii) associated concerns for other residents in respect of security and general disturbance; and
(iii) the commercial nature of the use of the apartment concerned.

Implications of the decision

The effect of the Board's determination – which, as indicated, is in line with the earlier declaration by Dublin City Council - is that the letting company or property owner will now need to apply for planning permission to Dublin City Council for a material change of use of the apartment concerned.

In light of this determination, the continued operation of an apartment or residential unit without planning permission for such a material change of use should be considered unauthorised development and subject to enforcement proceedings by the relevant Planning Authority. However, it is also important in this connection to distinguish between properties which are –

(a) only made available for short-term letting purposes on an occasional basis or for particular periods of the year,
(b) partially occupied by the residential owners on an ongoing basis, and
(c) exclusively used for commercial short-term letting purposes on a year-round basis.

In this regard, Planning Authorities are reminded of their obligations relating to planning enforcement under Part VIII of the Planning Act, and as further specified in the Planning and Development (Planning Enforcement) General Policy Directive 2013[3]. It should be particularly noted that any planning enforcement action in this area should be focussed on properties coming within scenario (c) above i.e. those being exclusively used for commercial short-term letting purposes on a year-round basis.

Next steps

The implications of this case have raised a number of regulatory and other related issues. With a view to providing full clarity regarding the appropriate regulatory approach to be adopted by relevant statutory authorities in relation to short term tourism-related lettings, and as provided for in the recently published Rental Strategy under the Rebuilding Ireland Action Plan, the Department intends to establish a working group comprising representatives of relevant stakeholders - i.e. local authorities, relevant Departments, public bodies and other interests in the area – to consider the issues involved and report by end Q2 2017.

[3] Refer to Planning Circular Letter PL 11/12

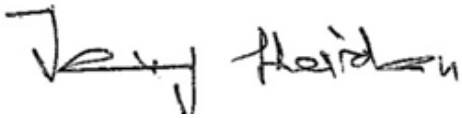
In the meantime, where it is brought to the attention of local authorities that particular properties may be exclusively used for short-term letting purposes, they should take the following steps:

(a) investigate the matter by checking commercial website platforms and other media that such short-term lettings are advertised and procured through;

(b) where they form the view that a property, or properties in a multi-unit development, may be in use for short-term letting purposes on an ongoing basis, they should write to the property owner(s) or letting management company concerned requesting them to confirm within a specified timeframe whether or not the property is being continually made available for short-term letting purposes, while simultaneously advising them of the requirement to apply for planning permission for change of use from residential to commercial use where the property is being exclusively used for such short-term letting purposes; and

(c) where necessary, initiate the planning enforcement procedures under Part VIII of the Planning Act and as further specified in the Planning and Development (Planning Enforcement) General Policy Directive 2013.

The Department will provide a further update on this matter in the light of the outcome of the deliberations of the above-mentioned working group in 2017.



Terry Sheridan
Principal
Planning Policy