



# **Airbnb response to consultation on the introduction of a use class for short-term lets and associated permitted development rights**

**June 2023**



# Contents

Executive Summary	3
Question 1	7
Question 2	7
Question 3	8
Question 4	8
Question 5	9
Question 6	9
Question 7	10
Question 8	10
Question 9	11
Question 10	11
Question 11	11
Question 12	12
Question 13	13
Question 14	13
Question 15	14
Question 16	15
Question 17	16
Question 18	17

## Executive Summary

- At Airbnb, we are proud of the role that we play in helping people in England take part in and benefit from the visitor economy by welcoming people into their homes. Airbnb Hosts are facilitating tourism across England's best-loved destinations and hidden gems, bringing hundreds of millions of pounds per annum into local and regional economies and helping Hosts supplement their income during the most significant cost-of-living crisis in decades.<sup>1</sup>
- Airbnb has long advocated for proportionate and effective regulation, including through our 2021 White Paper on how a registration scheme for short-term lets (STLs) could work in practice, and we support the effective operation and enforcement of planning law. The data generated from such a registration scheme should inform proportionate and evidence-based local planning interventions in communities, where it is necessary.
- For many families, hosting on Airbnb is an economic lifeline. One in five UK Hosts on Airbnb work in either education, healthcare or hospitality. The overwhelming majority of Hosts share just one property.<sup>2</sup> Over 40% of UK Hosts on Airbnb say the additional income helps them afford their home and 15% rely on it to save for their retirement.<sup>3</sup> It is therefore essential that any new planning rules do not restrict the ability of ordinary people to participate in the visitor economy during these difficult times.
- We support the Government in its intention to create a new planning use class for short-term lets, and to give local authorities the power to require planning permission for new STLs in areas where the evidence clearly demonstrates this is necessary to manage specific impacts stemming from excessive dedicated STL activity.
- However, we have concerns with the proposals set out in this consultation document as they represent an interference in people's ability to use their property as they see best, and fail to recognise that in a modern economy many people are living increasingly flexible lives, often working remotely or splitting their time across different locations. In particular, we would highlight the following consequences of the Government's proposals:
  - The Government's proposals create a complicated, arbitrary and awkward distinction between primary and secondary homes. In splitting these apart, someone using their own home for STL is subjected to a cap on the nights they can host each year. In contrast, in the absence of an Article 4 direction, non-primary dwellings would have unrestricted flexibility to offer short-term letting.
  - In an area where an Article 4 direction is made to restrict changes between use classes C3 and C5, the proposals could result in second homes sitting empty and unused for much of the year instead of being able to contribute to the local economy through limited STL.

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<sup>1</sup> BiGGAR Economics Report "England short-term let Economic Analysis" (Sep 2022) commissioned by Airbnb using using internal Airbnb data from Jan 2021 - Jan 2022

<sup>2</sup> <https://news.airbnb.com/en-uk/third-of-hosts-use-airbnb-income-to-afford-rising-living-costs/>

<sup>3</sup> Based on a survey of 4,373 UK Hosts surveyed between July 7, 2022 and Dec. 31, 2022. Margin of error under 2%

- When determining whether there is a need for an Article 4 direction, there is no indication from the Government's proposals that local authorities will be required to consider data from the registration scheme for STLs (being established by DCMS) as part of the required evidence base.
- Finally, we would note concerns about the additional resources that councils will require to handle planning applications in those areas where Article 4 directions are introduced, in addition to the cost of paying compensation when Article 4 directions are introduced without a 12-month notice period. The Government should therefore not proceed with the changes outlined in this consultation without a full business and regulatory impact assessment.
- We instead propose the following, simplified approach:
  - The definition of the C3 and C5 use classes should be distinguished by the number of nights that a property is deemed to be used as a dedicated rental (rather than whether it is a primary or secondary residence). To simplify matters, rather than a cap there should be a threshold set at 105 nights, to align with the threshold set in HMRC's Furnished Holiday Lets Scheme. C3 dwellinghouses used for short-term lets up to 105 nights would remain in class C3 and would thus not require planning permission under an Article 4 direction, while a dwellinghouse used for short-term lets of 105 nights and over would fall within the new C5 class and would need planning permission in areas subject to an Article 4 direction.
  - We agree that permitted development rights should apply for those moving a property from C3 to C5, and back again.
  - If a council decides to introduce an Article 4 direction to restrict the change of use between C3 and C5, it must demonstrate that it has considered data from the DCMS registration scheme as a key part of its evidence base. Article 4 directions must then only be applied to the smallest possible geographical area needed to manage the impacts identified by the council. As Article 4 directions represent an interference in people's ability to use their property as they see best, they should also be time limited and subject to review rather than being permanent in nature.
- Our alternative proposals aim to simplify the system to make it easier for everyday people to understand and comply with, while supporting local authorities in implementing and enforcing the rules more efficiently. Our proposals also aim to avoid unjustified and potentially permanent consequences for those who wish to freely enjoy their home. It will ensure that any decision to introduce an Article 4 direction is supported by robust evidence.





## Question 1

**Do you agree that the planning system could be used to help to manage the increase in short term lets?**

**a) Yes**

We agree in principle that the planning system can be an effective mechanism to manage the growth of new, dedicated short-term lets where evidence demonstrates such a need in specific communities. However, given the impact that the proposed powers to impose planning restrictions on short-term lets could have on businesses and livelihoods, it is essential that councils have the right tools at their disposal to ensure that any interventions made through Article 4 directions are evidence based and targeted only at areas where there are demonstrated negative impacts.

## Question 2

**Do you agree with the introduction of a new use class for short term lets?**

**a) Yes**

We agree with the principle of a new planning use class for short-term lets. However, we believe that the definition of the C5 use class proposed in this consultation does not take into account the changing ways in which people are living and working. It does not recognise that in a global and digitally-connected economy, many people will split their time between different properties, and even countries, and that people may work and live out of different properties at different times (for example, people whose job requires them to be in different parts of the country, or people who move temporarily to live with family members in need of care or support, and who benefit from being able to let out their primary home while they are away). For people in these circumstances, hosting for a proportion of the year can be invaluable in maintaining their property, while also bringing money into the local economy. They should not be restricted in this activity, particularly when the properties in question would not otherwise be available for use as permanent accommodation.

The Secretary of State himself stated that the intention of these rules is not to prevent people from letting out their own home as a short-term let and to instead tackle any acute local issues that might arise from dedicated short-term rentals.<sup>4</sup>

### **The Airbnb Host experience: Hosts who share their primary home could be capped as a result of the proposals in DLUHC's consultation**

- *“My husband and I have been hosting and renting our home via Airbnb since 2010. Since my husband had an almost fatal illness in 2016 and he lost his livelihood, we decided to rent our entire home more regularly. While the house is rented, we have been offering our*

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<sup>4</sup> Daily Telegraph, 6th May 2023

*service as housesitters. We don't charge for this as our own home is rented and we live off the income on that. Renting the house for medium to short periods of time fully furnished and with all our possessions in place gives us more freedom than renting the house full time."*

- *"My girlfriend lives in Scotland and works for BA from Heathrow. She is three weeks on and three weeks off. During the three weeks off we live in her house in Scotland and I work from there. During her three weeks on, we live in my flat in London."*
- *"I'm resident in London but rent on Airbnb when I'm away for long periods such as seeing my husband's family in France, or my family in Brazil."*

By distinguishing C3 and C5 use classes based on whether it is a person's sole or main residence, the consultation proposes to limit how a homeowner can enjoy their own home, even where there is no Article 4 direction in place, and where no local issues exist that support restrictive measures. Under the proposals, primary home owners would need to secure planning permission for a change of use to "sui generis" temporary accommodation if they wish to provide STL beyond the proposed cap (rather than shifting into the new C5 use class by permitted development right, as we propose).

The proposals would disproportionately restrict people's ability to use or enjoy their own property, undermining the stated policy objective of the consultation to give freedom and flexibility to those hosting in their own home. To address this issue, instead of restricting the definition of the new use class to only secondary properties, we believe it is better, and simpler, to define C5 based on the degree of STL activity, so that it specifically captures properties operating as dedicated STLs (i.e. those operating above a night threshold, as set out below).

### **Question 3**

**Do you agree with the description and definition of a short term let for the purpose of the new use class?**

**a) No**

As per our answer to question 2, the C5 use class should be defined to capture dedicated short-term lets only. To achieve this, rather than applying only to second properties (i.e. only properties that are not a sole or main residence), the C5 use class should apply to properties exceeding an annual occupancy threshold. We propose this threshold should be set at 105 nights to align with the threshold set in HMRC's Furnished Holiday Lets scheme. For more information on how this threshold could work and the benefits of setting it at 105 nights, please refer to our responses to questions 11 and 12, respectively.

Including the night threshold in the definition of C5, without the complexity of determining whether a property is a sole or main residence at any given moment, would simplify the rules so that any dwelling-house exceeding the STL threshold in a calendar year would automatically qualify as a dedicated STL and be classified under the new C5 use class. Changes between C3 and



C5 should benefit from permitted development rights so that planning permission for this change is only required if the area is already subject to a restrictive Article 4 direction.



Cornwall

Use class changes, including via permitted development, should not apply to hosting activity which only takes place on parts of a property (such as spare rooms, annexes). We therefore seek the Government's confirmation that any part-use of a property for STL will not be considered as part of determining whether there has been a change of use from C3 to C5.

## **Question 4**

**Do you have any comments about how the new C5 short term let use class will operate?**

**a) Yes**

Any new rules should protect an individual's freedom to enjoy their own home, whilst giving local authorities the tools they need to act only if there is a demonstrated need. However, the proposed changes will lead to limits on the number of nights someone can host in their sole or main residence, even in the absence of an Article 4 direction, while more flexibility would be granted to someone using a second home to host.

As the intention of the consultation proposals is to limit the activity of those short-term lets that could have an impact on housing stock, the proposed new planning use class would be more effective if it distinguished between properties that are dedicated short-term lets, and those that



are used for STL purposes on a more limited basis. This would best be achieved by creating a single STL threshold of 105 nights, from which point a property would change by permitted development right from a C3 to a C5 and be classed as a dedicated STL (which would require planning permission after local authorities have introduced an Article 4 direction).

## **Question 5**

**Do you consider there should be specific arrangements for certain accommodation as a result of the short term let use class?**

**a) No**

There would be no need to introduce additional specific arrangements if the definition of the C5 use class were simplified to relate to short-term letting beyond a minimum night threshold of 105 nights, rather than an assessment of whether or not someone is using it as a primary residence at any point in the year. Through its simplicity, our proposed approach would give homeowners greater certainty over their rights, support host compliance and help make enforcement more efficient for local authorities.

## **Question 6**

**Do you agree that there should be a new permitted development right for the change of use from a C3 dwellinghouse to a C5 short term let (a)**

**a) Yes**

Yes. For the vast majority of England, short-term letting activity provides significant benefits to both hosts and the communities they operate in. It is therefore right that there should be a starting point of permitted development so changes of use between C3 and C5 can continue without any additional planning hurdles.

## **Question 7**

**Do you agree that there should be a new permitted development right for the change of use from a C5 short term let to a C3 dwellinghouse (b)**

**a) Yes**

As above, we believe that people should be able to freely move between the defined use classes unless an Article 4 direction is in place. We also propose that there should be no avenue for securing an Article 4 direction to restrict a change from C5 to C3, as such use changes would align with the government's policy objective to increase supply of C3 housing.



Norfolk

## Question 8

**Do you agree that the permitted development rights should not be subject to any limitations or conditions?**

**a) Yes**

Yes. This would help minimise planning requirements and complexity where there are no local issues.

## Question 9

**Do you agree that the local planning authority should be notified when either of the two permitted development rights for change of use to a short term let (a) or from a short term let (b) are used?**

**a) No**

No. As for other permitted development rights, a property exercising its permitted development rights to participate in short-term letting activity should not have to notify the local authority. Hosts should be able to apply for a certificate of lawfulness to demonstrate their permitted status, although there should be no obligation on them to do so.

In the event of a dispute over whether a property has previously undertaken dedicated STL activity at the point an Article 4 direction comes into force, inclusion on the DCMS register of short-term lets (including occupancy data on the number of nights let for that listing, supplied to the register by booking intermediaries) should suffice to demonstrate the property is already a C5 short-term let. Even where no Article 4 direction is in place, occupancy data from the register can provide local authorities with a robust and accurate evidence base about the actual scale of short-term letting activity in their area.

While not directly relevant to the consultation scope, we want to make it clear that in order for the proposed planning changes to work, it is essential that the DCMS proposals for a registration scheme incorporate data sharing by online and offline booking intermediaries. This would provide the registration authority (i.e., VisitEngland) with the number of nights associated with each registration number over the last year. This will give councils visibility over the actual occupancy levels for each property registered to offer STL and will provide clear data, gathered centrally, to local authorities which want to learn more about the scale of activity in their area.

## **Question 10**

**Do you have any comments about other potential planning approaches?**

- No

## **Question 11**

**Do you agree that we should expressly provide a flexibility for homeowners to let out their homes (C3 dwellinghouses)?**

**a) Yes**

Yes. However, we do not support the imposition of general night caps and we do not consider that either of the options proposed at paragraph 41 of the consultation will be effective in meeting this aim.

Setting a night cap on primary homes through permitted development rights is inappropriate and ineffective as a cap would not have the effect of increasing housing supply, but rather would prevent homeowners from accessing a vital source of supplementary income.

Including the cap within the definition of C3 is equally problematic. In combination with the current proposals, if a primary homeowner wishes to provide short term-lettings beyond the proposed nightly limit of 30, 60 or 90 nights, but also wants to continue to use the property as their primary residence, not only would planning permission be required, but this would be considered a change of use to sui generis temporary accommodation, rather than automatically falling under the new C5 short-term let use class as would be the case for the exact same activity in non-primary residences.

We agree that local authorities should have both better visibility over the types of activity taking place in their area and the tools to intervene when needed in their communities. However, rather

than focussing on whether or not the property is someone's 'sole or main residence', a distinction that does not apply to many people's factual circumstances, a C5 use class that covers those operating dedicated short-term lets would enable the system to more easily differentiate dedicated from occasional short-term letting activity. This distinction would actually help the Government to address housing and tourist accommodation availability and needs in a given area where the data from the new registration scheme shows that local pressures from STLs may exist.

As set out in our answer to question 3, we consider that the night cap proposals should be incorporated into the definition of the C5 use class and that a threshold of 105 nights per year should be set, rather than a cap. In areas where an Article 4 direction has been introduced, planning permission would be required to offer new STL above this threshold (i.e from 105 nights and up), without distinction based on whether the property is a primary residence or not. This proportionate approach would provide clarity, freedom and flexibility for homeowners to let their property, protect the benefits of occasional hosting and still give local authorities the ability to take action in areas where the evidence demonstrates that there are specific problems. Similarly, it should be made clear that letting a part of any property (spare rooms or annexes) remains unrestricted by any cap or threshold and is not included within the remit of C5 as this STL activity does not have any negative impact on housing supply.

## **Question 12**

**If so, should this flexibility be for:**

**None of the supplied options. It should be for 105 nights.**

As stated above, we do not believe that a cap should be introduced solely for those letting out their primary residence, particularly if such a cap applies regardless of whether or not a local council has chosen to introduce an Article 4 direction. Such an approach is disproportionate and overly restrictive.

We instead believe there should be a threshold of 105 nights a year (consistent with HMRC's Furnished Holiday Let scheme), above which, if a local authority were to introduce an Article 4 direction, planning permission would be required for new STL activity in an entire property. This threshold would create a straightforward distinction between occasional letting (which would remain within C3) and short-term letting on a dedicated basis, which would be in the new C5 class. By including the 105 night threshold within the C5 definition, the new permitted development rights would enable flexible changes between C3 and C5 uses under permitted development rights, save for areas where a local authority has a sufficient and robust evidence base to demonstrate that it needs to introduce an Article 4 direction to manage specific local impacts.

We believe the threshold should be set at 105 nights in order to simplify the planning regime for the everyday people who are expected to adhere to and comply with it. This threshold is already in place through HMRC's Furnished Holiday Lets scheme, and therefore will be familiar to some people. Introducing a night cap (30 / 60 / 90 nights) for primary homes risks causing confusion, inefficiencies and potentially deterring people from making use of the very rights the Government is seeking to crystallise.



The Government has acknowledged that a key flaw in England’s planning system is its complexity. A key benefit of our proposal is its simplicity. Rather than introducing new rules and distinctions that would layer on top of an already complex system, our proposal favours a streamlined process with clear permitted development rights and change of use triggers, while making use of as much of the existing framework as possible.

We recognise that within Greater London, the current 90 night cap before needing planning permission will not be affected by the outcome of this consultation, as it is enshrined in primary legislation, and this would not be affected by the revised proposals. If the Government decides not to introduce a threshold of 105 nights as proposed here, we would support a threshold of 90 nights per annum to ensure alignment with the status quo in Greater London -- homeowners in other parts of England should not face tighter baseline restrictions than those already in place in London.



Peak District

## Question 13

**Should this flexibility be provided through:**

- ii) An amendment to the C3 dwellinghouse use class to allow them to be let for up to a defined number of nights in a calendar year.**

As noted above, we do not consider either option to be appropriate, but instead propose that a minimum threshold of 105 nights be included in the definition of what constitutes a C5 short term let, with planning permission only being required to move between C3 and C5 in areas where a local authority has introduced an Article 4 direction.

If the Government proceeds with the proposals as set out in the consultation document, then we would strongly argue that any flexibility should be provided through the use class definition, rather than through permitted development rights.

## **Question 14**

**Do you agree that a planning application fee equivalent to each new dwellinghouse should apply to applications for each new build short term let?**

**a) Don't know**

We have no opinion on this.

## **Question 15**

**Do you agree with the proposed approach to the permitted development rights for dwellinghouses (Part 1) and minor operations (Part 2)?**

**a) Yes**

Yes. We agree with this approach.

## **Question 16**

**Do you have any further comments you wish to make on the proposed planning changes in this consultation document?**

**a) Yes**

We would reiterate here that the Government's proposal to distinguish between primary and second homes for the purposes of defining short-term lets is overly complex, disproportionate and does not contribute towards the stated policy objective, which is to give local authorities the power to manage the growth of new, dedicated short-term lets in areas where the evidence shows this is needed to address local impacts and housing pressures. A far simpler and more fair approach would be to turn the cap into a threshold that would (i) form the tipping point between C3 and C5 use classes, and (ii) be the point at which planning permission is required for new dedicated STL in areas where an Article 4 direction is introduced. As we have set out in this consultation response, this threshold should be set at 105 nights, and should in any case be no lower than 90 nights nationwide as the London night cap is already enshrined in primary legislation.

We agree with the requirement in the consultation that if a local authority decides to restrict dedicated STL activity through an Article 4 direction, such restrictions must be limited to the smallest possible geographic area. However, to ensure that any new planning restrictions do not become permanent, even when there has been a change in local circumstances, the Government should clarify that such directions should last for a limited period of time and be subject to regular review (such as every year) to check that they are still needed.

We would also like to emphasise the importance of requiring local authorities to use the data from the short-term let registration scheme being introduced by DMCS when determining whether local impacts are sufficient to require an Article 4 direction. This is crucial, as without it the purpose of having a register is undermined. This shortcoming could result in some councils introducing an Article 4 direction without drawing upon the full range of data and information that could be made available to them.

We would also like to emphasise the importance of ensuring that the short-term let registration scheme is up and running before any other changes are introduced, including the ability of local councils to introduce Article 4 directions and remove short-term letting activity from permitted development rights. This is because the register will gather data that is pivotally important to ensuring that any further changes are demonstrably necessary and proportionate.

It will take the registration scheme up to a year to gather and publish the registration data needed to understand the scope and volume of STL activity actually taking place, particularly if booking intermediaries share occupancy data on an annual basis. This means it will not be possible to draw informed conclusions about the level and location of activity actually taking place until the first year of registering and reporting has been completed. A one year period of consolidation and consistency, will offer predictability and reassurance to hosts and businesses that the rules will not change again soon, while also giving authorities the chance to review a reliable set of data prior to introducing further regulations.

## Question 17

**Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could give rise to any impacts on people who share a protected characteristic? (Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or Belief; Sex; and Sexual Orientation).**

### **a) Yes**

The community of short-term let hosts in England is incredibly diverse, with almost two-thirds of Airbnb Hosts being women,<sup>5</sup> 20% being over the age of 60 and the overwhelming majority of Hosts sharing just one property<sup>6</sup>. One in five UK Hosts on Airbnb work in either education, healthcare or hospitality.<sup>7</sup>

Over 40% of UK Hosts on Airbnb say the additional income helps them afford their home and 15% rely on it to save for their retirement<sup>8</sup>. It is therefore essential that any new regulations or restrictions are carefully assessed to ensure that they do not adversely affect the diverse host community. In particular, the effect of the proposals would be to treat those sharing their primary

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<sup>5</sup> Airbnb internal data

<sup>6</sup> Airbnb, Survey Sent to Airbnb Host and Guest Accounts Around the World (San Francisco: Airbnb), 2019

<sup>7</sup> <https://news.airbnb.com/en-uk/third-of-hosts-use-airbnb-income-to-afford-rising-living-costs/>

<sup>8</sup> [https://news.airbnb.com/wp-content/uploads/sites/4/2021/05/Airbnb\\_2019\\_Economic\\_Impact\\_Report.pdf](https://news.airbnb.com/wp-content/uploads/sites/4/2021/05/Airbnb_2019_Economic_Impact_Report.pdf)

residence more stringently than those offering dedicated STLs in second homes, which would unfairly impact those who rely on such hosting to make ends meet during a cost-of-living crisis.



Bath

## Question 18

**Do you think that the proposed introduction of the planning changes in respect of a short term let use class and permitted development rights could impact on:**

- a. businesses**
- b. local planning authorities**
- c. Communities?**

**i. Yes**

Short-term letting activity brings tremendous benefits to the UK economy. In a report conducted with BIGGAR Economics, we estimate that travel on Airbnb alone generated £1.8bn for England's economy in 2021, supporting over 65,000 jobs<sup>9</sup>. Airbnb works with communities and destination management organisations across the UK to promote travel to areas where it is needed, during times when it was wanted. This work has helped to level up regional economies by spreading the benefits of the visitor economy more evenly around the country, opening up tourism to towns and villages that have little or no hotel capacity. A vibrant STL community has helped cities such as Birmingham and Liverpool with the capacity needed to host major events such as the Commonwealth Games and Eurovision Song Contest.

It is particularly important that, during the most serious cost-of-living crisis in generations, the benefits of hosting be protected, particularly for those who rely on this income to help make ends meet and who are sharing a space in their primary residence. The proposals outlined in this

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<sup>9</sup> BIGGAR Economics Report "England short-term let Economic Analysis" (Sep 2022) commissioned by Airbnb using using internal Airbnb data from Jan 2021 - Jan 2022



consultation would create additional bureaucracy, complexity and uncertainty for those hosting in their own home about whether they could continue to operate beyond a certain threshold. The proposals will treat those offering STL in their own home more stringently than those operating in their second home, which goes against the stated policy intention of the consultation, and represents a significant restriction on people's freedom to use their property as they see fit. Without any requirement on local authorities to use data from the DMCS register of short-term lets, there is a serious risk of local authorities introducing Article 4 directions without real evidence that planning restrictions on new STLs are actually necessary.

Finally, we would note concerns about the additional resources that councils will require to handle planning applications in those areas where Article 4 directions are introduced, in addition to the cost of paying compensation in the event that compensation when Article 4 directions are introduced without a 12-month notice period. The Government should therefore not proceed with the changes outlined in this consultation without a full business and regulatory impact assessment.

We would of course welcome the opportunity to discuss our response with you in more detail.

*“With more than a million people from all over the world expected to visit Birmingham and the West Midlands over the course of the Commonwealth Games later this summer, I am delighted that Airbnb has come onboard as the official hosting provider for Birmingham 2022. This move means that as well as locals having the opportunity to earn additional income through home sharing, visitors will also get to experience our great region in an even more authentic and connected way. Birmingham and the West Midlands is excited about offering both athletes and visitors a unique and one-of-a-kind Games, and this partnership is testament to that.”*

**Mayor of the West Midlands, Andy Street**