

# Galway City Council - Update on Difficulties with Enforcement of Short Term Letting Regulations

## Summary:

### What is Short Term Letting

- Short term letting is defined as the letting of a house or apartment, or part of a house or apartment, for any period not exceeding 14 days.
- Homesharing (the letting of a room or rooms in a person's principal private residence) will continue to be permissible on an unrestricted basis and be exempted from the new planning requirements.
- Homesharers will be allowed to sub-let their entire principle private residence (house or apartment) on a short term basis for a cumulative period of 90 days where they are temporarily absent from their home.
- Where the 90 day threshold is exceeded, change of use planning permission will be required.

Where letting in Galway City is above the threshold (less than 14 days for a non PPP or more than 90 days for a PPP, then planning permission is required. To date only 5 planning applications have been received by Galway City Council since the Regulations were introduced, despite the fact that the entirety of the LA is a Rent Pressure Zone.

The above outlines many of the difficulties faced by Galway City Council in enforcing the short-term letting market in Galway.

By using the Planning and Development Act/Regulations as an enforcement tool, we are bound by the timelines laid down in the enforcement provided for under this legislation. As it is also a criminal prosecution, the level of evidence needs to be "beyond reasonable doubt", and in the enforcement of short-term letting that is difficult to achieve. From our experience in investigating alleged short-term lettings to date, we have not been able to provide evidence that is beyond reasonable doubt, that short term letting in contravention of the Planning and Development Regs is occurring. In addition to providing the level of proof to confirm that short term letting in contravention of the regulations is occurring, the next hurdle to overcome is to identify the person or persons in breach of the said regulations. In some instances, we have not been able to identify the owner of the property to serve a summons, and in other instances the owner states that they have let the property on a long-term lease, and will not provide the name of the leasee quoting GDPR regulations.

Having regard to these difficulties, in particular with Enforcement and potentially conflicting evidence/affidavits, the only real way of resolving this is for the Government to require that the booking platform is required to provide details of lettings to Revenue including numbers of days occupied for income/ taxation purposes.

There is an expectation by the public that the Local Authority can write to the short term rental online platform to inform them that the letting is unauthorised and that it should cease to be advertised with immediate effect. However, under the current regulations, this is not the case.

## Trends:

The Short Term Letting market in Galway City was not particularly evident nor problematic during the first four months of 2021. This may have been due to the high level of travel and other restrictions in place. However, since the travel restrictions were lifted, there has been an increase in the number of complaints received in relation to Short Term Lettings allegedly taking place in unauthorised properties.

This appears to be most prevalent in the immediate City Centre, particularly with units which can cater to larger groups renting at weekends, presumably for parties. This occurred in the Summer of 2020 also, with complaints associated with loud music, noise and large gatherings.

It appears that some providers are renting properties for themselves and then running them as a Short Term Rental business. During investigations it has been noted that it is often the same provider advertising the properties on short term rental websites.

## **Enforcement:**

The legislation for enforcement of unauthorised Short Term Lettings is similar to all other Enforcement cases and is dealt with by the same team. There is a set procedure to be followed by the Local Authority set down in the Regulations.

Where a complaint is received in writing it is firstly investigated by the Enforcement technician and if validated, a Warning Letter is issued. This process takes c. 6 weeks. The owner then has a period of 4 weeks to make a submission in response to the warning letter issued. If the owner fails to comply with the warning letter, an Enforcement notice is then served giving a reasonable timeframe to discontinue the unauthorised development. The case is then referred to our legal advisors to commence legal proceedings and secure a court hearing date.

In addition, during the pandemic, the on-going COVID restrictions continues to limit capacity to respond to UD complaints and the limited resources are applied on a priority basis across the whole spectrum of Unauthorised Development or Use. It is also the case that a number of scheduled Unauthorised Development court cases in the district court have been adjourned to later dates by the Court given the backlog of criminal prosecutions yet to be dealt with by the courts.

No dedicated staff have been appointed to date. While a recruitment process was undertaken, no suitable candidates were available to take up a 2 year contract. The Covid pandemic then put a hold on and created delays with new recruitment.

## **General Difficulties Encountered:**

There are a number of difficulties being encountered in relation to the legislation for enforcement.

Since the Regulations were introduced in 2019, some properties are being reported as operating an unauthorised use year on year. This trend is appearing again in 2021 in that complaints have been received for properties which were subject to enforcement proceedings in 2019 and again in 2020 in an attempt to stop the unauthorised use.

In some cases warning letters were issued but following the timelines in the legislation, by the time an Enforcement letter had issued, the Season was over and the Short Term Letting had ceased. While an unauthorised use might cease once investigated, there is nothing to say that the operator will not recommence the short term lettings again the following year.

In other cases, particularly in multi-unit apartment blocks around the City Centre, ownership could not be established despite extensive searches in Dublin by Law Agents working on behalf of Galway City Council's legal providers. In these cases, the only option is to write to the Owner / Occupant but it cannot proceed to Court as there is no one to serve with an enforcement notice. In the absence of information regarding ownership, the Local Authority is not in a position to assist the complainant, who are often adjacent neighbours.

When ownership has been established, a number of properties are owned by either companies that no longer exist or Receivers / Stockbroker companies. These companies when contacted have responded stating the lease with their tenant is a long term lease and valid and compliant and that they therefore cannot assist with stopping the short term letting nor give details of the tenant who is carrying out the unauthorised use. GDPR is regularly cited as a reason not to disclose ownership / tenancy details.

Other issues include:

- Some Short Term Letting Platforms do not disclose full property addresses until after booking confirmation.
- Difficult to Prove – Stays of less than 14 days / 90 days or more if absent from P.P.R. and where operators stated the property was their P.P.R. and they have permission from the landlord.
- Corporate Owners of multi-unit blocks leasing on Long Leases – stating unaware of Short Term Lettings
- Management Companies carrying out Short Term Lettings in Blocks – will not provide Owner's Details under GDPR

- Summer Short Term Lettings with no Planning Permission – By the time proof gathered, students in-situ for academic terms
- Establishing Ownership and Contact information. Some company owners registered abroad cannot be followed.

The following are examples of two different cases that the Local Authority have been trying to resolve using the current legislation for enforcement of unauthorised Short Term Letting and the difficulties encountered.

### **1) Taking Court Proceedings / Proof of unauthorised uses – “Beyond reasonable doubt”**

Galway City Council have commenced legal proceedings on an alleged unauthorised Short Term Letting in the City Centre which has been the subject of numerous ongoing complaints and one where the police have often been called for public order, noise and nuisance complaints.

GCC legal advisors have reverted with a number of difficulties they perceive of being successful proving “beyond reasonable doubt” that the use for Short Term Letting is unauthorised in the context of Section 6(5)(g)(i) of the Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2019 which states that it shall be exempted development where the aggregate number of days during a year in which the house is the subject of short term lettings does not exceed 90 days.

The advices received from Legal Counsel are as follows:

- *This is a criminal prosecution so the standard here is “beyond reasonable doubt” so it is a very high standard for Galway City Council to reach and if the defendant claims that the property is not let out for more than 90 days a year, it is going to be very hard for GCC to prove otherwise so we must highlight this as a risk here from the outset*
- *The first prosecution by Galway City Council here should ensure that the property is let for more than 90 days a year so that this defence of exempted development cannot be put forward so I await hearing with your comments as to how sure you are that the property is let out for more than 90 days a year*
- *I note from the Enforcement Officer’s Report dated that “a search on the online booking sites state that the property is currently not taking bookings” so this would suggest that the property is not let out on a year round basis and it may indeed be let out for less than the 90 days permitted per year. The Report also states that “a site inspection was carried out on the 21<sup>st</sup> September 2021. I called to the property but could not gain access. All curtains to the front of the property were drawn. The key Lockbox for anytime check-in was still in place”. The fact that the check-in key lockbox is still in place is not proof that the property is still being let out as the owner would be fully entitled to leave the check-in box there for when the property is being let out for the 90 days a year (or less).*
- *I note from the reports/internet searches/complaints that the property was let out for large bookings but again, this is not proof that the property is being let out for more than 90 days a year*
- *There are also difficulties in this case with regards to the ownership as the property is Registry of Deeds and as per my previous email on this file dated 2<sup>nd</sup> October 2020, “there is always the caveat with Registry of Deeds searches that they may not be fully up-to-date as seen from the fact that the Conveyance to Mr. XXX was dated in May 1998 but was not registered in the Registry of Deeds until almost 3 years later in April 2001. This may be the case with the current owner i.e. they may not be showing as registered in the Registry of Deeds” so therefore, I would recommend that updated searches are carried out to confirm the current owner before legal proceedings issue here*
- *If your instructions remain to proceed with this prosecution, I would suggest carrying out further inspections/property visits on a regular basis over the coming months to confirm how often the property is let out. In order to overcome the 90 days hurdle, the Reports would need to show numerous visits to the property whereby the planning enforcement officer met with renters at the property whom confirmed that they were renting out the property. Further information in relation to the length of their stays would be*

*helpful as would evidence from neighbours to confirm how often the property is let out and for how long. It may be worthwhile asking the neighbour (complainant) for further information in this regard and they could be asked to keep a log going forward and as to what dates the property is let out/occupied going forward. The complainant would need to be agreeable to attend Court and give evidence in relation to this log as otherwise, it would not be acceptable evidence in Court as it would be deemed to be Hearsay Evidence if it was not direct evidence from the party themselves.*

- *The Enforcement Notice here is dated 31<sup>st</sup> May 2021 but section 154(12) of the Planning and Development Act, 2000, states that an enforcement notice shall cease to have effect 10 years from the date of service so the legislation clearly supports that the Enforcement Notice will remain valid for a 10 year period. Therefore, the Enforcement Notice will not expire any time soon here so I would suggest carrying out visits to the property on a bi-weekly basis until the end of the year to confirm if the property is let out for more than 90 days a year. If you visit the property on a number of occasions over the coming months and there is no sign of anyone renting out the property then this obviously will not help your case but it will give you an indication of whether you should proceed with this particular case. However, if your visits show regular interaction with renters at the property and if they confirm that they are staying at the property for extended periods of time then this will certainly help your case.*
- *I appreciate that there is quite a bit of extra work needed here but these are extremely difficult cases to proceed against as it is extremely difficult to prove that the property is rented out for over 90 days per year and we must highlight this risk to you from the outset in that it will be very hard to obtain a successful prosecution in this case without additional information/evidence confirming that the property is let out for more than 90 days a year.*

This case is ongoing. It will take significant time and resources for the Local Authority to gather sufficient evidence to prove the unauthorised use beyond reasonable doubt. Based on trends observed, It is likely that the Short Term Letting will be ceased or reduced over the Winter / student months and recommence again next Summer.

This same process would be required for all other cases that are taken to court under the current legislation.

#### **Issues regarding Proof to avail of exemptions for PPR:**

Galway City Council have a case on hand which first arose in 2019 and again in 2020 with one complainant who eventually was forced to sell his adjoining apartment due to the amount of nuisance and noise he was forced to endure.

A complaint was received in Summer 2021 from a different adjoining resident, together with the Management company, of significant noise, nuisance and intimidation. The operator of the STL has submitted a Form 15 to avail of the exemption as her PPR with intent to rent out for 90 days. All complainants have refuted her statement as the property being her PPR and wish to submit an affidavit swearing to same.

Galway City Council sought legal advice on the issue where there is reason to doubt the veracity of PPR status in support of a Form 15 exemption. The legal advisors who would be responsible for taking the case to Court have commented as follows:

*“A Principal Private Residence (PPR) is defined on the Revenue website as “a house or apartment which you own and occupy as your only, or main, residence”. However, “main residence” is not defined so it is not entirely clear when a person owns/occupies more than one residence and there are a number of different factors. I do recall a case in Galway Circuit Court (which I was not involved in) but where the Judge determined a principal private residence as a residence that is occupied by the person at least 4 nights a week (on average). This would be a safe rule of thumb to apply as a person could not successfully argue that the property was their principal private residence if they were not occupying it more than half the week on average.*

*In your scenario, the owner stated on her Form 15 that the property was her PPR but she was availing of the exemption to use it as a Short Term Let for 90 days a year. If the owner was still occupying the property for the other 275 days a year, then she would have a very strong case to state that the property is her PPR as she is occupying it for more than 4 nights a week (on average over the course of the year).*

*The complainant could certainly submit an affidavit refuting the owner's claim it is her PPR and if the complainant/neighbour swore on affidavit that the property has been let out for over 90 days a year, then the owner would certainly have a case to answer for unauthorised use of a short term let without the necessary planning permission. If the complainant went further and swore an affidavit stating that the property was let for more than 183 days a year (i.e. more than half the year) then the owner would find it very hard to claim it is her PPR in those circumstances.*

*However, the owner would likely swear an affidavit confirming the opposite and if she has a Form 15, sworn affidavit, and utility bill in her name – it would be very hard to argue against this without further proof. You could ask for additional evidence confirming proof as a PPR in the form of additional utility bills but this is unlikely to be of any assistance to you as all of the said utility bills are likely still in the owner's name even if the property is being rented out on a short term basis. You could ask for details of bookings/reservations (with redacted names and contact details for GDPR reasons) but again, the owner would still be able to mislead the position with this information by excluding additional bookings/reservations beyond the 90 days.*

*In summary, it is very difficult to proceed with these sort of cases where the owner is claiming the 90 day exemption and if they are submitting documentation to support this position. I fully understand your concerns over the veracity of such documents but it is very hard to prove otherwise without additional proof from your end. If you proceeded with such a prosecution, it would likely come down to the owner's evidence under oath in Court and whether the Judge believes them or not. GCC can bolster their evidence with affidavits of neighbouring residents confirming that the property is let out more than 90 days a year or with evidence from booking websites (if you are able to obtain same) but if the defendant swears under oath in Court that it is their PPR and that it was not let out for more than 90 days a year, it is very difficult to prove otherwise unless the Judge forms the view that the defendant is lying under oath. It is a criminal prosecution under the Planning and Development Acts and so the criminal standard of proof of "beyond reasonable doubt" must be met and it is a high bar to achieve as if there is any reasonable doubt created by the defendant by way of Form 15, sworn affidavit, utility bills, etc. confirming that the property is not let out for more than 90 days, it would be extremely difficult to proceed with a prosecution in my opinion."*

This case is ongoing. During recent weeks, Galway City Council have contacted the Management Company to ascertain if the unauthorised use is still ongoing. As per 2019 and 2020, the operator has now let the rooms on a longer term letting but it is anticipated that the unauthorised Short Term Letting will recommence in summer 2022 and possibly Christmas 2021 for a number of weeks. The Management are seeking legal advice to ban all short term letting in the apartment blocks. However, the operator of the alleged unauthorised short term letting has sought her own legal advice and informed the Management Company they will not be successful. We await an update in this case.