

Galway City Council Planning SPC

Recommendation to Government - Enforcement of Short Term Letting Regulations

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.

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.

Difficulties posed by current legislation:

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

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.

By using the Planning and Development Act/Regulations as an enforcement tool, the Local Authority is 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. Unlike a physical structure ie. an extension/ structure, which can be physically measured / removed, proving an unauthorised short term use of a property which has permission for use for residential purposes is almost impossible.

From experience in investigating alleged short-term lettings to date, we have not been able to provide sufficient evidence that is beyond reasonable doubt that short term letting in contravention of the Planning and Development Regulations 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. In

other circumstances, the operator has claimed that the property is a Principle Private Residence (PPR) and has submitted the relevant Forms to the Local Authority claiming an exemption. It has proved difficult to dispute a claim of PPR exemption beyond reasonable doubt.

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”.

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.

2) 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 advices received from Legal Counsel are 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.

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.

Summary:

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.

A front page headline of the Galway City Tribune recently stated **“Residents “in hell” as staycationers party”**. The article cited instances of 60% STLs in blocks of apartments, up to 18 people at times in some units, fire safety concerns, city rents skyrocketing, hotels paying commercial rates but STLs not offering an unfair commercial advantage.

The article also recognised the serious problems and difficulties faced by Local Authorities trying to enforce the current regulations and the high level of frustration by complainants with the protracted process and at times, lack of success, in terminating the unauthorised use.

As you are aware, Housing for all, the Government’s housing policy to 2030, gives a commitment to ensure efficient use of existing stock. It includes a proposal for new regulation of short-term lettings through a Fáilte Ireland registration system. The new housing plan sets out that government will bring forward the revised regulatory controls requiring the registration of short-term and holiday lets with Fáilte Ireland with potential for the Residential Tenancies Board to be tasked with an enforcement role as part of the process

There may be concerns that Short Term Letting provides an additional accommodation facility in a City and therefore aids the Tourism sector. It may be more productive 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 as a method of regulation the Short Term Letting market. It is recognised that when the Non Principle Private Charge and subsequently the Household charge were moved from within the remit of Local Authority and converted to Local Property Tax which was managed by Revenue the percentage of compliance increased dramatically.

The Planning SPC have discussed and recognised the issues and difficulties in enforcement under the current Regulations for unauthorised Short Term Letting, which is negatively impacting on the Housing rental market, commercial rate payers in the hospitality industry and the quality of life and residence of those most severely impacted in their daily lives.

In order to submit a proposal to Government with a recommendation as to how the enforcement in this area could be improved to be more efficient and effective at curtailing and ultimately ending unauthorised Short Term Lettings, the Planning SPC would welcome comments and recommendations from Elected Members.

It would be appreciated if any suggestions could be returned to Ms. Emma Silke, Administrative Officer, Planning section emma.silke@galwaycity.ie no later than Friday 26th November in order that the recommendation be finalised for the Planning SPC meeting on 10th December 2021.

