

HOUSING, PLANNING AND LOCAL GOVERNMENT



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Policy Briefing Paper No. 7

**REGULATION OF
SHORT TERM LETTING
PLATFORMS**

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Regulation of short term letting platforms

The rise of online short term letting platforms and the impact they have on the private rented sector has generated a lot of debate.

Supporters say these online platforms are important as they support the local tourism industry and allow people generate additional income.

Detractors say they are having a negative impact on the rental market by the reducing supply of long term rented properties. This coupled with increasing demand for accommodation in the private rented sector is contributing to the homelessness crisis and generating anti-social behaviour.

An unregulated short term lettings sector is not ideal for any of the stakeholders involved, including hosts, users, neighbours and landlords.

Sinn Féin supports a fairly and properly regulated short term lettings sector that enhances the tourism sector and allows families generate income while at the same time ensures that the sector does not negatively impact on the housing market or contribute to the rising level of homelessness.

Problems with online short term letting platforms

Airbnb was launched in 2008 and is billed as a home sharing service that allows people to generate income from their extra space and allows tourists to book accommodation often at a lower price than traditional tourist accommodation.

However Airbnb and online platforms like it have encountered a number of pitfalls since being rolled out. The main concern is that Airbnb is not being used as it was originally intended, as a home sharing platform.

Short term letting and home sharing make a valuable contribution to the tourist economy and allow families to bring in much needed extra income.

However, there is clearly a problem with commercial landlords with multiple listings using Airbnb to maximise profits and in some cases to circumvent planning regulations and tax laws.

There are also concerns around anti-social behaviour. For example in October 2016 residents in Spencer Dock apartment complex in Dublin were told by their property management company that that short-term lets via Airbnb or other short term letting platforms are contrary to their residential and tenancy contracts. This was due to an increase in footfall at the weekends and security needed to curb anti-social behaviour.

Other problems include a lack of clarity around the legal status of tenants utilising platforms like Airbnb without either their landlord's permission or knowledge. Insurance cover is also an issue. Liability for accidents in Airbnb properties is not very clear and fire safety is also a concern. Under the Fire Safety Acts an Airbnb property could be considered guest accommodation and different fire safety standards apply.

While data on the impact of short term letting platforms on the broader housing market remains patchy it is clear that in certain high demand areas such as Dublin 1, 2, 7 and 8 a significant volume of properties that would otherwise be used as standard rental units are being transferred over to short term lets. This is having a negative impact on the rental market in areas that often provide lower cost accommodation. In turn this is adding to the homeless crisis.

Issue with planning permission

Under Irish planning law all development including a material change of use requires planning permission unless exempted.

Article 10(4) of the Planning and Development Regulations 2010 contains a proviso that a house that is used for overnight guest accommodation is classified as an exempted development. This is as long as it meets certain criteria including not more than four bedrooms being used for overnight guest accommodation. However apartments do not benefit from this exemption.

There is a mechanism available under section 5 of the Planning and Development Act 2000 where if there is a question as to whether a development is exempted or not any citizen can ask for a declaration on the issue from the relevant planning authority.

For example last year An Bord Pleanála ruled that planning permission is required for the exclusive use of a residential apartment for short term letting purposes in the Templebar area of Dublin. The property was on the market for over €400,000 and the accompanying ad stated that it had an annual rental income of around €80,000 per year due to short term letting. To An Bord Pleanála this constituted a material change of use and the owner was in breach of planning regulations.

On foot of this ruling and in an attempt to provide some clarity the Department of Housing, Planning and Local Government issued a circular to local authorities on the issue of planning permission and short term lets.

The circular states:

*"In the first instance, the purpose of this circular is to address these issues where an application is made for permission under the Planning and Development Act 2000 (the Act) for change of use for short term letting purposes."*¹

The guidance provided in the information note states that the immediate factors for planning authorities to consider are:

1. Urban centres where there is a high demand for residential rental accommodation
2. Whether a rent pressure zone has been designated for the local electoral area
3. High numbers of persons on the local authority waiting list for social housing in the area
4. Difficulties in establishing HAP or RAS tenancies
5. Concentration of short term letting properties within a particular area or a particular multi-unit development²

It also lists three possible scenarios in cases where a change of use is applied for and factors to be considered. This includes an individual applying for a change of use for short term letting in an existing single apartment, individual applying in relation to a non-exempt house; and change of use to short term lettings of entire or part of an existing apartment building. The most relevant of which are the apartment lettings.

1 http://www.housing.gov.ie/sites/default/files/publications/files/circular_pl10_aph3_2017.pdf

2 http://www.housing.gov.ie/sites/default/files/publications/files/circular_pl10_aph3_2017.pdf

Existing single apartment

For an existing single apartment a grant of permission may be appropriate where the applicant is the owner or occupant of the apartment, the apartment has a permanent resident and there is confirmation of consent from the management company. Crucially however planning authorities must also consider the following factors.

- Short term letting does not exceed 60 nights in any one year and not more than 5 consecutive nights in any specific letting
- Not more than 2 rooms per apartment to be occupied per night and not more than 4 guests
- Not more than 20% of the apartments accessible on any floor from any access stairwell/lift core to be approved for short term letting, on a first come first served basis, as is the norm for other locally contentious uses building up in an area.

Entire or part of an existing apartment building

In these cases planning authorities should consider whether the apartment building in question is in a rent pressure zone. If it is it may not be appropriate for planning permission to be granted for the period of the application of that designation. In other circumstances planning permission may be appropriate subject to confirmation of consent of the Management Company.

While this circular does attempt to provide some clarity for when change of use planning permission is sought, issuing it in isolation brought more confusion. Ideally the circular should have been issued in tandem with a legal definition of short term lets.

The enforcement of planning law is also a key issue. Local authorities must have the resources required to make sure that planning regulation is adhered to. This requires a greater investment in inspection teams and a higher level of inspections.

The wider issue of regulation for the sector has still not been tackled by the government. The Department of Housing, Planning and Local Government has established a Working Group on the issue and is due to report back by the end of 2017.



Government inaction and lack of data available

The government has been slow to act on this issue. However there is also a lack of required information being shared by short term letting platforms including Airbnb with policy makers.

There is concern among policy makers that Airbnb and platforms like it may be having an adverse impact on the availability of properties for long term rent, especially in high pressure urban areas.

It is impossible to measure the impact as there is a distinct lack of comprehensive data available on the level of short-term letting and how many units are unavailable for long term rent due to this activity.

During a series of Oireachtas Housing Committee hearings on the issue last summer a number of issues were raised, including the lack of regulation, the situation in other jurisdictions, the lack of data available.

Regulation in other Jurisdictions

Airbnb and other short term letting platforms are operating in a regulatory vacuum in this state. Anecdotal evidence suggests that the rising prevalence of short term lets without any regulatory system in place is having an adverse impact on supply in the rental market.

The Joint Committee on Housing, Planning and Local Government published a report in October 2017 on the impact of short term lettings on Ireland's Housing and Rental Market. This report outlined the findings of preliminary research by Dublin City Council (DCC) on the extent of Airbnb activity in Dublin in March 2017. It suggested that there was a total of 6,729 listings existed on Airbnb for all of Dublin, with 5,377 listings located within the Dublin City Council area at that point in time. Of these, 50% were listings for entire houses or apartments only.

In a city with an acute shortage of affordable rental properties it is worth noting that the Committee also noted that

*"...there are currently more short term rental properties available in the Dublin 1 area than there are traditional rental units and that at least 30 former rented units have been lost in the past 18 months as a result of change of use for the purposes of short term lets."*³

Ireland has been slow to act on this issue, despite many other European countries taking decisive action, such as the cities of Barcelona and Amsterdam.

It is also worth noting that in the majority of European cases action was taken at a city or municipal level. In Ireland due to a weakened system of local government Dublin City Council is dependent on regulation and guidance from central government.

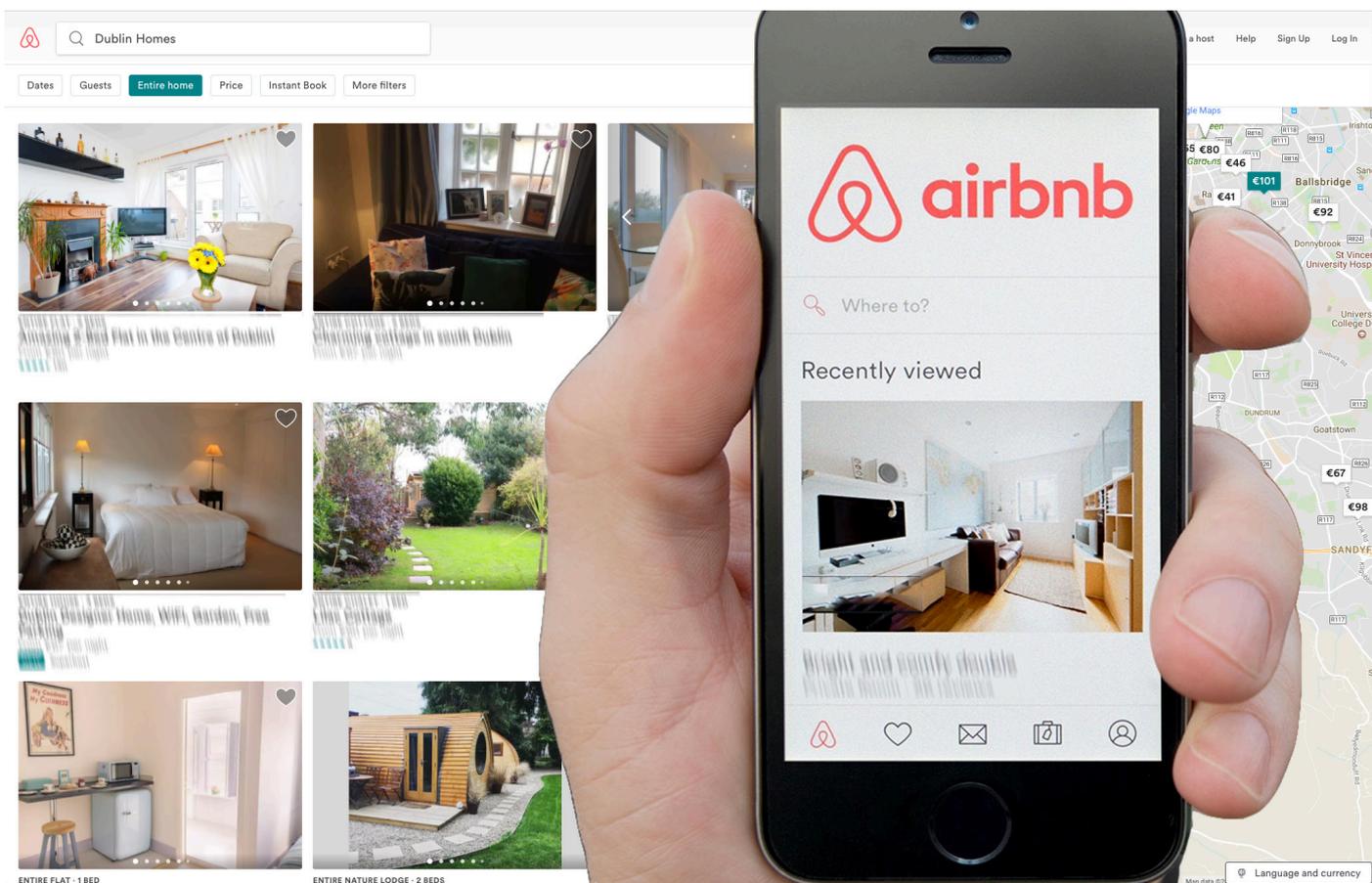
A number of parliamentary questions were submitted and questions were asked of the Minister for Housing as to when we can expect some movement on regulation.

From these responses the government seemed to be leaning towards a system of self-regulation via a memorandum of understanding with Airbnb.

Unfortunately Airbnb has a poor record of abiding by actual regulations imposed by cities in other EU member states.

For example the city of Barcelona was engaged in a long running dispute with the platform over the listing of hundreds of properties for short term lets that did not have the required permits from

3 https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_housing_planning_and_local_government/reports/2017/2017-10-05_the-impact-of-short-term-lettings-on-ireland-s-housing-and-rental-market_en.pdf



city hall. After the issuing of fines to the company and threats to bar Airbnb from operating in the city Airbnb agreed to remove listings from the website that did not comply with the city regulations. The city has also increased the number of inspectors who are tasked with identifying illegal rentals.

Some cities where strict regulation appears to be working include Berlin. Since May 2016 the city has banned hosts from renting out their homes to short-term visitors unless they occupy at least 50% of the homes themselves.

While landlords can apply for a permit for short term lets, these are limited in number and those who operate without permission face a fine of up to €100,000.

According to Airdna, a provider of data and analytics to Airbnb hosts, the rise of the number of entire home listings flattened after May 1, 2016, however by comparison, the number of shared home listings continued to rise.⁴

Interestingly the data indicates that for professional Airbnb hosts, these are hosts who list more than one property in a month, the number of listings fell by 60%.

Other lessons can be learned from Quebec in Canada. The Quebec government originally introduced legislation to ensure that hosts obtained a permit and paid a hotel tax. However the majority of hosts failed to register. The province subsequently reached a deal with Airbnb that the platform would collect the tax on behalf of its hosts.

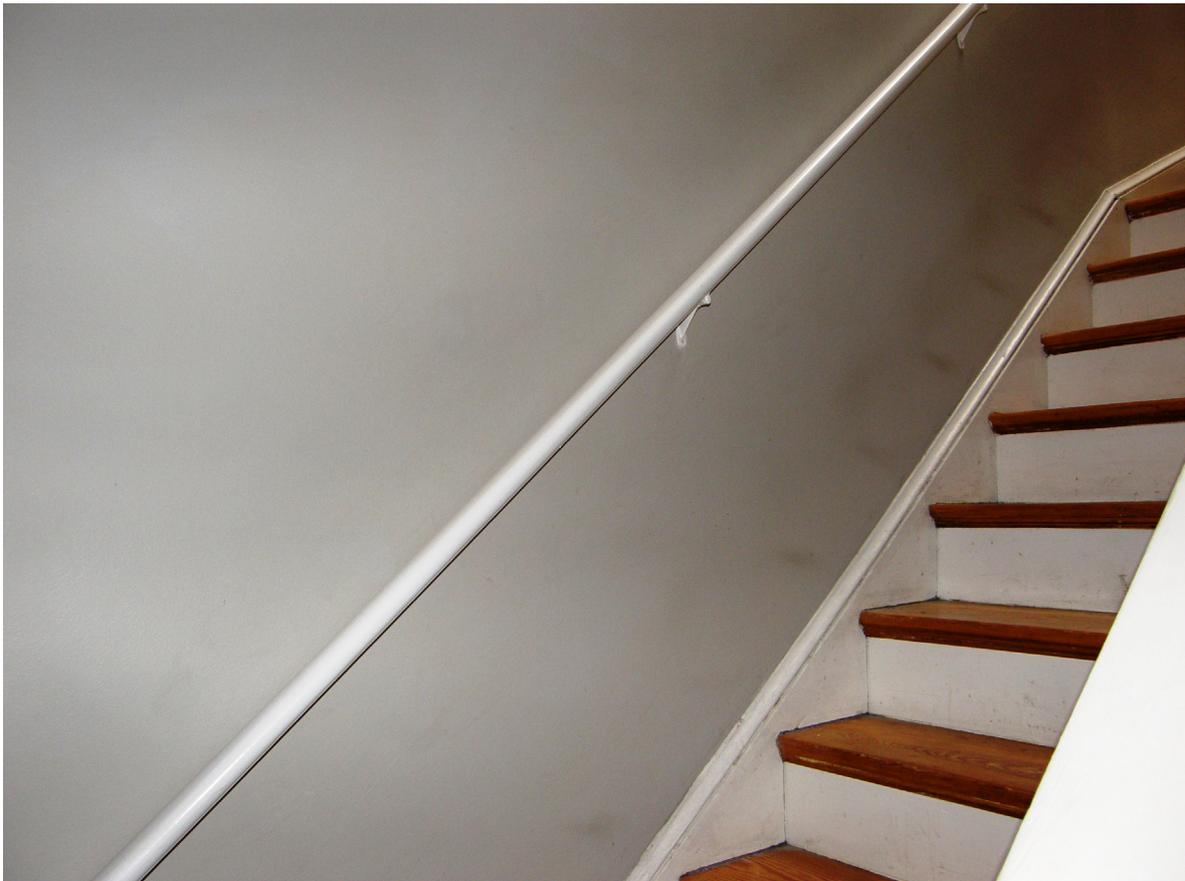
⁴ <http://blog.airdna.co/effects-airbnb-regulation/>

Report of the Committee on Housing, Planning and Local Government

In October 2017 the Joint Committee on Housing, Planning and Local Government published a report containing thirteen recommendations aimed at tackling the lack of regulation and oversight of the short term letting market in this state.

- The report recommends that a two-level regulatory regime must be introduced via primary legislation in relation to short term lettings.
- This would involve a strict regime of regulations targeted at entire property, short term commercial lettings at one level. This is designed to combat the practice of commercial landlords with multiple listings using short-term letting platforms to maximise profits, thus removing properties from the long-term rental market.
- The report also recommends that a less stringent second level of regulations for those that rent out their own primary residence for a period of 90 days or less per year should be introduced.
- These regulations would be supported by a licensing system. This system would require all short term letting platforms to register all hosts with the relevant local authority. The introduction of such a system would legally require the platform to provide information with the local authority on the letting type, availability and the amount of revenue generated.

The report also recommends a review of planning and development laws and the commissioning of a study on the impact of short term lettings on Ireland's housing and rental market.



Lack of regulation in Ireland

Sinn Féin welcomed the publication of the Departmental circular guidance when change of use is applied for under planning. However it is just guidance and without strong enforcement and proportionate penalties landlords will continue to flout planning law.

The Housing Committee report indicates that there is cross party support for a two tier regulatory regime supported by a licensing system.

The limited data available from Berlin demonstrates that a strict regime does not necessarily impact on the original intent behind Airbnb as home sharing numbers went up.

There is a problem however as data analysis and policy making is dependent on limited sources of information outside Airbnb. On a number of occasions Sinn Féin has sought answers from the company on specific units of accommodation. By this we mean self-contained units, in the form of a house, an apartment or a granny flat.

Of the entire home listings on Airbnb how many are not primary residences. Of these how many are available for a full year, how many are available for between six and twelve months and how many are available for between two and six months?

The answers to these questions are important because then we can compare like with like. For example if 95% of the lets are only available for a few months a year, then it is highly unlikely that Airbnb rentals are impacting on the supply of long term lets.

We also accept that shortcomings in Irish legislation are also hampering the collection of data. There is no definition of either primary residence or short term let in Irish Law. However there is nothing to prevent Airbnb from asking hosts to state whether this is his or her primary residence. That data would be valuable.



Sinn Féin Recommendations

1. Government must introduce as a matter of urgency a robust regulatory framework for short term letting and short term letting platforms that protects hosts, guests, the housing system and the public interest.
2. This would best be achieved by setting out in primary legislation a definition of short term letting; the responsibilities of hosts of various categories of lets in terms of planning, minimum standards and tax compliance; the responsibilities of platforms in terms of registration, data collection and sharing; and the role of Government agencies in terms of enforcement and research.
3. For hosts seeking to let out their principal private residence for sixty days or less per year no change of use planning permission is required
4. For hosts seeking to let out their principle private residence for more than sixty days per year planning permission should be required.
5. For hosts who are letting out dwellings other than their principle private residence planning permission should be required irrespective of the number of days it is being made available.
6. Planning Regulations should be provided to local authorities setting out the basis upon which such applications should be judged. In addition to standard planning considerations factors such as potential impact on the private rental market and potential impact on levels of homelessness should be included.
7. A statutory licensing regime should be introduced, administered by short term letting platforms, through which all hosts register, provide set data and are made aware of their planning, minimum standards and tax obligations.
8. Hosts who do not use on line platforms or off line letting platforms would also be covered by the planning regulations and *licensing* regime.
9. Hosts, via their platforms, must identify whether their let is their principle private residence; how many nights a year it is available, how many nights a year it is let, the number of guests hosted and the income derived from letting activity. This information shall be shared with Local Authorities and Revenue.
10. The platform will be responsible for informing the host of their legal responsibilities at registration and if/when a host moves between the two levels of regulation.
11. Both the platform and the host may be liable for breaches of the *licensing* regime and appropriate punishments as set out in legislation.
12. Local Authorities in areas where short term letting exists must have dedicated staff to monitor the sector, enforce the regulations and collate data from the platforms.
13. Department of Housing must conduct an annual review of the sector and publish a report detailing activity in the sector, its impact on tourism, on the housing market, levels of compliance and enforcement.



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