



# COTSWOLD DISTRICT COUNCIL

## GUIDANCE FOR HOLIDAY ACCOMMODATION WITHIN COTSWOLD DISTRICT

1. Within the Council's district there are many developments providing holiday accommodation where the units of accommodation are subject to restricted occupancy conditions in the following general form (although there may be slight but insignificant variations from development to development):

“Notwithstanding Classes C2 and C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, the lodges shall be used to provide holiday accommodation only and they shall not be used as permanent unrestricted accommodation or as a primary place of residence”.

2. Some of the developments are also subject to additional restrictions preventing use of the holiday accommodation during certain periods, for example:

“The holiday lodges to be erected as part of the development will not be occupied from [eg] the sixth January until the fifth February inclusive in each year”.

3. The reason why the Council feels it is important to make these holiday developments subject to these restrictions is because allowing unrestricted residential development away from existing towns and villages would be contrary to long-established planning policies for the protection of the countryside and sustainability objectives. There are also benefits in providing holiday accommodation in that it encourages people to visit our popular and attractive area and contributes to the local economy during their stay whilst ensuring that people staying in the holiday developments do not place an undue burden on local services. Additionally, the economic activity generated by allowing holiday accommodation also delivers enhancements to the wider landscape, biodiversity and public access to the countryside. Equally, making holiday accommodation available in this way provides people who live elsewhere with an alternative to purchasing holiday accommodation in villages which could result in a reduction in the local housing stock and potentially increased pressure in more sensitive landscapes.

4. The restrictions on occupation are backed up by requirements on the developers who built the development to monitor the occupation of the holiday accommodation within their developments and to report any breaches of the restrictions to the Council. In many cases, the above restrictions and requirements are duplicated in planning agreements relating to the developments and, subject to any necessary modifications, in the long leases granted by the developers.

5. The Council takes the maintenance of these restrictions seriously. In recent years some of the holiday accommodation has been occupied in breach of the occupancy conditions. The Council has served a number of enforcement notices in respect of breaches and these have been upheld on appeal by the Secretary of State.

6. The restriction is to ensure the accommodation is not used as a principal or primary residence for the reasons set out in paragraph 3 above. This stance has been supported by a Planning Inspector appointed by the Secretary of State and the Council will continue to investigate suspected breaches.

7. Where holiday accommodation is used throughout the year for a succession of holiday lets by separate individuals then subject to other conditions being complied with this would be acceptable. Similarly, where holiday accommodation is used for "holiday" breaks throughout the year, then that would comply with the terms of the occupancy conditions.

8. For these purposes, the Council regards a "holiday" as being something within the dictionary definition of that word. As noted in the Planning Inspector's decision notice (ref: APP/F1610/C/09/2119532), "The Concise Oxford English Dictionary defines holiday as: "noun. 1) an extended period of recreation, especially away from home; 2) a day of festivity or recreation when no work is done".

9. It has been suggested that the concept of a "holiday", especially in this busy day and age, is inherently uncertain, and so that a restriction based upon "holiday" occupation is unenforceable. But relevant case law establishes that this is not correct, see *Chichester District Council v. Secretary of State for the Environment* [1992] 3 PLR 49, in which the High Court had no doubt that, if enforcement action were taken on the basis of a "holiday occupancy" condition, there would be little difficulty in deciding on the facts of the case whether the unit in question (a chalet in that case) was being used for holiday accommodation or as a primary or principal residence.

10. Equally, the imposition of "holiday occupancy" conditions is expressly commended in paras. 116 and 117 of Circular 11/95: The Use of Conditions in Planning Permissions and in Annex B to the DCLG's Good Practice Guide on Planning for Tourism (2006). Furthermore, the Secretary of State has upheld the Council's planning conditions as being sufficiently certain and enforceable in a number of recent appeal decisions.

11. There are various factors which may indicate that holiday accommodation is being occupied in breach of the occupancy conditions. Whilst the responses to any one of these questions may not be decisive or critical in itself, the overall responses are likely to lead to a picture of occupation that will identify breaches. Whilst it is impossible to provide an exhaustive list, these factors include:-

- (i) An occupier (or spouse/partner or other family member) carrying on their business or employment either based at the holiday accommodation or elsewhere;
- (ii) An occupier or members of their family being registered permanently with a local GP;
- (iii) An occupier's child attending a local school;
- (iv) An owner/occupier's family continuing to reside in the holiday accommodation as a principal or primary residence;
- (v) The letting of the holiday accommodation for any purposes other than for holidays.

12. For the avoidance of doubt, even if retired, any occupier must have a principal or primary residence. Similarly, on sites which are subject to a restrictive condition requiring the holiday accommodation to be unoccupied for a certain period in the year, the Council will not accept occupation by a person using the holiday accommodation as their permanent or primary place of residence simply because they observe the requirement to vacate for, say, one month in each year. In both cases, the Council would not regard such occupation as complying with the terms of the occupancy restriction.

13. Having regard to the importance which the Council attaches to the maintenance of these restrictions, the Council will use its authority to ensure compliance by the occupiers and owners through examination of the records of occupation kept by the site developers and/or by seeking information through the service of Planning Contravention Notices (PCN). In accordance with current legislation and best practise these will only be used where it appears to the Council that there may be a breach of planning control. This can be done without infringing the occupier's human rights because the service of a PCN to seek information is expressly provided for in section 171C of the Town and Country Planning Act 1990 (as amended). Occupiers' rights to protection of personal information under the Data Protection Act 1998 will similarly not be infringed because they should be aware that the developers will collect the relevant information for the purpose of ensuring compliance with the restrictions and have registered with the Information Commissioner accordingly. Occupiers should also be aware that data relating to their occupation is collected by the developers and shared with the Council. Any data collected will not require authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA). Occupiers should further note that any information supplied to the Council's Revenues and Benefits Section is shared within the Council to monitor compliance with the occupancy conditions.

14. As noted above, where there appears to the Council that there is a breach, the Council will consider whether enforcement action should be taken, having regard to the relevant advice in PPG 18, Planning Circular 10/97 and the Good Practice Guide for Enforcement by Local Planning Authorities. Non-compliance with any enforcement notice could lead to criminal proceedings. The Council may in appropriate circumstances invoke all or any of the other remedies available to it to ensure compliance, such as enforcement by injunctions.

15. The Council regards visitors and holiday homeowners as an important component of the economic success of the area and actively supports and promotes tourism. The above guidance is therefore aimed towards ensuring that the holiday homes are used or are allowed to be used for holiday accommodation only.