



**AGENDA ITEM (11)**

**GUIDANCE NOTE FOR HOLIDAY ACCOMMODATION IN COTSWOLD DISTRICT**

<b>Ward Members</b>	All Members
<b>Accountable Officer</b>	Philippa Lowe Head of Development Services 01285 623000 Philippa.Lowe@cotswold.gov.uk

<b>Purpose of Report</b>	To consider approval of a Guidance Note and supporting documents as part of the Council's wider approach to the Enforcement of Holiday Occupancy restrictions.
<b>Recommendation(s)</b>	<b>That the Guidance Note be approved for operational purposes and used as a reference document when giving advice to customers and when considering Enforcement Action.</b>
<b>Reason(s) for Recommendation(s)</b>	In the interests of consistency, and to ensure a fair, transparent approach to the Enforcement of planning conditions and the requirements of Section 106 Agreement clauses.

<b>Ward(s) Affected</b>	All
<b>Key Decision</b>	No
<b>Recommendation to Council</b>	No

<b>Financial Implications</b>	None
<b>Legal and Human Rights Implications</b>	This Guidance Note is intended to support a consistent and transparent approach to the enforcement of planning restrictions.
<b>Environmental and Sustainability Implications</b>	None
<b>Human Resource Implications</b>	None
<b>Key Risks</b>	None
<b>Equalities Impact Assessment</b>	Not Required

<b>Related Decisions</b>	Various Enforcement Notices previously authorised by the Planning (Regulatory) Committee
<b>Background Documents</b>	Report to the Planning Committee - 9 <sup>th</sup> November 2011
<b>Appendix</b>	<p><b>Appendix 'A'</b> - Guidance Note</p> <p><b>Appendix 'B'</b> - Annual Audit Template</p> <p><b>Appendix 'C'</b> - Investigation Questions</p> <p><b>Appendix 'D'</b> - Frequently Asked Questions (FAQs)</p>

<b>Performance Management Follow Up</b>	Implement the Committee's decision(s)
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<p><b>Background Information</b></p> <p>1. <u>Update</u></p> <p>The Planning Committee was due to consider the Guidance Note and supporting documents at its Meeting on 9<sup>th</sup> November 2011. However, the item was deferred in order that an updated report could incorporate consideration of a recent Appeal decision. The following report incorporates a resumé of that case; confirms details of publicity associated with the guidance; and sets out what actions are proposed to take place regarding outstanding enforcement matters.</p> <p>2. <u>Appeal Decision - Application Reference - 11/00985/FUL The Leverets, Haregrove, Brimpsfield</u></p> <p>2.1 The Appeal (ref: APP/F1610/A/11/2156281) relates to replacing a restrictive holiday occupancy condition on two disabled person holiday units, which were originally granted planning permission for conversion in 2005, with one referring instead to 'tourist accommodation'.</p> <p>2.2 In allowing the Appeal, the Inspector stated that the "amendment sought by the Appellant would not alter the existing preclusion against occupying the units as dwellings". The Inspector went on to confirm that "The Council would retain the ability to take appropriate action against anyone found to be occupying the units as permanent accommodation or a primary residence, and so prevent their use as unrestricted dwellings".</p> <p>2.3 The Inspector's view on the concept of tourism is that it extends to visits to an area for business purposes.</p> <p>2.4 However, staying in holiday accommodation whilst away on business in an area, just as one would in a hotel is not the same as holiday accommodation which is used for business activities and/or as a base from which to carry out business activities.</p> <p>2.5 As such, the narrow scope of this Appeal decision does not necessitate any revision to the guidance as its principal focus is the situation where people may be using accommodation as their primary/permanent residence.</p> <p>3. <u>Context</u></p> <p>3.1 Development in the Cotswold Water Park in particular is high profile and it is, therefore, essential that the Council has a transparent and consistent approach to investigating any potential breaches of planning.</p> <p>3.2 The holiday accommodation represents high quality development which has gained national and international recognition and which is entirely in line with policy. As such, it is essential that the function of such accommodation as a tourist and visitor attraction is safeguarded.</p>
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3.3 It is also important to make it clear that this Guidance is not new policy, but re-states the conditions already attached and captures the Council's approach to enforcement investigations.

3.4 The guidance will help existing owner/occupiers and prospective purchasers to establish if they are at risk of being in breach and what is required to ensure compliance. The guidance sets out how the Council has and will investigate suspected breaches in a consistent and robust way.

3.5 Existing purchasers will have been made aware of the restrictions through land charges searches undertaken by their Solicitors, as set out in their leases, and through the question and answer sheets which are already provided by the developers.

3.6 The robustness and clarity of the conditions have already been tested at appeal and the Planning Inspector appointed by the Secretary of State fully endorsed the Council's approach and dismissed the Appeals against the service of Enforcement Notices.

3.7 In response to the guidance, all of the main developers in the Water Park have confirmed their commitment to cooperate and ensure diligent management of the occupancy obligations. This includes appropriate publicity on Web Sites, in sales brochures and in information packs to ensure prospective purchasers are made aware of the restrictive conditions.

3.8 As noted above, the guidance does not therefore represent a change in approach but builds on what has already been done to make it explicit that the accommodation shall be used for holiday purposes only and cannot be used as a principal place of residence.

3.9 A number of minor changes to wording to ensure clarity and plain English were reported in the additional representations which were circulated at the Committee Meeting in November 2011 and they have all been incorporated within the supporting documents appended to this report.

#### 4. Status of the Guidance Note

4.1 The Guidance Note at **Appendix 'A'** and list of potential investigation questions at **Appendix 'C'** are intended for use as tools for establishing compliance and investigating potential breaches of occupancy of holiday accommodation in the District. Together with the responses to the Frequently Asked Questions (FAQs) at **Appendix 'D'**, they will also be available as an aid for understanding by owners and occupiers of these properties to ensure compliance with the relevant restrictions.

4.2 The Note and supporting documents provide guidance on the evidence which will be required to assess any potential breach. The aim is to ensure that the approach is consistent and transparent for all parties (the Council, developers, accommodation owners/occupiers), is not unduly onerous and, most importantly, is effective in determining whether any occupancy restriction imposed either through a planning permission and/or legal agreement has been breached.

4.3 The final document at **Appendix 'B'** is a template example of the format for the annual audit of owners/occupiers of the holiday units which is required by the Section 106 Agreement to establish that the occupation is in compliance with the restrictive occupancy conditions.

#### 5. Policy Context

5.1 Local Plan Policies place strict control on the development of new holiday accommodation outside development boundaries. Key policies relevant to the consideration of new applications for holiday accommodation in the District are set out below.

Policy 19 - Development outside development boundaries

Policy 26 - Tourism

Policy 28 - Conversion of rural buildings

Policy 49 - Planning obligations and conditions

Section 11 - The Cotswold water park

Policy UT.1 - The Upper Thames: The Cotswold Water Park.

5.2 A full list of policies contained in the local plan can be viewed on the Council's Web Site through the following link: [http://www.cotswold.gov.uk/nqcontent.cfm?a\\_id=1064](http://www.cotswold.gov.uk/nqcontent.cfm?a_id=1064)

## 6. Occupancy Restrictions

6.1 Whilst there are approvals for self-catering holiday accommodation across the District, principally in converted buildings, new build is largely concentrated and permitted by Policy within the area known as the Cotswold Water Park.

6.2 Permission for holiday accommodation within the Cotswold Water Park has been granted subject to planning conditions and legal agreements made pursuant to Section 106 of the Town and Country Planning Act 1990.

6.3 The various planning permissions and Legal Agreements contain similar conditions and covenants along the following lines:-

'Notwithstanding Classes C2 and C3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, the units shall be occupied as holiday accommodation only and for the avoidance of doubt they shall not be occupied as permanent unrestricted accommodation or as a principal or primary place of residence'.

'The holiday units shall not be occupied from the 6<sup>th</sup> January until the 5<sup>th</sup> day of February inclusive each year'.

'From the date any holiday unit is first occupied the developer will at all times hereafter:-

(a) undertake an annual audit of all its lessees by the thirteenth day of November in every year to ascertain that the units are being occupied for holiday purposes and not principal places of residence; or

(b) remedy the situation in the event that there are any detected breaches of the occupancy restrictions; and

(c) report all breaches immediately to Cotswold District Council.'

6.4 The reasons given for the imposition of the conditions is as follows:-

'This is development which is only permitted at this location because it provides holiday accommodation. This needs to be carefully controlled.'

6.5 Account has also been taken of Annex B of the Department for Communities and Local Government (DCLG) Publication - Good Practice on Planning for Tourism - 2006 - 'To avoid occupation by permanent households which would in turn put pressure upon local services. Permanent households may place demands for local schools, and social and health services which would not normally arise from visitors'.

6.6 With these restrictions and policy background in mind, fundamental issues of concern to the Council include:-

- What use is being made of the holiday accommodation, and for what purposes are they being used?
- What burden is being placed on local services?
- Is that burden consistent with use of the properties as holiday accommodation?

6.7 It is therefore necessary to have an agreed approach to establishing the nature and extent of the occupation. The supporting documents to the Guidance Note include a number of questions which would be used as part of an investigation into a potential breach (**Appendix 'D'**).

6.8 Whilst the answers to any one of the 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.

## 7. Consistent Approach

7.1 The Guidance Note and supporting documents are intended to ensure clarity for both owners/occupiers of holiday accommodation and anyone with an interest in such development as to how the accommodation should be occupied. Once approved, the Guidance Note and supporting document will form the basis for investigations and owners/occupiers will need to provide the relevant information to substantiate evidence of compliance.

7.2 The Council will keep the Guidance under review in the future, in the light of experience, and potential or existing occupiers/owners will be encouraged to liaise with the Council's Development Services Section if they are in any doubt about the requirements of the restrictions.

## 8. Consultation and Feedback

8.1 The attached documents have been the subject of internal consultation with Officers and key Members. Also, copies have been circulated to the main site owners and relevant Parish Councils for their information and feedback.

8.2 It is further proposed to publicise the guidance through the main site owners, letting agents, the press and the Council's Web Site to ensure that it is made widely available.

## 9. Enforcement Action

9.1 The Council has in the past served a number of Enforcement Notices on the owners/occupiers of holiday accommodation within the Water Park, where potential breaches of the restrictive occupancy conditions have been identified. Appeals were lodged by the owners/occupiers against the service of some of these Enforcement Notices and an Inspector appointed by the Secretary of State, **in all instances**, dismissed the Appeals and supported the Council's decisions to enforce against unauthorised occupancy of the holiday accommodation.

9.2 As the period for compliance with these Notices passed some time ago, which has allowed time for any necessary adjustments to be made to ensure compliance, it is proposed that a review of all the Appeal cases will now take place to ensure that they are no longer in breach.

9.3 Following publicity of the Guidance and receipt of audit information from the site owners, any future cases which come to light regarding possible breaches of the planning conditions will be investigated with reference to the Guidance. However, the initial burden will rest with the site owners, under the terms of the Section 106 Agreements, to seek to remedy any suspected breaches.

## 10. Request for Withdrawal of Notice

A report to the Planning (Regulatory) Committee on 27<sup>th</sup> October 2010, requesting withdrawal of an Enforcement Notice at 33 Windrush Lake, South Cerney, was deferred to allow consideration of correspondence received from the freeholders. It is now proposed that an updated report be submitted to a future Meeting of the Planning Committee in light of a review of the information and reflecting on the work which has taken place to produce the attached guidance.

(END)