

BRITISH HOLIDAY
& HOME PARKS
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Defining holiday occupancy

Drawing on a guide prepared by Cotswold District Council, the East Riding of Yorkshire Council has published guidance on the meaning of holiday use requirements in planning terms

Their guidance is reproduced below and will be of interest to all who manage holiday parks

EAST RIDING OF YORKSHIRE COUNCIL HOLIDAY ACCOMMODATION GUIDANCE

1. There are many developments within the East Riding of Yorkshire providing self-catering holiday accommodation, such as caravans, cabins, chalets, building conversions where that development would not have been approved but for a restriction on the accommodation being for holiday purposes only. The Government encourages such tourism developments, but they also accept it is important that planning conditions ensure that approved holiday accommodation is not used as a person's sole or main place of residence. If it was, then residential development could occur in places that are contrary to long-established planning policies to protect the countryside, deliver sustainability objectives and resist undue pressures on local services.

2. There are significant benefits in providing holiday accommodation. It encourages people to visit the attractive and popular East Riding of Yorkshire area, and during their stay visitors contribute to the local economy by using local shops, public houses and cultural facilities. The economic activity gener-

ated by allowing holiday accommodation also delivers enhancements to the wider landscape and public access to the countryside. Accordingly, the proposed approach in the Council's emerging Local Plan seeks to support development that will improve the tourism offer and encourage the growth of the visitor economy whilst ensuring the countryside is protected from inappropriate development (policy EC2 refers).

3. Prior to 2005, holiday accommodation planning permissions in the East Riding involved controls such as: conditions limiting occupation to 10/11 months each year; specified 'close down' periods, and/or limiting the periods individual accommodation could be occupied at a time. Some old permissions may in fact not have any conditions imposed beyond their approval for holiday use.

4. The Council undertook a review of its approach to holiday accommodation in mid 2005, which included setting up a working group including representatives from the British Holiday & Home Parks Association Ltd, caravan manufacturers, park operators and their agents. This led to a report to the Council's

Planning Committee in November 2005 (min 3033) when a new 'model' set of planning conditions were agreed. These conditions have been quoted in previous Government guidance¹ as an example of good practice. The conditions expect:

- i) the accommodation is occupied for holiday purposes only;
- ii) the accommodation shall not be occupied as a person's sole or main place of residence, and;
- iii) the operator to maintain a register of the occupants' main place of residence, which is available for inspection.

These conditions have been attached to planning consents for holiday accommodation in the East Riding since November 2005. Some of the accommodation with 'old' consents (see paragraph 3 above) have sought an amendment to their consent in favour of these conditions.

5. The Council takes the maintenance of these restrictions seriously. In recent years, it has become apparent that some of the holiday accommodation has been occupied in breach of the holiday occupancy conditions and these matters are

'some ... holiday accommodation has been occupied in breach of the holiday occupancy conditions ... these matters are being dealt with by formal enforcement procedures'

'non-compliance with any enforcement notice could lead to criminal proceedings'

'a holiday is an extended period of recreation, away from a person's home'

being dealt with by formal enforcement procedures. Advice from the British Holiday and Home Parks Association to the owners of holiday parks² is very clear that if they allow people to live permanently in their caravans/holiday homes in breach of planning conditions then they run very serious risks that could lead to prosecution. It is therefore very important that anyone thinking of purchasing holiday accommodation clearly understands the terms and conditions of the planning conditions and site licence.

6. Where holiday accommodation is used throughout the year for a succession of holiday lets by separate individuals, then (subject to all other conditions being complied with) this would be acceptable. Similarly, where holiday accommodation is used for the same individual(s) for bona fide holidays during the course of the year, then that would comply with the terms of the occupancy conditions.

7. For these purposes, the Council regards a 'holiday' as being something within the dictionary definition of that word. The Concise Oxford English Dictionary defines holiday as: 'noun.

1) an extended period of recreation, away from home; **2)** a day of festivity or recreation when no work is done'. This is the legal definition consistently used and relied on by Planning Inspectors in the determination of planning appeals, including enforcement cases (such as that of Lakeminster Park, Beverley).

8. It has been suggested that the concept of a 'holiday' is inherently uncertain, and so that a restriction based upon holiday occupation is unenforceable. However, relevant case law establishes that this is not correct. In the case of *Chichester District Council v. Secretary of State for the Environment* [1992] 3 PLR 49, 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 sole or main residence.

9. Equally, the imposition of 'holiday occupancy' conditions is accepted practice and the Secretary of State has upheld such planning conditions as being sufficiently certain and enforceable in a number of appeal decisions.

10. 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 spending the majority of their time in the 'holiday' accommodation

(ii) An occupier being asked by the site operators to provide a relative's address or an overseas holiday address as their sole or main place of residence;

(iii) An occupier(s) receiving their mail at the holiday accommodation;

(iv) An occupier using the holiday accommodation as a place to register to vote;

(v) An occupier's child attending a local school;

(vi) An occupier or members of their family being registered permanently with a local GP or dentist;

(vii) An occupier (or spouse/partner or other family member) carrying on their business or employment based at the holiday accommodation.

11. For the avoidance of doubt, an occupier even if retired must have a main or sole residence elsewhere as ceasing employment does not mean that you are on holiday. Similarly, on sites which are subject to a restrictive condition requiring the holiday accommodation to be unoccupied for a certain period in the year (sometimes referred to as a 'close down' period), the Council will not ac-

cept occupation by a person using the holiday accommodation as their main or sole place of residence simply because they observe the requirement to vacate for, say, two months in each year. In both cases, the Council would not regard such occupation as complying with the terms of the occupancy restriction.

12. Due to the importance that the Council attaches to the maintenance of these restrictions, it will use its authority to ensure compliance by the occupiers and owners through examination of the register of occupation kept by the site developers and/or by seeking information through the service of Planning Contravention Notices (PCN). It should be noted that to provide false information in response to a PCN, or to not comply with the questions asked in it, is an offence and could lead to a criminal prosecution of which the Council has run a number of cases, all successfully.

13. 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 the National Planning Policy Framework and the Planning Practice Guidance. 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. Breach of an operational injunction is regarded in law as a contempt of court and is punishable by imprisonment.

14. 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. *continued...*

'the owner/occupier cannot use the accommodation as a sole or main place of residence, which must be in place elsewhere and being used as such'

'ceasing employment does not mean that you are on holiday. You are still required to have a sole or main residence'

'accommodation cannot be used for business purposes'

HOLIDAY OCCUPANCY: FREQUENTLY ASKED QUESTIONS

The Frequently Asked Questions (FAQs) below provide responses to potential queries regarding compliance with the restrictions and what may or may not be acceptable from a holiday accommodation occupancy perspective.

Reference should always be made to the planning consent and licence for the site in question and can also be made to the further detail and clarification set out in the Council's 'Holiday Accommodation Guidance' (above).

What can the accommodation be used for?

The accommodation can only be used for holiday purposes.

What is meant by a holiday?

We rely on the standard dictionary definition which is applied also by Government Planning Inspectors and in the Courts that a holiday is an extended period of recreation, away from a person's home; a day of festivity or recreation when no work is done.

How long can my holiday be for?

It is not for the Council to dictate to individuals the length of their holiday. The test remains that the owner/occupier cannot use the accommodation as a sole or main place of residence, which must be in place elsewhere and being used as such.

Is there a limitation on how frequently I can occupy my property for holiday purposes?

No there is not. The test remains that the owner/occupier cannot use the accommodation as a sole or main place of residence.

Can I use it as my main home?

No - the accommodation cannot be used as a sole or main place of residence. Planning permission was only granted for holiday accommodation to meet the area's tourism/holiday needs.

Where can I see a copy of the restrictions that might apply?

Reference should always be made to the Council's planning permission records and the Council's caravan site licence.

These are available for inspection free of charge and on the Council's website. Care should be taken to inspect the whole document and reliance should not be placed on a part copy or the site's office copy.

Advice on a particular site's planning restrictions will be given by either the Council's planning officers or planning enforcement officers, and in the case of the site licence by the Council's licensing team.

I am retired. Can I use the holiday accommodation all the time?

No, ceasing employment does not mean that you are on holiday. You are still required to have a sole or main residence.

Can I run a business from my holiday accommodation?

No - the accommodation cannot be used for business purposes. The test remains that the owner/occupier cannot use the accommodation as a sole or main place of residence. However, the Council does recognise that some people do bring ICT equipment with them to 'keep in touch' with business matters whilst on holiday.

Can I use it as a base if I work locally?

The accommodation must not be used as a base to commute to and/or from a place of work as if being used as a sole or main place of residence.

But I need to keep in touch when I am on holiday.

If your mail is delivered to the accommodation as a matter of course, this may well suggest the use of that accommodation as a sole or main place of residence and not occupation solely for holiday use.

What use can I make of local services?

We would expect you to use local services as you would normally do when on holiday. As an example, if you were taken ill while at the accommodation, or developed toothache, we would expect you to use a local doctor or dentist, for urgent treatment.

Can my children attend local schools?

A child or children registered at a local school would indicate occupation of the accommodation is not solely for holiday use.

Do any other restrictions apply to the accommodation?

Some holiday accommodation is subject to an additional restriction which requires a specified close-down period. The accommodation cannot be occupied for any purpose during the specified close-down period, under any circumstances. For the avoidance of doubt 'occupied' does not mean visiting the accommodation for essential maintenance and/or repairs, but overnight accommodation is not permitted.

Properties may also have restrictive covenants as part of the lease agreement with the landlord. This is outside the control of the Council and would be enforced by the landlord.

Note

This document is published for guidance only. The Council would advise anyone who is considering the purchase of holiday accommodation, or who is already occupying holiday accommodation and has anxieties if they comply with the holiday occupancy restrictions, to take legal advice that is independent of both the Council and the accommodation's owner/operator. Reference should always be made to the Council's planning permission records and the Council's caravan site licence. These are available for inspection free of charge and on the Council's website. Care should be taken to inspect the whole document and reliance should not be placed on a part copy or the site's office copy. Advice on a particular site's restrictions will be given by either the Council's planning officers, planning enforcement officers and by the Council's licensing team in the case of the site licence.

East Riding of Yorkshire Council

For more information on Planning see the Council's website: www.eastriding.gov.uk ●

¹ DCLG's Good Practice Guide on Planning for Tourism (2006), Annex B

² Misuse of caravan holiday homes – British Holiday & Home Parks Association and National Caravan Council

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