

Chief Planning Officer's Advice Note:

Lifting Holiday Occupancy Conditions

This is one of a series of notes issued by the Chief Planning Officer to guide greater consistency when making planning decisions. These notes may be updated from time-to-time in response to changing circumstances.

It provides guidance to help reach a decision only and should not be used as a reason for refusal. The note cannot be used as a substitute for the policies of the adopted Local Plan.

A holiday occupancy planning condition will have been attached to a planning permission, at the time of approval, in order to make the development acceptable, for example, in areas that would not be suitable for permanent residential use. Circumstance, conditions and policy position may change after the condition is set. The key test for lifting conditions is whether they are still pertinent and necessary to make the development acceptable¹. This requires the decision maker to assess the proposal against up-to-date policy as set out in the Local Plan: Strategic Policies (LP:SP). All planning applications and applications to lift conditions must be treated on their own merits irrespective of precedent; this should include an understanding of the viability of proposals. The following issues are the key considerations for a decision maker to take into account.

Location

Is the location acceptable for residential use against existing LP:SP policy? Consideration should be given to Policy 3 (Infilling, rounding off and reuse of previously developed land (PDL)), Policy 7 (Housing in the countryside including the reuse of buildings), and Policy 21 (Best use of land and buildings). The Chief Planning Officer's Advice Note: 'Infill/Rounding Off' will be helpful in making this judgement.

Layout

Is the layout of the property appropriate for permanent residential use? Consideration should be given to Policy 12 (Design) and 13 (Development standards). Does the layout and siting of buildings in relation to other buildings and uses protect individuals and property from overlooking or unreasonable loss of privacy, overshadowing and overbearing impact, and unreasonable noise and disturbance? Is there an appropriate level of off-street car parking and cycle parking, sufficient and convenient storage for waste, recycling and compostables?

¹ Officers and applicants should be mindful that in some instances the original description of development as set out on the decision notice may refer to the development as 'holiday accommodation'. In this circumstance even where a condition is lifted that restricts occupation other than for holiday use the description of development may still be sufficient to still restrict the use of the development. Where this is the case a full planning application may be required to ensure that the description of development and use are consistent.

Design and construction of buildings

Are the buildings of suitable construction for permanent residential use? Again, consideration should be given to Policies 12 (Design) and 13 (Development standards). Is there sufficient internal space for everyday activities, for example, are the rooms large enough and is there storage space?

Affordable housing/S106 contributions

Does the proposal require the provision of affordable housing or other S106 contributions? Consideration should be given to Policy 8 (Affordable housing), Policy 9 (Rural exceptions schemes) and Policy 28 (Infrastructure), where the LP:SP thresholds are exceeded. If the original permission exceeded the thresholds for affordable housing and other tariff style community contributions, a contribution proportional to the original permission should, subject to the usual tests of viability, be sought through a planning obligation. This can sometimes be simplified and obtained by a planning condition when the proposal would affect individual units.

Holiday complexes

There are a large number of holiday complexes in Cornwall, many of which are of a relatively significant size and scale and have often been established for a long time. Holiday complexes provide an important tourism function and can help alleviate pressure on market housing for tourist use; however, the Council recognises that the holiday market changes over time and business has to respond to this.

Holiday complexes are likely to have holiday conditions for one or all of the reasons set out above. The key tests set out above should be applied when assessing applications to lift holiday conditions on holiday complexes, and, in addition, the following should be taken into account in the balance of considerations:

- In addition to the location of the site and its relationship to nearby settlements, consideration should be given as to whether a change to permanent residential use of this scale would bolster an existing sustainable community by contributing to the maintenance and improvement

of community infrastructure such as shops, schools, pubs and other social networks within the established settlement.

- How accessible the site is and whether accessibility could be improved by provision of new footpath or other connections.
- Whether the necessary community facilities that are required to service the proposed residential use can be provided.
- Local economic and other benefits of the proposed use should be considered against the benefits of the continued existing use of the holiday facility. This should be a key consideration for upgrading and enhancement of existing facilities as supported by Policy 5 of the LP:SP.
- If the accommodation has already been provided, viability arguments about the ability to deliver a proposal can be discounted, as factors such as the quality of the accommodation, infrastructure requirements and ownership arrangements are known.
- In some instances the layout, management arrangements and location of the complex would mean that, in real terms, it is unlikely that many units would be occupied permanently. Therefore the benefits of removing the condition may be greater than the harm from inappropriate permanent occupation. This can form part of a balanced consideration, but it should be remembered that planning conditions are the appropriate mechanism for the planning system to enforce holiday use. Some covenants in planning obligations restrict the amount of time an individual can stay at the property and therefore appear to have the same effect as a holiday occupancy condition. Such covenants might not meet the tests of the Community Infrastructure Levy regulations and could subsequently be lifted contrary to the objectives of the Local Plan policies. The holiday occupancy condition cannot be enforced through other, non-planning agreements. Where such a condition remains necessary and appropriate, in planning terms, it should not be removed.
- The past use of the holiday units is a material consideration.
- The risk of creating a redundant brownfield site is a material consideration and should be considered in the planning balance.

Extant permissions

When applications are received to change the use of extant permissions all the above factors should be taken into consideration. However, the existence of a fall-back position is a material consideration.

New development

Holiday conditions should not generally be used on new proposals, including re-development of holiday use, if that development would otherwise be acceptable for residential permission. This is the case even for accommodation intended for holiday use.

Retrospective permissions

Applications for certificates of lawfulness as established residential use should be regularised where the balance of probability suggests residential use can be demonstrated for over a ten year period.