

**DERBYSHIRE DALES
DISTRICT COUNCIL**

**POLICY ON
DERBYSHIRE
CLAUSES**

**UNDER THE HOUSING
ACT 1985**

1. INTRODUCTION

- 1.1 Section 19 of the Housing Act 1980, subsequently replaced by Section 157 of the Housing Act 1985 (as amended) and Section 37(5) of the Housing Act 1985, allowed for a restriction (known as a covenant) to be placed on the deeds of certain properties situated within the Peak District National Park. These covenants were granted for the benefit of Derbyshire Dales District Council ("District Council")
- 1.2 The reference in conveyancing documents referring to the above sections are commonly referred to as a Derbyshire Clause or alternatively Peak Park Clauses.
- 1.3 The effect of these restrictions is that the purchaser needs to meet certain criteria to be allowed to buy the property and will need a letter from the District Council stating that they either meet the specified criteria or that they have been granted permission to purchase the property. The same applies to someone wanting to lease a Derbyshire Clause property.
- 1.4 The clause is a permanent clause and stays with the property on any subsequent sale. Therefore, any future purchasers must also satisfy the same criteria or obtain permission from the District Council.
- 1.5 Please note that if the intention for the purchasers at any point during the ownership of the property, to lease or rent out the property, then the tenant's must also need to meet the specified criteria or the potential tenant will use the property as their only or principal home and remains in the dwelling throughout the duration of the tenancy or license.
- 1.6 The purchaser of a restricted property needs to obtain a letter of consent from the District Council to be able to register the sale (or lease) at the HM Land Registry. Failure to obtain such letter of consent means any purchase (or lease) of the property is void and the Land Registry may refuse to register the transaction.
- 1.7 There are currently 863 properties within the Derbyshire Dales District which contain the Derbyshire Dales Clause. This clause only applies to former District Council properties within the Peak District National Park boundary (for example Bakewell, Hathersage, Youlgreave).
- 1.8 This policy is intended to give guidance on what evidence the District Council would want to see before issuing the consent letter and in what circumstances that the District Council may consider granting permission where the purchaser does not meet the criteria.

2. EXEMPTIONS

- 2.1 Section 160 of the Housing Act 1985 contain a number of exemptions where a Letter of Consent is not required these include:-

- The property is transferred or leased to a spouse/civil partner or former spouse/civil partner and they meet the criteria
- The property is transferred or leased to a family member that has been residing in the property throughout the period of 12 months before the transfer and they meet the criteria.
- The transfer or lease is from joint to sole owners and the sole owner meets the criteria; or from a sole to a joint owner (the joint owner does not need to meet the criteria as the previous sole owner already complies).
- The transfer of a property to a beneficiary under a will
- A transfer of property under section 24 or 24A of the Matrimonial Causes Act 1973.
- Transactions under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975
- Transactions under section 17 of the Matrimonial and Family Proceedings Act 1984
- Transactions under paragraph 1 of Schedule 1 to the Children Act 1989
- Transactions under Part 2 or 3 of Schedule 5, or paragraph 9 of Schedule 7, to the Civil Partnership Act 2004
- The transaction is of a result of a Compulsory Purchase

2.2 You also do not need permission if you

- Take in a lodger and continue to live in the property;
- If you re-mortgage your property

2.3 The Land Registry will however on occasions request a letter from the District Council to confirm it is an exempt transaction in order to complete the registration.

3. CRITERIA FOR CONSENT

3.1 The District Council will provide a Letter of Consent where purchaser meets the following criteria:

3.1.1 Persons who have lived or worked within Derbyshire or the Peak District National Park for a period of three years before the transaction (“the Area”)

The District Council must issue a Letter of Consent if the criteria above is satisfied however the District Council has determined that they will also grant a Letter of Consent in the following circumstances

3.1.2 A person who has a local connection in the Area and is returning to the Area to care for or be cared for by, another relative.

3.1.3 To members of the armed forces with a local connection returning to live in the Area

3.1.4 To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.

3.2 For further details and information relating to the evidence required is detailed below however were possible more than one piece of evidence should be produced to prove each point, preferably a minimum of three pieces of evidence.

3.3 Persons who have lived or worked within Derbyshire or the Peak District National Park

3.3.1 In order to satisfy the requirement to have lived within Derbyshire or the Peak District National Park you must be able to prove you are living and have lived within a property that lies within the required Area for three complete years immediately preceding the transaction.

3.3.2 If purchasing a property jointly, only one person needs to prove the three year connection.

3.3.3 It is not sufficient to show that between the two of you that you have lived in the Area for three years.

3.3.4 For example if one partner had lived in the Area covering 2015 and 2016 and then moved out of the Area but the other purchaser can prove they lived in the Area for one year in 2017, that would not qualify.

3.3.5 Also if at the time you apply for the letter of consent you must still be living or working in the Area. If for any reason you move out of the Area for any period of time or have stopped working in the Area, the three year period restarts.

3.3.6 When applying for consent the proposed purchaser should supply sufficient evidence to support their request. Examples include Council Tax bills, Bank or Credit Card Statements, utilities bills or if renting, rental agreements covering the full period.

3.3.7 The evidence MUST show their name and address and they should provide three pieces of evidence for each year to show continual residence and one of the statements should be dated within the last month to show that the applicant is still resident in the Area.

3.3.8 If you wish to apply for the consent letter because you have worked in the Area for three years. The District Council would require to see your signed contract of employment showing where your employment is based and a letter from your employer stating where your employment is based and stating how long they have worked from that base of employment and recent evidence to show you are still employed prior in the Area immediately preceding the transaction.

3.3.9 Many companies will have multiple offices and employees may be required to work from other offices from time to time. As long as the employee has

the specified place of employment at an office within the Area they will qualify.

3.3.10 If however the employee is required to work from multiple offices, all of which are not within the Area or their place of employment is outside the Area but they are required to work at an office from time to time within the Area as part of their duties, this will not qualify.

3.3.11 To apply under the three year rule it is possible to combine the periods together as long as it is three years with no gaps. So you could have worked in the Area for 2 years, moved into the Areas and been here for at least a year, but have since changed jobs and no longer work in the Area.

3.3.12 If you work in the Area but are self-employed the District Council will need to see evidence that shows you or have worked in the Area for 3 years and that at least 75% of the work you have undertaken is in in the Area or your business is based in the Area. Evidence could include copy of a commercial lease, registration with a professional or trade body, copies of invoices to customers or invoices from suppliers or a grant or license to work in the Area, for example a licensed taxi driver with a license issued by the District Council.

3.4 **A person who has a local connection in the Area and is returning to the Area to care for or be cared for by, another relative**

3.4.1 A local connection refers to someone who lived or worked in the Area previously for a minimum of three years within the last ten years.

3.4.2 Having immediate family that live in the Area can also provide a local connection, if those relatives have lived in the Area for at least three years immediately preceding the transaction.

3.4.3 Immediate family mean grandparents, parents, sons and daughters (including step parents and children) brothers or sisters, nieces and nephews.

3.4.4 Evidence will need to be provided to show that those relatives are immediate family and have lived in the Areas for at least three years prior to the application

3.4.5 The second part of this test is caring for another relative.

3.4.6 To clarify for this exemption you must be able to provide evidence of what care that person requires and that the person requires someone living close to them to provide that care.

3.4.7 Care can include those that are elderly or for those with a young family and seek assistance with childcare. This can also include those moving to the Area so that family already in locality can provide care. If a person is moving to provide childcare assistance, the District Council will only

consider applications where a member of the family is disabled meaning that additional support is needed by either a disabled child or a disabled parent, or where it can be shown that both parents need to work and that paying for private childcare would cause an excessive financial burden on the family resulting in the family being unable to meet general living expenses.

3.4.8 To qualify under the care provisions, you are required to provide evidence to show that care is needed on a regular basis and it is above that which is provided by the state.

3.5 To members of the armed forces with a local connection returning to live in the Area

3.5.1 To qualify for the armed forces consent you must either be a serving person in the armed forces or discharged in the last six months after serving your minimum term or being discharged due to medical grounds and must be able to show a local connections.

3.5.2 The minimum length of service in each branch of the forces currently are as follows:

- Army (over 18s): Four years
- Army (under 18s): Until 22nd birthday
- Navy: Three and a half years after completion of training or four years' service, whichever is longer
- Air force: Three years after completion of training or four years' service whichever is longer

3.5.3 In addition to the criteria stated in point 2 above as to what is a local connection, this will also include any person stationed in the Area for a period of six months while on active service.

3.6 To be given to companies whose stated aim is to provide housing for those satisfying the qualifying criteria. Consent will be conditional on compliance with this requirement.

3.6.1 This criteria is for any Registered Social Landlord approved and regulated through the Homes & Communities Agency, to enable them to purchase the property for re-letting for social housing purposes to tenants that would meet the qualifying criteria.

4. SALE BY AUCTION

4.1 The District Council has been asked on occasions to give written permission by Auctioneers to sell a property by auction which is subject to a Derbyshire Clause.

4.2 The District Council will provide written permission for a property to be sold by auction but this is not a letter of Consent for the purposes of registering the land transaction with HM Land Registry.

- 4.3 Any permission letter will require the Auctioneer to state in any auction catalogue and advertisement that the property is subject to a Derbyshire Clause and that any bidder must meet the criteria and/or obtain a letter of Consent prior to bidding.
- 4.4 The District Council does not guarantee to provide a letter of Consent to a successful bidder in respect of a property sold by auction therefore allowing the sale to complete.
- 4.5 Any bidder that successfully purchases a property at auction without obtaining a letter of Consent prior to bidding does so at their own risk and the District Council is not liable for any losses for the bidder failing to confirm they can legally complete the transaction.

5. LETTER OF CONSENT TO SELLER

- 5.1 The letter of Consent is normally issued to the purchaser of the property. The District Council will in rare circumstances consider issuing a general letter of Consent to the seller where they are suffering substantial hardship or emotional hardship.
- 5.2 This could include (but not limited to) where the seller has marketed the property for over a year, reduced the price to a level below market value for a long period of time with no offers from valid purchasers.
- 5.3 The sellers are facing repossession of the property and needs a quick sale to avoid the mortgage company taking possession.
- 5.4 The seller needs to move to care urgently for sick or venerable family members and needs to sell quickly.
- 5.5 The issuing of a general letter to the seller will only be issued in exceptional circumstances and the District Council would need to see substantial evidence of the situation to agree to a general waiver.

5.6 Applicants that do not satisfy the criteria

- 5.6.1 Where a prospective purchaser fails to provide satisfactory evidence to qualify, then the District Council is not under an obligation to provide consent for the purchase to complete.
- 5.6.2 However, the District Council has discretion as to whether to grant consent, where a prospective purchaser maintains the restriction is unduly harsh.
- 5.6.3 In deciding whether to grant an exception to the restrictive covenant, the District Council will consider the following issues:-

- The prospective purchaser is in key employment and is moving to the Area to take up work in key services, for example Police, Fire, Teacher, NHS or similar key services which have problems recruiting.
- The purchaser will meet the 3 year requirement once the purchase is complete. Any Consent may state that completion cannot take place before a certain date.
- The property have been marketed actively, noting the restrictive covenant details, for at least four months, at a price which takes account of the local occupancy restriction, overvalued properties will not be considered.
- The Seller has reduced the price more than once in order to obtain a purchaser.
- The prospective purchaser must be making the purchase to use the property as their only home and not for rental.
- The prospective purchaser can demonstrate that they cannot afford to purchase an alternative property, which does not having the local occupancy restrictive covenant, at its open market value.
- Where the purchaser has moved away for a short period of time for good reason
- Where the purchaser has moved away for a long period of time but prior to that spent a substantial part of their life living or working in the Area.
- Any other substantial reason the District Council deem appropriate.

5.6.4 When considering granting a Consent letter the District Council will take all matters into consideration and usually require at least 2 of the above reasons to agree to issue the letter, but that does not guarantee that Consent letter will be issued.

5.6.5 The District Council will however not consider the following to be good reasons to waive the restriction:

- Living close to but not in the Area.
- Owning a business that benefits those living in the Area.
- Being unable to sell the property with no efforts to reduce the price to attract a buyer or effectively market the property.

5.7 Owners intending to sell a property subject to a Derbyshire Clause

5.7.1 Sellers of properties are responsible for:

- Making their Estate Agent aware of the Derbyshire Clause
- Notifying the Solicitors acting in the sale of the Derbyshire Clause restrictions an early stage.
- Notifying purchasers that if they intend to rent the property now or in the future that they must obtain a letter of Consent and that prospective tenant must meets the same residency or employment criteria as required if purchasing the property; and the property will be the tenant's only, or principal home.

5.8 Renting a Derbyshire Clause Property

- 5.8.1 The Housing Act 1985 section 157 allows a Derbyshire Clause property to be rented out as long as the tenant meets the criteria as detailed in clause 3.1.1 of the policy.
- 5.8.2 The District Council also agrees to provide written consent to rent the property to a person who meets the criteria in clause 3.1.2 to 3.1.4. An application should be forwarded as per clause 5.9 below.
- 5.8.3 If you wish to rent your property to someone who does not meet the criteria in 3.1.1 to 3.1.4 then you must apply for consent which will be considered in line with this policy and the fee detailed in 5.9.2 below will apply.
- 5.8.4 If at any time following consent being granted the tenant changes, a new consent must be obtained.
- 5.8.5 Consent will only be granted if it is deemed appropriate under this policy and the tenancy is for a minimum period of 6 months and the tenant is occupying the property as their main/principle place of abode.

5.9 Applying for a letter of Consent

- 5.9.1 The prospective purchaser should only apply for a letter of Consent once they have identified a prospective property.
- 5.9.2 The District Council does not charge a fee for a letter of Consent where the applicant meets the criteria, however if the Applicant is asking for the District Council to exercise its discretions a fee of £465 is payable.
- 5.9.3 The request should be sent either by post addressed to:

Derbyshire Clause Application
FAO: Director of Housing
Derbyshire Dales District Council
Town Hall
Bank Road
Matlock DE3 4NN

Or by email to legal@derbyshiredales.gov.uk with Derbyshire Clause Application in the subject heading.

- 5.9.4 The application should contain the applicant's contact details, including telephone and email address in case further information is required, the full names of everyone purchasing or leasing the property, details of the property and details of the seller, including the estate agents details, full reason in why you are applying for the Consent letter and any documents to support the application.

5.9.5 The District Council aim to make a decision and if acceptable issue a Consent letter within 10 working days from receiving the fee if applicable and all the required information and documentation.

6. APPEAL

6.1 If the District Council has refused to issue a Consent letter, the applicant can appeal the decision to members of the District Council's Licensing and Appeals Sub-Committee. Any request to appeal must be made within 21 days of receiving the refusal letter and the District Council may refuse to refer the decision to members if made after this time.

6.2 The ability to appeal does not deny the applicant the right to complaint through the District Council's complaints procedure, however the failure to take advantage of this ability may be taken into consideration when replying to the complaint.

6.3 Nothing in this policy is intended to fetter the discretion of members on appeal to divert from the policy if deemed appropriate to do so. If the Sub-Committee take such a decision, reasons for diverting from policy will be given.

VERSION CONTROL

NEXT REVIEW DATE: On or before 25 November 2024

<u>DATE</u>	<u>CHANGE</u>	<u>VERSION</u>
25/11/2021	Approved Policy by full Council with delegated authority for Director of Housing to make minor changes or amend the policy to take into account Appeal decisions.	1.0