



Guide to Holiday Lets Covenant for Residential Use

If a lease provides that a property may only be used for residential purposes, can it be used for holiday lettings? 'No' is the answer.

If a lease states that the property can only be used for residential purposes, it would be a breach of the user clause to use the property for holiday lettings.

A residential building is defined as one which is either:

- Designed as a dwelling or number of dwellings; or
- Intended for use solely for a relevant residential purpose (which includes hospices, old people's homes and any building which is the sole or main residence of at least 90% of its residents but does not include hospitals, prisons or similar institutions).

(Group 5, [Schedule 8](#), Value Added Tax Act 1994.)

A dwelling is generally held to mean a place where someone dwells and which they treat as their home. This definition follows from a House of Lords judgment in a Housing Act case, *Uratemp Ventures Ltd v Collins* ([2002] 1 All ER 46).

In *Caradon District Council v Paton and Bussell* (2001) CA 33 HLR 34, the Court of Appeal considered the issue of whether you could properly describe the occupation of those who are tenants for the purposes of their holiday as being occupation for the purposes of the use of the dwelling house as their home. The court concluded that you could not (see [Caradon District Council v Paton and Bussell \[2001\]](#)).

In *Walker v Kenley* [2008] EWHC 370, the court held that objectively construed, residential flats were flats for use as permanent residences and as such the term did not include holiday flats.

It therefore seems to logically follow that if a lease restricts the use of the property for "residential purposes", the purpose of the restriction is to ensure that the property is occupied only as a main residence, someone's home. It is intended to prevent transient occupiers and as such, holiday lettings.

Other issues to consider

- The lease is likely to contain restrictions on subletting or sharing occupation and possession. This would preclude allowing third parties to use the property for a holiday letting.
- Leases may directly provide that the property is not to be left vacant for more than a given period at any one time. Even if this is not expressly stated, the restriction may apply through an obligation to comply with all the requirements of the insurance policy for the property. This is likely to make use of the property for holidays only, whether by a tenant or by third parties through holiday lets from a tenant, impractical.
- The tenant will have to comply with planning requirements. You need to establish the use class the property falls in and then whether a material change of use has occurred.

It has been argued that if property is used for holiday lettings then it does not fall within Class C3 (dwelling houses) of the Town and Country (Use Classes) Order 1987 (SI 1987/764). However, in *R v Tunbridge Wells Borough Council ex parte Blue Boys* [1990] 1 PLR 55 it was held that a change of use from self catering units to residential units would **not** require planning permission as both uses fell within Class C3 (dwelling houses).

- If the lease is mortgaged, there is likely to be a restriction in the mortgage prohibiting the borrower from letting the property without the consent of the lender.

Caradon District Council v Paton and Bussell [2001]

In *Caradon District Council v Paton and Bussell* (2001) CA 33 HLR 34, two freehold properties were subject to identical covenants that restricted their use to that of a private dwelling house. The owners of the properties did not occupy the properties but rented them to tenants on short term holiday lets in the summer months.

The covenant stated "Not to use or permit to be used the property for any purpose other than that of a private dwelling house and no trade or business or manufacture of any kind shall at any time be permitted to be set up or carried on on any part of the property or in any building now or hereafter within the perpetuity period erected thereon....."

The purpose of the covenant was to ensure that the houses were used as dwellings (to prevent the loss of housing stock in the area) and to prevent business use. Whether a property is being used as a dwelling house is a matter of fact and degree.

The Court of Appeal held that when determining the proper construction to be afforded to a covenant, it is necessary to consider its purpose. It held that where the object of a covenant is to protect the amenity of an area by retaining properties as part of the local housing stock, the

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appropriate test for determining whether property is used as private dwelling house is to consider whether it is being used by the occupant as a home. Use of property as a home requires a degree of permanence and an intention by the occupant that the property should be a home. Accordingly, a tenant who rented property for a short time for the purpose of a holiday did not, and did not intend to, occupy the property as a home.

Latham LJ stated "I consider that the answer to the question posed by this case is dependent on whether or not one can properly describe the occupation of those who are tenants for the purposes of their holiday as being occupation for the purposes of the use of the dwelling house as their home". Latham LJ considered that a person who is in a holiday property for a week or two would not describe that as his or her home and therefore the use was in breach of the restrictive covenant.

This case highlights the importance of looking at the wording of a covenant and the reasons for its imposition.

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