

NOTES ON SECTION 157 OF THE HOUSING ACT 1985
AND THE COUNCIL'S POLICY ON CONSIDERING
APPLICATIONS MADE UNDER THIS SECTION

Section 157 of the Housing Act 1985 (formerly Section 19 of the Housing Act 1980) relates to a restriction on disposal of dwelling houses in National Parks etc and states as follows:-

"(1) Where in pursuance of this Part a conveyance or grant is executed by a local authority, or housing association ("the landlord") of a dwelling-house situated in:-

- (a) a National Park
- (b) an area designated under Section 82 of the Countryside and Rights of Way Act 2000 as an area of outstanding natural beauty, or
- (c) an area designated by order of the Secretary of State as a rural area

the conveyance or grant may contain a covenant limiting the freedom of the tenant (including any successor in title of his or any person deriving title under him or such a successor) to dispose of the dwelling-house in the manner specified below.

(2) The limitation is that until such time (if any) as may be notified in writing by the landlord to the tenant or a successor in title of his

- (a) there will be no relevant disposal which is not an exempted disposal without the written consent of the landlord but that consent should not be withheld if the disposal is to a person satisfying the condition stated in subsection (3) and
- (b) there will be no disposal by way of tenancy or licence without the written consent of the landlord unless the disposal is to a person satisfying that condition or by a person whose only or principal home is and throughout the duration of the tenancy or licence remains the dwelling-house.

(3) The condition is that the person to whom the disposal is made (or, if it is made to more than one person, at least one of them) has, throughout the period of three years immediately preceding the application for consent or, in the case of a disposal by way of tenancy or licence, preceding the disposal

- (a) had his place of work in a region designated by order of the Secretary of State which, or part of which, is comprised in the National Park or area, or
- (b) had his only or principal home in such a region

or has had the one in part or parts of that period and the other in the remainder; but the region need not have been the same throughout the period."

A "relevant disposal" is defined in Section 159 of the Housing Act 1985 as a disposal whether the whole or part of the dwellinghouse by way of a Conveyance of the freehold or an assignment of the Lease or the grant of a Lease for a terms of more than 21 years.

An "exempted disposal" is defined in Section 160 of the Housing Act 1985 and includes disposals for the purposes of a vesting of the whole of a dwellinghouse in a person taking under a Will or Intestacy, pursuant to Orders such as the Matrimonial Causes Act 1973, Inheritance (Provision for Family and Dependents) Act 1975, The Matrimonial and Family Proceedings Act 1984, Children Act 1989 and Civil Partnership Act 2004. Exempted disposals are, also, disposals of the property to a

member of the family of that person or one of those persons who has resided with him or her throughout the period of 12 months ending with a disposal.

All ex-local authority properties sold under the Right to Buy legislation (Housing Acts 1980 and 1985) within the Cotswold Area of Outstanding Natural Beauty contain a restrictive covenant made pursuant to either Section 19 of the Housing Act 1980 or Section 157 of the Housing Act 1985. The registered title to the property will contain in the Proprietorship Register a restriction on disposal. As a result, without the Council's written consent to the disposal any sale of an ex-local authority property within the Cotswold AONB would be void and could not be registered by the Land Registry.

The purpose of the restriction is to stop former Local Authority properties being used either as a second home or as a holiday home but to try to keep them available for local people as far as that is possible.

Basically the Council cannot withhold its consent to a sale to a local (qualifying) person nor can it withhold its consent to a tenancy or licence to a local (qualifying) person. The Council considers that a qualifying person is someone who has either lived or worked in the Cotswold Area of Outstanding Natural Beauty or within the County of Gloucestershire for the past three years.

Clearly the Housing Act 1985 does not require a qualifying person to make the dwelling-house his only or principal home although this is a material consideration. Section 157(3) just requires that the person to whom the disposal is made has "had his only or principal home in such a region". Therefore, you could have the situation where an ex-local authority property is bought by someone who has either lived or worked within Gloucestershire or the Cotswold AONB for the past three years but does not intend to occupy the property but let it out. In such circumstances, the purchaser would be a qualifying person but the Council's consent would be required for the tenancy or licence (letting) of the property. Again, if the property is let to a local person then the Council's consent would be automatic as it is being let to a qualifying person.

**CHECKLIST FOR APPLICATIONS FOR CONSENT TO DISPOSAL
MADE PURSUANT TO SECTION 157 OF THE HOUSING ACT 1985
(FORMERLY SECTION 19 OF THE HOUSING ACT 1980)**

Application can be made by the seller or the buyer of the property in writing either by e-mail or letter.

1. **Was the Property Sold by the Council or by Fosseway Housing Association?**

If FHA then the application must immediately be referred to Group Home Ownership Services of Bromford Group. Their postal address is:-

Venture Court
Broadlands
Wolverhampton
WV10 6TB

Telephone number: 0330 1234034

Email: ghos@bromford.co.uk

The applicant or solicitors should be advised that the matter has been referred to Group Home Ownership Services who since the Large Scale Voluntary Transfer of Housing Stock in 1997 like to deal with consents for former FHA houses as Fosseway is now part of the Bromford Group.

2. **If the Property Was Sold by the Council Prior to 28th February 1997 Then is the Purchaser a Qualifying Person Pursuant to the Act?**

If yes, then the Council's consent can be given automatically and the Council's written consent given by using the usual AONB consent certificate which can be found in [LegalServices/Legalshared/legal/consents/bases/BASE.consent.aonb.doc](#). (See attached). To complete this consent you will need the full address of the property, the title number of the property, the full names of the current owner(s)/the registered proprietor(s) and the full names and addresses of the purchaser(s). The consent needs to be dated and signed by the Head of Legal and Property Services, (whose approval will suffice).

If not, then the Council must consider the application for disposal.

3. **Has the property been on the market for a minimum of 28 days?**

If yes, then the application for the Council's consent can be referred to the relevant Ward Member or Members and the Cabinet Member for Housing and Planning. The current Cabinet Member is Susan Jepson who can be contacted by e-mail on susan.jepson@cotswold.gov.uk at same time as Ward Member or Members.

The Applicant should be asked to give the fullest possible statement of his/her reasons for wishing to purchase the property (including whether or not he or she intends to occupy it as his/her only and principal home).

Consideration of whether or not consent should be granted is discretionary.

It is helpful to tell the Ward Member or Members and the Cabinet Member for Housing and Planning how long the property has been on the market and the purchaser's reasons for wanting to buy the property. If this information is not available then it must be requested. The Ward Member or Members and Cabinet Member should be contacted by email and be told that if a response is not received within 7 days of the date of the email then it must be assumed they are happy for the Council to provide consent to the sale of property to the prospective purchaser.

4. Have Both Ward Member and Cabinet Member Consented to Disposal?

If yes, then issue the usual AONB consent certificate.

If not, and you have a situation where, for example, there is a difference of opinion between the Members then the matter must be referred to the Head of Legal and Property Services, in the first instance, for consideration or ultimately Cabinet for a decision.

(END)