

## **RESTRICTIONS ON TRANSFERRING EX- COUNCIL HOUSES TO PEOPLE FROM OUTSIDE DEVON**

Some ex-council houses in the South Hams can only be transferred with the Council's consent. The Council will not normally agree unless the house is being transferred to someone who has lived and/or worked in Devon for the previous three years.

### **Q1. Which houses does this apply to?**

This leaflet deals with houses which were bought from the Council, in other words those sold under the "right to buy" scheme before 22<sup>nd</sup> March 1999. On that date, the Council sold all its houses to a company (South Hams Housing, now called Tor Homes), and in the case of houses bought from that company, you or your solicitor should contact Tor Homes to find out what restrictions apply. Their address is Tor House, St Peters Quay, Totnes, TQ9 5SH.

Not all former Council houses in the South Hams have this restriction. Generally it is the ones in the designated "Area of Outstanding Natural Beauty", or the other rural areas outside the towns of Dartmouth, Kingsbridge, Ivybridge and Totnes. However, it depends on the parish, so some houses in

the Bridgetown area of Totnes, for example, are subject to the restriction because they fall within Berry Pomeroy parish. You will need to ask your solicitor to look at your deeds, or ask the Council, whether the restriction applies to your particular home.

### **Q2. What about buying in joint names?**

Only one person needs to qualify, in order to obtain the Council's consent. However, the house must be put either in joint names (including the name of that person), or in that person's sole name.

### **Q3. Is this restriction legal?**

Yes. Although it does not apply to **all** ex-Council houses, it originates in national legislation (details are given in the section entitled "Information for solicitors and conveyancers"). It is not something unique to South Hams District Council.

### **Q4. What is the point of it?**

The thinking behind this covenant is to enable local properties to be available, and more affordable, to local people. This is important in an area like the South Hams which is popular with people moving from other parts of the country, or buying holiday homes.

### **Q5. Does this still involve the Council, now that it has disposed of its housing stock?**

Yes. The covenant means the **Council's** consent is needed, unless the house was first sold on or after 22<sup>nd</sup> March 1999. That is when the transfer of housing stock took place.

Properties first sold after that date are the responsibility of Tor Homes, and you should find out from them what you have to do before buying or selling.

Leasehold properties (usually flats) need the consent of **both** the Council and Tor Homes.

### **Q6. Are there exceptions?**

Yes. For example, if the property is being transferred from joint to sole name (or vice versa) or inherited under a will or intestacy, then the Council's consent is not needed.

### **Q7. Will the requirement for living or working in Devon be relaxed in any circumstances?**

It is very unlikely. The covenant has been imposed for sound reasons that still hold good, and it would not be right for the Council to let these houses go to people from outside the area except in very special circumstances. Such might be where a person has lived out of the Devon for a short period in recent years,

but before that lived in the South Hams for many years.

The fact that someone happens to have found a buyer from another part of the country will never be sufficient on its own. It is for owners and estate agents to market houses properly, bearing in mind any restrictions that apply.

It should be remembered that the owner would have been aware of the situation when he or she bought the property, and should have benefited at that time from any reduction in value caused by the covenant.

### **Q8. What about renting the house out?**

Any renting or letting of properties subject to the covenant must also be to tenants who have lived and/or worked in Devon for the previous three years.

Note that **all** ex-Council properties are restricted to use as a main residence and not as a second or holiday home.

### **Q9. Is this the only restriction on buying and selling ex-council houses?**

No. Some houses are subject to other restrictions and your solicitor should check the position.

## Information for solicitors and conveyancers

### Q10. What does the covenant say?

On any sale or assignment of lease of a property to which the restriction applies, the prospective purchaser must obtain the Council's prior written consent to sale. If they do not, the Land Registry will not register the transaction and the sale will be void.

The Council will not give its consent unless the prospective purchaser can prove that he or she has lived (which means having had his or her principal home) and/or worked in Devon throughout the three years immediately prior to the date of the proposed purchase of the property. If the conditions are satisfied, then the Council **must** give its consent.

Sections 157 to 162 of the Housing Act 1985 contain the relevant provisions.

In the case of a **leasehold property**, this is really a matter for Tor Homes as owner of the freehold, and the request for consent should be made to them in the first instance. However, the restriction at the Land Registry is specifically in the Council's name, and the Registry will insist on specific consent from the Council as well.

In practice, if Tor Homes consent to the transfer of a leasehold property, the Council will consent as a matter of course.

### Q11. What do we need to do to get consent?

The purchaser (or at least one of joint purchasers) must show that he or she has lived and/or worked in Devon for the preceding three years. We will accept a letter from their solicitors saying so but only if the letter states specifically that this is within the solicitor's personal knowledge.

If this cannot be done, we require a statutory declaration from the prospective purchaser attesting to the fact – they should include their

current address and chain of previous addresses. If there is more than one purchaser, only one need supply a statutory declaration. It must comply with the legal formalities, and **not** be taken by the solicitor acting for the person in the purchase. We will not accept utility bills or reference to the electoral register, as they are not conclusive proof of residence.

### Q12. What happens then?

The Council must give its consent if it is satisfied that one of the buyers satisfies the restriction. This will take the form of a letter along the following lines:-

“Please accept this letter as the Council's formal consent to the transfer of [property] to [x or x and y] under Section 157 of the Housing Act 1985”.

### Q13. How quickly can this be done?

Usually within a few days if the requirements are complied with and the application is in the proper form. In many cases we need to ask solicitors for additional information (eg. They have said their client has lived in the area for some time, but not for how long, or that it is within their personal knowledge).

Please bear in mind that it will be necessary for us to retrieve papers from store and check our records relating to the particular property. Like you, we are busy people, and it is helpful if your application for consent is not left until the last minute.

### Q14. Will you give consent retrospectively?

If the requirements are satisfied, yes.

### Q15. The buyer does not comply, but I believe there are exceptional circumstances. What should I do?

Please bear in mind that it is **very** unusual for the requirement to be waived. If, however, you consider that the Council should consider doing so, please refer to our separate leaflet.

### Q16. My clients are having trouble selling – where do we go from here?

1. It may be that the property is overpriced, either in current market conditions, and/or bearing in mind the covenant which can in some cases reduce the value of a property. Please bear in mind that your clients will have bought the property in full knowledge of the covenant, and the price paid by them will have reflected its existence.
2. The Council may be prepared to waive compliance with the “lived or worked in Devon” requirement if the property can be sold to a Registered Social Landlord (eg. a housing association) which can then make the property available for rent by someone who complies. Not all properties are suitable for Registered Social Landlords, but our Housing Resources and Development Manager might be able to indicate whether this is likely to be an option. Contact Andrew Fiske at Follaton House.

### Q17. What else do I need to look out for?

It is your responsibility to check the title, but other matters to look out for include:-

- (a) **Rights of pre-emption.** These were generally only included in transfers in the early 1980s and before, and had a life of 21 years. They have therefore probably all expired.
- (b) **Main Residence Covenants.** These apply to all ex-Council properties wherever they are, and therefore constitute an additional requirement to the “lived or worked in Devon” covenant. The covenant states that the property must only be used as a main residence and not as a second or holiday home. This also applies where the property is let – the tenant can only use the property as their main residence.

- (c) **Building Plots.** Sometimes the garden of an ex-Council house is large enough to build a second dwelling on. We take the view that the construction of a second house on the plot does not, in itself, breach the “rural area” covenant. However, both the old and the new property will be subject to all of the covenants applying to the land including the “main residence” covenant, and the “lived or worked in Devon” covenant if applicable. It is not our practice to agree to the release of such covenants in relation to development land.
- (d) **Covenant preventing alterations.** Generally ex-Council properties will be subject to a covenant preventing alterations. Following the transfer of housing stock, the Council will not oppose the release of such covenants unless it has retained land in the vicinity which can be said to benefit. The person requesting the release will be required to meet our costs.

Consent of Tor Homes (where applicable) should be sought separately.

## Information for estate agents

When a former Council house is marketed, it is very important that particulars include details of any restrictions as to who can buy the property. This avoids the disappointment and inconvenience which will inevitably occur if a sale falls through because the Council will not give its consent.

It is helpful if the seller's solicitor is asked to examine the deeds at an early stage, to identify any relevant restrictions.

## South Hams District Council

### Restrictions on transferring ex-Council houses to people outside Devon - Guidance and Frequently Asked Questions

**Q What does this Guidance cover?**

A This Guidance refers to restrictions applied to some ex-council houses in the district of **South Hams**. This is known as a **rural area covenant** or **restriction** or sometimes a **section 157 restriction**.

**Q How do I apply for consent to transfer one of these properties?**

A Refer to document 'How to apply for consent where a Rural Area Restriction applies'.

**Q What is a Rural Area Covenant or s157 Restriction?**

A Some of the ex-Council houses in South Hams can only be transferred with the Council's consent. This will only be agreed if the property is being **transferred to someone who has lived and/or worked in Devon for the previous three years three years immediately prior to the sale, or lived in the South Hams District for a cumulative total of 7 years in the past 20**. If consent is not obtained, the Land Registry will not register the transaction and the sale will be void.

**Q Why does this still involve the Council?**

A The covenant means Council's consent is needed for houses sold **before** the dates set out below.

**Q Which houses are affected?**

A Houses bought under the 'Right to Buy' Scheme from South Hams District Council **before 22 March 1999**. For houses **sold after** these dates please contact Devon & Cornwall Housing, 8 St Peters Quay, Totnes, Devon, TQ9 5SH or visit their website [www.dchgroup.com](http://www.dchgroup.com) .

**Q Does this apply to houses in all areas within the South Hams?**

A No - it will usually apply to the ones in designated rural areas or areas of outstanding natural beauty or Dartmoor National Park, outside the main towns of Dartmouth, Kingsbridge, Ivybridge and Totnes.

**Q What does the restriction / covenant say?**

A Prospective purchasers must have **lived** (which means having his/her principal home) **and/or worked** in Devon throughout the **three years** immediately before the date of the proposed purchase of the property. If these conditions are met then the Council must give its consent.

**Q What does this mean?**

A On any sale or assignment of lease of a property to which the restriction applies, you must obtain the Council's written consent to the sale. If you don't, the Land Registry will not register the transaction and the sale will be void.

**Q Is this restriction legal?**

A Yes. The rules are set out in sections 157 to 162 of the Housing Act 1985

**Q What is the point of the restriction, and will it be relaxed in any circumstances?**

A The restriction helps local properties to be available and affordable to local people. This is important in areas like the South Hams where people would like to move to from other parts of the country or invest in a holiday home.

**However** – there is an exception where the potential purchaser has lived in the South Hams District for a cumulative total of **seven years** in the past 20 years.

**Q Can we buy in joint names?**

A Yes, and only one person **must** meet the qualifying conditions. However, the house must be put either in joint names (including the name of the qualifying person) or just in the qualifying person's name.

**Q Are there exceptions?**

A The Council's consent may not be needed:

- if the property is being transferred from joint to sole name (or vice versa) **or**
- inherited under a will or intestacy

**Please check with your solicitor**

**Q What about renting the house out?**

A Any renting or letting of properties subject to the covenant must also be to tenants who have lived and/or worked in Devon for the previous three years.

**Q Is this the only restriction on buying and selling ex-Council houses?**

A No. Some houses are subject to other restrictions - ask your solicitor to check.

For example:

- **All ex-Council properties** are restricted to use as a **main residence** and not as a second or holiday home.
- Rights of **pre-emption**: these were usually only included in transfers prior to the early 1980s and lasted for 21 years, so they have probably all expired now
- **Building Plots**: the garden of an ex-Council house may be large enough to build a second dwelling on. We consider that building a second house on the plot does not, in itself, breach the 'rural area' covenant. However, both the old and the new property will be subject to all of the covenants applying to the land including the 'main residence' covenant, if applicable. We don't normally agree to the release of such covenants in relation to development land.
- **Covenant preventing alterations**: most ex-Council properties have a covenant preventing alterations. The Council is unlikely to object to releasing these covenants unless we have land in the vicinity which can be said to benefit. The person requesting the release must pay our costs.
- Consent of the Housing Company should be sought separately.

**Q I'm selling a property subject to the restriction – what should I do?**

A Make sure your Estate Agent includes the rural area restriction in the Property Particulars – reducing the risk of a sale falling through because the Council will not give its consent. Ask your Solicitor to check your Deeds at an early stage to see what restrictions may apply.

**Q What if the property is leasehold?**

A In the case of a leasehold property, this is really a matter for the Housing Company as owner of the freehold, and the request for consent should be made to them in the first instance. However, the restriction at the Land Registry is specifically in the Council's name, and the Registry will insist on specific consent from the Council as well. In practice, if the Housing Company consents to the transfer of a leasehold property, the Council will consent as a matter of course.

**Q I am having problems selling my ex-council house because of the restriction – what can I do?**

A It is likely that the restriction will reduce the value of the property. The restriction would have been taken into account in the price paid when the property was first sold, and initial and any subsequent purchasers would have been fully aware of the restriction when they bought the property.