

Appendix 2

Introduction

1. South Lakeland District Council ("**the Council**") is the owner of the bed of Lake Windermere. Anyone who wishes to erect any building or other structure, or attach any other object which encroaches over the Council's land ("**the Encroachment**") will need to apply to the Council for consent and will be required to pay a fee (to be calculated based upon the size of the Encroachment).
2. There are a number of different types of encroachment:-
 - i) Annual Residential – this is any Encroachment used by a Customer who is occupying their property on a normal residential basis and whose use of the Encroachment is subject to an annually renewable agreement.
 - ii) Annual Commercial – this is any Encroachment used by a Customer who is using their property for **any** commercial basis irrespective of whether or not the operation generates an income. This includes, but is not limited to, properties such as guest houses, management companies, business operations, charities and properties held in a trust. Again, the use of such Encroachment is subject to an annually renewable agreement.
 - iii) Commercial (long term) – these Encroachments are used by Customers who operate a commercial business (again, irrespective of profit) and the use of the Encroachment is governed by an agreement which extends beyond one year. These are outside the scope of this guidance note.
3. This guide is intended to set out the process to be followed should a customer using an Annual Commercial Encroachment believe that they should properly be treated as an Annual Residential Encroachment and they wish to apply to the Council to have this reviewed.

Application process

4. Any customer who believes that their Annual Commercial Encroachment should properly be treated as an Annual Residential Encroachment will need to make an application in writing to the Council's property agents at the address below:-

Lambert Smith Hampton
Suite 1
Cumbria Tourism Building
Windermere Road
Staveley
LA8 9PL

5. The application will need to contain the following:-
 - i) Applicant's name (or names if more than one);
 - ii) Applicant's address;
 - iii) The date of the application;

- iv) Property address (if different to the Applicant's address);
 - v) An explanation as to why the Applicant believes the Encroachment should be treated as an Annual Residential Encroachment rather than an Annual Commercial Encroachment; and
 - vi) Appropriate evidence to support the application (see more on this below).
6. Lambert Smith Hampton will send an acknowledgement letter within **7** working days of receipt of an application. They will then review the application to ensure all relevant information has been provided and, if any further information is needed, will write to the Applicant to request this.
7. Once a full application has been received, Lambert Smith Hampton will submit it for consideration by the Lake Administration Committee of South Lakeland District Council ("**the Committee**"). The Committee meets on approximately quarterly basis.
8. The Committee can make one of three decisions:-
- i) It can approve the application. In this case, the updated charging rates will apply from the 1st day of the following month.
 - ii) It can refuse the application. In this case, the charging rates will remain unchanged.
 - iii) It can defer the application to the next meeting (usually so that further information can be obtained). In this case, the Applicant will be required to continue making payments at the existing rate.
9. Once the application has been considered by the Committee, Lambert Smith Hampton will write to the Applicant to confirm the decision made within **7** working days of receipt of the Committee decision. If the application is approved, the charging rates will be updated from the 1st day of the month following the decision date and an updated invoice will be supplied. If the application is approved, under no circumstances will the charging rate be backdated. If the application is refused, the charging rates will remain unchanged.
10. The decision of the Committee is final and there is no right of appeal. An Applicant cannot submit a further application for a period of 12 calendar months.

Evidence

11. As stated above, every application must be accompanied by adequate evidence to support the fact that the Encroachment should be treated as an Annual Residential Encroachment. The purpose of such evidence is to support the fact that the property and Encroachment is being used as a normal residential dwelling.
12. Although each application will vary, the following documents are likely to be required in support of an application:-
- i) Council Tax bill showing the property is treated as a residential property (not a holiday home or guest house);

- ii) Personal bank statements addressed to the property address;
- iii) Utility bills addressed to the Applicant or householder at the property address;
- iv) Company/Trust accounts showing the registered office address (different to the property address) – this may be relevant in cases where a Company/Trust has vacated a property and it is now in residential use;
- v) Company/Trust bank statements (addressed to a property other than the one benefitting from the Encroachment);
- vi) Details of who occupies the property as a residential dwelling (supported by Council Tax bill, bank statement, utility bills as necessary); and
- vii) Signed statutory declaration confirming that the property is in residential use only and setting out the dates and circumstances of such use.

13. The Council reserves the right to make its own enquiries into the use of any property or to instruct its agents to do so on its behalf.

Review of guidance

14. This guidance was approved by the Committee on 13 April 2018. It will be reviewed by the Monitoring Officer or Solicitor to the Council on an annual basis. The Monitoring Officer and Solicitor to the Council have the delegated authority to make minor amendments. Any substantial changes will be reported to the Committee for approval.

Date	Version
13 April 2018	1.0