



CABINET - 3 OCTOBER 2001

COMMONERS DWELLINGS IN THE NEW FOREST

1. Introduction

- 1.1 On 3 May 2000 the report, attached as Appendix 1, was considered by the former Planning and Transportation Committee. The recommendations were agreed as set out in the report and the consultation exercise has now been completed.
- 1.2 The New Forest District Local Plan, First Alteration, approved for First Stage Deposit in July 2001, retains the same planning policy, but makes reference to New Forest District Council taking over the management of the scheme.

2. The Consultation Exercise

- 2.1 Assistance was sought from the New Forest Committee and the New Forest Consultative Panel in drawing up a list of organisations to be consulted on the proposed arrangements. Appendix 2 contains a list of the bodies who were consulted. In addition discussions have been held with the Forest Friendly Farming project steering group who are also very interested in this issue.
- 2.2 The results of the consultation exercise are set out in Appendix 3, which summarises the comments received in the eight replies. As will be noted, all of the bodies (and individuals) supported the proposal set out in Option 3 of the earlier report with the exception of the Commoning Animals Protection Society. They feel the scheme should be administered independently of New Forest District Council by a Housing Association.

3. Financial Implications

- 3.1 The previous report notes that officer time will be involved in negotiating the legal agreements and monitoring compliance with them. These costs can be accommodated within existing budgets and applicants will be expected to meet their own and the Council's legal costs.
- 3.2 In the event of non-compliance with the agreements the Council's ultimate sanction is to purchase the dwelling and the associated land at a price which is established by a formula in the legal agreements. This price is very substantially below the market value being based upon the cost of building the dwelling. The Council would then seek to sell the dwelling on the same terms to another commoner who meets the requirements of the planning policy.
- 3.3 There is clearly a short-term financial implication in terms of the period between the purchase and the re-sale of the property. It is not anticipated

that this scenario will arise, other than very exceptionally, and would need to be the subject of a detailed report before the purchase clause is invoked. This will enable the Council to consider the detailed financial implications at the time. In total, only four dwellings are currently managed under this scheme by the New Forest Commoning Trust, and a large number of new dwellings are not anticipated in the future.

4. Environmental Implications

- 4.1 The importance of commoning to the environment of the New Forest is well known. A scheme which helps to support the continuation of commoning, even on a small scale, has significant environmental benefits.

5. Crime and Disorder Implications

- 5.1 None.

6. Conclusions

- 6.1 The consultations exercise has strongly supported the continuation of this small but significant scheme to help support commoning on the New Forest. In the absence of any alternative proposals, the Council can enable it to continue by agreeing to take over the management of any new dwellings which comply with the relevant planning policy.
- 6.2 It is hoped that this might only be a short-term situation and that alternative ways of providing and administering a scheme to provide affordable commoner's dwellings will be found. This will be kept under constant review working in partnership with the New Forest Committee and particularly the Forest Friendly Farming Group.

7. Recommendation

- 7.1 That the Council is prepared to enter into management agreements where new commoners dwellings are proposed which comply with the terms of Policy NF-H8 of the adopted New Forest District Local Plan and its First Alteration (July 2001).

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Background papers
Consultation Responses
held by C Elliott on
Commoners Dwellings
File

PLANNING AND TRANSPORTATION COMMITTEE 31 MAY2000

COMMONERS DWELLINGS IN THE NEW FOREST

1. PURPOSE

- 1.1 Commoner's dwellings can be allowed under a Local Plan 'exceptions' policy which require strict control of their occupation and long term use. The New Forest Commoning Trust has assisted the Council on the implementation of this policy since its introduction but have now indicated they do not wish to do so in respect of future new dwellings. This report considers options for the future of the section.

2. BACKGROUND

- 2.1 In 1989 the New Forest Review Group recommended that all agencies operating in the Forest should do all they could to support the practice of commoning. One major obstacle perceived by commoning groups was the lack of affordable housing in the Forest, preventing young commoners from living in the area and continuing the long held family traditions. New Forest District Council commenced a review of its planning notices to see how it might assist.
- 2.2 Simple solutions such as occupancy conditions and Section 106 legal agreements were quickly ruled out. They are subject to challenge on appeal and there is no effective mechanism for ensuring that once built a dwelling would be passed on at an affordable price. There was also concern about speculative applications which could result in numerous new dwellings contrary to the otherwise very restrictive planning policies.
- 2.3 The New Forest Commoning Trust was set up by the New Forest Committee in the early 1990s. One of its principal functions was to establish and operate a legal mechanism to ensure that any commoners' dwellings permitted by the Council were controlled in the long term to ensure they were only occupied by practising commoners and if they were sold on in the future this was at an affordable price to other commoners.
- 2.4 The basis of this legal mechanism is that the freehold ownership of a parcel of land is transferred to the Trust who then lease it back to the Commoner subject to restrictive covenants governing the occupation of the dwelling and the price, and to whom it can be sold on in the future. The creation of this mechanism led the Council to introduce a new policy for commoners' dwellings into its Deposited District-wide Local Plan. This free-standing policy stated:

"Policy NF-H7

Commoners housing in the New Forest Permission may exceptionally be granted for the development of commoners' dwellings provided that the following requirements are met:

a. the local planning authority is satisfied that the dwelling meets a need that cannot be accommodated in any other way; and

b. the application is supported by the New Forest Commoning Trust; and

c. the proposed dwelling has a habitable floor area not exceeding 120 square metres; and

d. appropriate mechanisms are agreed between the applicant, the New Forest Commoning Trust and the local planning authority to guarantee the proper management and long term availability of the dwelling for use by commoners exercising their rights.”

- 2.5 The policy was subject to challenge at the Local Plan Inquiry and the Inspector, who did not seem to appreciate the importance of commoning in the New Forest, recommended that it should be deleted as he felt it did not add to the general affordable housing ‘exceptions’ policy. After careful consideration of this recommendation, the District Council decided that the specific reference to commoners’ housing be retained but as part of the general affordable housing exceptions Policy and with some rewording to pick up particular concerns expressed at the Local Plan Inquiry. The revised policy states:

**“Policy NF-H8 Affordable housing for local needs in the New Forest
Exceptionally, small-scale housing developments on sites in or adjoining
villages may be permitted, to meet the needs of local people unable to
afford to rent or purchase property on the open market, provided that:**

- a. the local planning authority is satisfied that the dwellings meet a particular local need that cannot be accommodated in any other way; and**
- b. the developers enter into a planning obligation under Section 106 of the Town and Country Planning Act (1990) to ensure that the dwellings provide or low-cost housing for local needs in perpetuity; and**
- c. the proposal is capable of management by an appropriate body, for example a Registered Social Landlord, the New Forest Commoning Trust, or a village trust or similar accredited local organisation; and**
- d. there are appropriate local facilities shops, schools and public transport).**

In respect of single dwellings, the habitable floor area should not exceed 100 sq. metres, or 120 square metres for dwellings permitted specifically to meet the needs of New Forest Commoners.

D3.28 Favourable consideration will be given to the inclusion within a scheme of dwellings specially designed to meet the needs of New Forest commoners. In appropriate circumstances a single dwelling outside an existing settlement may be permitted under Policy NF-H8 to assist commoners who wish to continue their family’s commoning traditions but who, on wishing to set up home themselves, are unable to afford to purchase on the open market a dwelling from which they can continue commoning. The New Forest Commoning Trust has been set up specifically to support the implementation of a policy to support affordable commoner’s housing, and the Council will have regard to whether the proposal for a commoners’ dwelling is supported by the Trust. In order to guarantee the long term availability of dwellings built for commoners under this policy, applicants will be required to enter into legal agreements.

Appendix 1

D3.29 The New Forest Commoning Trust has devised an agreement which is acceptable to the local planning authority. Under this agreement, the Commoner, who will be responsible for building the dwelling, will transfer the Freehold interest of the site to the Trust. The Trust will then divide the site into grazing land and building land. The building land will be conveyed back to the Commoner with imposed covenants restricting the use of the dwelling and land to Commoners. The grazing land will be leased back to the Commoner. The Trust in turn will be responsible to the local planning authority for monitoring and checking that the dwelling continues to serve the needs of commoning. In the event that the applicant at some time in the future reduces his/her commoning activity below a substantial level the legal agreement will give the Trust the right to repurchase the property. The Trust will then arrange for the property to be sold to another Commoner under the same terms and conditions at a prior agreed price based on the construction cost of the dwelling and the market value of the land associated with it.”

- 2.6 The New Forest Commoning Trust objected to the revised version of the policy. They have now indicated that they do not wish to accept any more applicants under the scheme. At the present time four houses have been permitted under the scheme; two are occupied and two are nearly finished and close to occupation. The New Forest Commoning Trust have regularly inspected the dwellings and checked that the owners are fulfilling the legal requirements of the scheme.

3. Options for the Future

- 3.1 The scheme has had a limited uptake but it has provided a small number of commoners dwellings which will remain affordable in the long term. An on-going slow uptake of the scheme could have been anticipated providing a limited supply of housing for this important group of people without having the more substantial environmental impact that a more permissive policy might have created. If nothing is done, which is the first option, it is likely that the policy will be completely redundant as there is no other way currently available of complying with the detailed requirements of the planning policy.
- 3.2 A second option is to completely review the whole policy through the review of the District Local Plan. In practice this means that no new dwellings are likely to be permitted until the new plan is well advanced which is likely to be two years or more. It is also difficult to see how any new simplified control mechanism could avoid the risks initially identified, i.e. that the scheme could be the subject of planning appeals and the removal of restrictions by planning inspectors. This could lead to many more applications for dwellings in the hope that in the future the restrictions can be removed and the value of a property might increase up to four-fold. This option is not recommended.
- 3.3 The third option is that the District Council takes over the management scheme currently operated by the New Forest Commoning Trust. Where an applicant and a site meet the requirements of the planning policy, the Council will take the freehold ownership of the site and then transfer part and lease part of it back to the commoner with restrictive covenants. This will ensure that the long term control and on-going ‘affordable’ requirements of the planning policy can be achieved. The Head of Legal and Democratic Services has confirmed that the Council has the legal power to own land in such circumstances and initial discussions indicate that the Council’s Estates and Valuation section could manage the scheme.
- 3.4 There are, however, workload implications in monitoring and securing

compliance, particularly for Planning, Estates and Valuation and Legal staff if there is any breach of the covenants by the Commoner. The restrictive covenants give the Council the right to repurchase the dwelling and associated land at a price which is established by a formula in the agreements. The dwelling would then be sold on to another Commoner who met the requirements of the planning policy and subject to the same conditions.

4. Environmental Implications

- 4.1 The importance of commoning to the environment of the New Forest is well known. A scheme which helps to support the continuation of commoning, even on a small scale, has significant environmental benefits.

5. Financial

- 5.1 The scheme will have financial implications in terms of the officer time required to negotiate the agreements and monitor compliance with the requirements. The applicants will be expected to meet their own and the Council's legal costs. More importantly account must be taken of the potential cost of the enforcement of the restrictive covenants as described in paragraph 3.4. This could involve money being needed to repurchase the land and dwelling and there would then be a period of time before it can be resold and the Council's costs reclaimed. These costs will not be incurred if there is no breach of the covenants but need to be considered at this stage. It is recommended that this aspect be the subject of a more detailed report back to the Committee following the consultation exercise as recommended in paragraph 7.2.

6. Crime and Disorder Implications

- 6.1 None.

7. Conclusions

- 7.1 Option Three is the preferred option as it allows the continuation of scheme which makes a small but significant contribution to supporting the continuation of commoning in the New Forest.
- 7.2 If Option Three is agreed in principle, it is recommended that a consultation exercise be carried out with commoning organisation within the Forest before the new scheme is brought into operation. Any significant results from this exercise, including the financial issue set out in 5.1 above, would be reported back to the Committee for further consideration.

8. Recommendation

- 8.1 That Option Three, the District Council taking over the responsibility for the management of Commoners' dwellings under planning Policy NF-H8 be agreed in principle.
- 8.2 That a consultation exercise be carried out on this proposal before it is introduced with any comments being reported back to this Committee for further consideration.

Further Information:

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Background Papers:

Published Papers only

Consultees

Commoners Defence Association
Commoning Animals Protection Society
Country Landowners Association
FFF Affordable Housing Group
Minstead Manor Commoners
National Farmers Union
National Trust
New Forest Commoning Trust
New Forest Consultative Panel
Northern Commoners Association
Verderers of the New Forest
Dr Julian Lewis MP
All Members of the New Forest Committee

Responses to Commoners Dwellings Consultation

New Forest Commoners Defence Association – support the Council's proposal to take over responsibility for the management of the scheme. They suggest a review of the criteria used to assess applications, how they are monitored and a liaison group perhaps via initiatives within the Forest Friendly Farming Project.

New Forest Committee – welcome the Council's decision in principle to manage the scheme set out in the Local Plan.

The Countryside Agency – supports the District Council taking over the management of the scheme and welcomes the consultation exercise.

Commoning Animals Protection Society – believe that the scheme should be administered independently of New Forest District Council by a Housing Association set up to meet the specific needs of the Commoning community.

Hampshire County Council – support the Council's proposal to take over responsibility for managing commoners dwellings.

Salisbury District Council – support the Council's proposal (option three) and query if it could do so legally for any such dwellings proposed in the Salisbury District.

Environment Agency – have no comments to make on the Council's proposal.

Colonel Peter Sweet – would prefer the creation of a new Trust, but if this is not possible would support the Council's proposal to take over the management of the scheme. Suggests close liaison with the CDA is essential to check on new applicants history of commoning.