

EXECUTIVE SUMMARY:

Essential dwellings in the open countryside

PURPOSE

The study has been undertaken by Land Use Consultants in association with Kernon Countryside Consultants and the Institute of Rural Sciences, University of Wales, Aberystwyth.

The objectives of this research have been to:

- Review the Assembly's current guidance on agricultural and forestry dwellings and agricultural occupancy conditions, with particular reference to the functional and financial tests.
- Advise on the appropriateness of the guidance in the light of changes to the rural economy and current rural policy.
- Assess in detail the adequacy of the operation of current controls including monitoring and enforcement.
- Investigate alternative methodologies for assessing the need for essential new dwellings in the open countryside.

The central tenet that underlies this study is that since the introduction of the planning system in 1947 strong control has been exercised over development in the open countryside. One of the few exceptions to this planning constraint has been dwellings deemed essential for the support of agriculture and forestry enterprises.

Through this research 'open countryside' has been defined as that away from established settlements. Under current guidance in TAN (W) 6 planning applications for new essential dwellings in the open countryside are required to satisfy all of the following tests to justify their exception to planning policy:

1. *Functional test:* There is a clearly established existing functional need for the dwelling.
2. *Full-time test:* The need relates to a full-time worker (or one who is primarily employed in agriculture).
3. *Financial test:* The unit and the enterprise are currently financially sound and have a clear prospect of remaining so.
4. *Other dwellings test:* The functional need could not be met by another property on the unit or in the locality.
5. Other normal planning requirements can be met.

RESEARCH METHOD

This research has involved:

- *Context setting:* through a literature review (including a review of relevant national policy) and a postal questionnaire to assess the current state of the rural housing market.
- *Statistical data gathering:* on the total number of relevant planning applications received by local planning authorities (lpas) in Wales.
- *National consultations:* with the views of a wide range of national consultees sought, reflecting the diverse range of issues bearing on the future of planning policies for essential dwellings in the open countryside.
- *Review of lpa policy and practice:* with review and discussion of relevant planning policies across nine sample lpas and review of a total of 50 planning applications within these authorities covering applications for: new essential dwellings; the lifting of occupancy conditions; and Certificates of Lawfulness for Existing Use or Development (CLEUD).
- *Case studies:* with 20 applications subject to a site visit and interview with the applicant.

CONTEXT

Important context to the consideration of future policy for essential dwellings relates to the changing face of and policy for rural economies and communities.

Farming and forestry: With the exception of the dairy industry there has been a recent significant rise in farm incomes from an all time low in 2002, with the income of Welsh livestock farmers reaching a seven year high in 2003/04. With this renewed buoyancy in the agricultural economy there is likely to be a continuing need for new essential dwellings to meet the functional needs of agriculture, although the continuing increase in farm size in mainstream agriculture is likely to limit the growth in this demand. However, the full implications of CAP reform are unlikely to be known for a few years. On the other hand, there is little indication of an ongoing need for essential dwellings in support of the

forestry sector where the majority of forestry work is now undertaken by contractors and peripatetic workers.

Family farming and diversification: The Welsh Assembly Government's strategy for agriculture – *Farming for the Future* – places strong emphasis on the family farm – “*the family farm is integral to the character of rural Wales and to the social fabric of rural communities.....socially the family farm defines the character of Welsh rural society, and its sense of identity, farming is also, in much of rural Wales, one of the most important areas of life in which Welsh remains the natural, everyday means of communication*”. Thus maintenance of the family farm is also central to Welsh national policy on the conservation of the Welsh language.

The strategy for agriculture, picking up on EU and UK policy, also places strong emphasis on the diversification of the agricultural and wider rural economy to create viable incomes from agriculture and other sources in a way that sustains the family and the environment.

House prices and affordability: Over the last three years there has been a significant rise in the price of rural properties, largely driven by commuters and other incomers, including those retiring to rural Wales. While over the two years 2002/03 house prices in Wales increased by an average of 52%, those in the more rural areas of Wales increased by 65% - 75%. As a consequence, rural housing affordability is now a widespread concern. As a response to this problem the report of the Environment, Planning and Countryside Committee of WAG - *Planning aspects associated with the provision of affordable housing and sustainable communities in the countryside (2004)* - recommended that Ipas should be able to develop local affordable housing policies that reflect the local housing market and local evidence of need. The Assembly Government accepted this recommendation.

Farm properties and speculation: The upward trend in house prices is reflected in the sale of farm properties. According to RICS, despite past falls in farm incomes, land values have risen to record levels. Furthermore the share of farms bought by non-farmers in England and Wales rose to 51% in the last three months of 2003. This trend is significant as hobby/lifestyle farmers are changing the traditional structure of farming in Wales, with small-holdings under 5 ha. now making up 37% of all holdings in Wales.

According to previous research, the Planning Inspectorate, and Ipas consulted during this study, there is continuing pressure for new 'essential dwellings' coming from those outside agriculture (often commuters and those approaching retirement) who are seeking 'a place in the country' unrelated to a rural enterprise. These pressures are strongest in areas within easy commuting distance of the north and south coast, such as the Vale of Glamorgan. Where approved, these dwellings are often of a size and appointment that lie outside the reach of those employed in rural enterprises.

At the same time, estate agents were of a clear view that agricultural workers can no longer afford to buy a property with an agricultural occupancy condition, despite its 30% - 50% discounted value on the open market. This is reinforced by their view that only 10% of those viewing agricultural dwellings with occupancy conditions would be able to meet the occupancy condition.

Structure of rural communities: Current changes in house prices are seen as contributors to the out migration of the young from rural Wales and an increasingly aging rural population. In turn, the changing population structure has been blamed for the loss of identity and cohesion of rural communities.

All these above factors have a bearing on the future policy for 'essential dwellings' and are picked up in the conclusions and recommendations of this research.

KEY FINDINGS

Against the above background key findings from this research have been:

Planning Policies: Local policies for essential dwellings in the open countryside broadly follow current national guidance but lack significant detail, with few plans mentioning all five essential dwellings tests. Significantly, some Ipas have extant plans from the 1990s which refer to national guidance that predates TAN (W) 6.

Applications for new essential dwellings in the open countryside: The number of applications for new essential dwellings is not great but it is a highly contentious area of planning. Individual Ipas receive between 1 & 20 such applications per year. 64% are outline applications and 36% are full planning applications. 62% of all

applications for new essential dwellings were approved between 1999/2002.

The current demand for new essential dwellings appears to be coming primarily from established family farms where there is a need to provide accommodation for another family member and from bareland plots arising from the lotting up of farmland at sale, including applications with only a tenuous connection to a justifying rural enterprise. Currently few applications come from economic activities other than agriculture.

Applications for the removal of agricultural occupancy conditions: Overall there are fewer applications for the removal of occupancy conditions, compared to those for new dwellings, with an average of one or two such applications per lpa per year. Of these 60% relate to holdings of 5 hectares or less and 56% are on holdings with more than one dwelling. 70% of all such applications are approved. From the case files it appears that occupancy conditions are most frequently lifted in situations where the supporting enterprise never materialised or failed.

Certificates of Lawfulness: A number of lpas reported receiving an increasing number of applications for Certificates of Lawfulness (CLEUDs) from those who have lived in breach of an occupancy condition for more than 10 years. The Vale of Glamorgan, for example, estimates receiving between 30 and 50 such applications per year.

Application of the tests for new essential dwellings: The *functional test* is the most important test in the assessment of new essential dwellings. If there is no need for a resident worker for the proper functioning of the enterprise, then even if it is a full-time and viable business, a new dwelling cannot be justified. From the review of case files it appears that the functional test is applied in all cases although there is little analysis of whether the identified functional need could be met by an existing worker on the unit.

Full-time test: Few lpas clearly assess whether the essential need relates to a full-time worker.

Financial test: Across the sample lpas the financial test is only sometimes applied. Yet this is necessary in all cases to assess the long term viability of the justifying enterprise and thus that

the justification for the dwelling will be assured into the long term.

Other dwelling test: Whether the functional need could be met by another existing dwelling on the unit, again appears not to be regularly assessed despite many of the applications reviewed relating to a second dwelling on the unit. Where there is an existing dwelling, the test requires that *an essential need has to be established for a full time worker or workers on the unit and that such workers cannot be accommodated either by the existing dwelling or other suitable accommodation in the area*

Generally applications are assessed against other normal planning requirements but a surprising number of applications were approved where the dwelling had a poor functional relationship with the enterprise that it was intended to support.

Enforcement of agricultural occupancy conditions: There is little monitoring of agricultural occupancy conditions in Wales. Of the 19 lpas initially consulted, only three had an up to date list of dwellings with occupancy conditions. If there is no record of these dwellings then the occupancy condition cannot be monitored. If there is no monitoring there is strong encouragement for those outside agriculture to purchase such properties in anticipation of applying for a Certificate of Lawfulness once a 10-year breach of the condition has elapsed.

CONCLUSIONS AND RECOMMENDATIONS

The concession in planning policy for essential dwellings in the open countryside is framed by a central tension. On the one hand, there is the need to limit abuse of this concession in planning by those with only tenuous connections with a rural enterprise, while on the other, there is a need, embodied in national policy, to support the family farms of Wales and the integrity of Welsh rural communities against a backcloth of unprecedented rural house price rises. There is equally a need to foster farm diversification and the diversification of the rural economy, whilst continuing to acknowledge the importance of agriculture, both economically and as custodian of the landscape.

To date control of essential dwellings in the open countryside, both in policy and practice, has primarily been through assessment of the 'essential' need for new dwellings (judged against a series of tests at the planning application stage).

However, control over this concession in planning is affected by four interrelated factors:

1. The meeting of specific tests before an application for a new dwelling is approved.
2. The imposition of an occupancy condition at approval of such dwellings, limiting who is eligible to live in the property.
3. The monitoring of compliance with the occupancy condition.
4. The limiting of circumstances in which the occupancy condition can be lifted.

The conclusions to this study therefore have reflected on the above four factors while answering a series of questions, as set out below.

Should any concession in planning be retained for essential dwellings in the open countryside?

This research has identified that there is a small but continuing number of genuine applications for essential dwellings in the open countryside. For the benefit of the agricultural and wider rural economy it will be important that this concession in planning is retained but in ways that avoid abuse of the system.

Recommendation 1: There remains a justifiable case for continuing the concession in planning for essential dwellings in the open countryside.

Should the scope for new dwellings in the open countryside be widened?

Current guidance for essential dwellings in the open countryside will be increasingly out of step with other areas of national policy if no allowance is made for diversified activities where there is a clear functional need for a worker to be resident on the holding.

Recommendation 2: There is a solid case for widening the current guidance for essential dwellings in the open countryside to apply to agricultural, forestry and other rural enterprises. New residential accommodation should only be permitted where the justifying rural enterprise is acceptable in planning terms and permitted in that rural location. The wording in the Annex to PPS 7: Sustainable Development in Rural Areas (2004) paragraph 15 provides a model set of words (see paragraph 3.36 of the main report).

Should the concession in planning for essential dwellings in the open countryside be made easier or more difficult?

Although representatives of the farming community have commented that the current guidance on essential dwellings is out of date, there is clear evidence that detailed scrutiny of individual applications remains essential to avoid abuse of this policy concession. If applied without reference to a common set of criteria the potential for inappropriate development in the countryside is considerable, especially in the face of escalating rural house prices, land fragmentation and a high percentage of land purchases by non-farmers. From this research it appears that the use of more stringent tests over the last five years has reduced abuse of this concession in planning, although it is clear that there is still considerable variation in how the tests are applied. Consistency will become all the more important as the range of justifying rural enterprises expands with rural diversification.

Recommendation 3: The current five tests set out in TAN (W) 6 paragraph 41 for the assessment of applications for new agricultural dwellings continue to be directly relevant and are equally applicable to diversified enterprises. These tests, however, require clarification to ensure greater consistency in their application. The main report provides suggestions for revised text.

Recommendation 4: The Welsh Assembly Government in association with the Welsh Local Government Association (WLGA), Planning Officers' Society and the Planning Inspectorate should work with Welsh local planning authorities to ensure greater consistency in the application of this area of policy.

Is there a case for less stringent application of the tests (TAN (W) 6 paragraph 41) in certain instances?

From this research there are two scenarios where there may be a case for applying the tests set out in TAN (W) 6 more leniently. Both relate to second dwellings on established enterprises and reflect the policy focus on supporting the family farms of Wales: First, in remote rural areas there may be a need for a second worker to assist with two-person tasks and in emergencies. Second, on some units there may be a need for a member of the family, working full or part-time on the

enterprise, to be available at short notice, with the intention that they will take on the enterprise at the retirement of the current enterprise manager. In both cases the issue hinges on the availability of other housing in the locality that is affordable, available and suitable to meet the identified need.

A clear risk associated with allowing new dwellings in the above circumstances is that it could lead to a less strict policy approach being adopted in all circumstances. Thus any revised wording in guidance must clearly define the circumstances in which a less stringent approach might be adopted. It also needs to be considered in tandem with a change in wording of the occupancy condition (considered below).

Recommendation 5: On established enterprises that meet the financial test there may, on occasion, be a case for allowing a second dwelling where there is a need for full or part time assistance but there is no suitable and available accommodation in the locality. The wording of such a concession requires very considerable thought to ensure that it does not result in an overall dilution of the strict restraint on new housing in the open countryside (suggested wording is provided in paragraph 8.40 of the main report).

Should a temporary test be retained?

Under current guidance, temporary residential accommodation should be provided for the first three years of a new enterprise to give the enterprise time to develop and to prove that it can be economically sustainable. There is evidence from the cases studied that this is an effective tool for assessing genuine cases, while not resulting in undue hardship for applicants.

Recommendation 6: The current requirement that a temporary dwelling should be provided in the case of newly created enterprises, where the case for a dwelling is not completely proven, should continue and the current tests in TAN (W) 6 paragraph 50 retained. For clarity, however, this section should be retitled “New enterprises” and under test (d) it should be noted that “in the case of new enterprises on existing units it will need to be demonstrated why the functional need of the new enterprise cannot be met by existing dwellings on the holding, potentially with the reorganisation of existing labour and accommodation”.

Should the range of conditions and other guidance in TAN (W) 6 be retained?

In addition to the main tests for permanent and temporary essential dwellings, TAN (W) 6 includes a range of other guidance which can be followed at the Ipas’ discretion. These include:

- consideration of the recent history of the holding;
- removal of certain permitted development rights through condition;
- application of the occupancy condition to other properties on the holding;
- tying the dwelling to adjacent buildings or to the land of the unit to prevent fragmentation.

As it remains imperative to continue to limit abuse of this concession in planning in the face of rising rural house prices and pressure on the rural housing stock from incomers, it is appropriate that these controls continue to be included in future guidance.

Recommendation 7: Current guidance in TAN (W) 6 aimed at limiting land fragmentation and ensuring that essential dwellings remain appropriate for the purpose for which they were constructed should continue, as a means of controlling abuse of this concession in planning.

Is there a case for altering the wording of conditions, designed to control subsequent occupancy, and how they are applied?

With rapidly rising house prices and pressure on the rural housing stock, there is no case for dropping occupancy conditions. Such a move would only serve to fuel property speculation and take housing further out of the reach of those in agriculture and other rural enterprises.

But, reflecting the policy emphasis on farm diversification and the lack of affordable housing for local workers, there is a strong case for a change in the wording of the agricultural occupancy condition such that it becomes a rural occupancy condition, with the wording of the condition expanded to include those:

- a. working or last working in the locality in agriculture or forestry; or

- b. *working or last working on a diversified enterprise on the holding or in the locality, where there is/was a defined functional need; or*
- c. *in or last in employment deemed by the local authority to be essential in the locality who would be eligible for consideration for affordable housing under the local authority's housing policies; or*
- d. *widows or widowers of the above, or any resident dependants*

Recommendation 8: The wording of the current agricultural occupancy condition should be broadened to become a rural occupancy condition that reflects the diversification of rural enterprises and the need to provide affordable housing to meet local needs. The wording of such an occupancy condition should be standardised to encourage consistency, with a recommended condition set out in any revision to TAN (W) 6. This condition must operate within the national framework on local needs housing with individual lpas developing their own bespoke affordable housing policies.

With this revised wording the need to lift occupancy conditions should be largely removed as the market for their purchase or rent will have been significantly broadened. In turn, the clear message that the occupancy condition will not normally be removed should act as a deterrent for those seeking to use this concession in planning as a means of gaining a house in the country unrelated to a rural enterprise.

Policy should also make it clear that where existing occupancy conditions can no longer be fulfilled or where enforcement action is taken for non compliance, the condition should be replaced by the revised wording rather than lifted, so retaining these dwellings within the restricted housing sector.

Recommendation 9: There should be a strong message in policy that rural occupancy conditions should not be lifted whilst there remains a need for local housing at affordable prices. Where applications are made for the lifting of current agricultural occupancy conditions, the condition should be replaced with the rural occupancy condition rather than, as at present, being taken out of the restricted sector through the lifting of occupancy conditions.

How can the operation of occupancy conditions be made more effective?

A key finding of this research is the current lack of monitoring of agricultural occupancy conditions. Without monitoring such conditions have little value and after a 10-year breach of occupation will be eligible for a Certificate of Lawfulness. The same situation would equally apply were the suggested revision to the agricultural occupancy condition introduced.

Monitoring is essential if the current trend of occupation in breach of occupancy conditions is to be reduced.

Recommendation 10: The Welsh Assembly Government working with the WLGA and Planning Officers' Society, must ensure that all Welsh lpas establish and maintain up to date records of those properties with agricultural / rural occupancy conditions and undertake annual monitoring of compliance with these conditions to prevent breach and subsequent loss of these properties from the restricted housing stock.

None of these recommendations should be seen in isolation. They are all inter-linked and the success of future policy will rest on the interplay between allowance for new dwellings and the operation and monitoring of occupancy conditions.