



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Adran yr Amgylchedd, Cynllunio a Chefn Gwlad
Department for Environment, Planning and Countryside

The Chief Planning Officer:
County & County Borough Councils:
The National Park Officer:
National Park Authorities:
Countryside Council for Wales:
Other Interested Bodies:

} in Wales

Eich cyf .Your ref
Ein cyf . Our ref A PAA 08/09/385 (CL-11- 04)
Dyddiad.Date 14 December 2004

Dear Colleague

THE SALE OF RURAL PLOTS AND THE LAND USE PLANNING CONSEQUENCES

The sub-division of agricultural land or woodland into small plots for sale, usually on the internet, can create problems for communities and planning control. This letter is to remind Chief Planning Officers of potential remedies already available, and to emphasise the need to act swiftly and pre-emptively where possible.

The subdivision and sale of small plots of agricultural land and woodland is a matter of public concern and the issue was most recently debated in the House of Commons on 12 October 2004.

There are three main aspects to the problem. First, the plots may be divided up with pegs, stakes or fences, creating an eyesore which detracts from the open appearance of countryside. Further degradation of amenity may result from the creation of hard standing or the stationing of caravans. Second, when plots are sold and no longer in agricultural use this can lead to neglect that is especially difficult to put right if plot owners cannot be traced. Third, the subdivision of fields and woodland gives rise to local concern because it can give a false impression that development of the land is bound to occur, regardless of any planning guidance or development plan policies for the area.

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In the case of woodland, the Forestry Act 1967, as amended, may require a landowner to obtain a Forestry Commission licence before undertaking certain tree removal activities. For example, under section 9 of this Act, landowners are required to obtain a licence to fell trees exceeding 10 centimetres in diameter unless they are fruit trees, or trees standing in an orchard, garden, churchyard, public open space, or hedge. Subject to this, owners or their tenants are allowed to fell up to 5 cubic metres of timber in any quarter without a licence, or sell up to 2 cubic metres in any quarter without a licence. There are exceptions from the need for a licence to cover such things as felling where trees are considered to be a nuisance or danger, at the request of an Electricity Board to protect power lines, or where it is required for the purpose of development authorised by planning permission granted under the Town and Country Planning Act 1990.

The Forestry Commission's Woodland Officers already work closely with local planning authorities. If they are not already doing so, authorities are advised to liaise with them over the control of tree felling when they receive a proposal that involves development in woodland. Contact details within the Commission are given at Annex 1.

POTENTIAL REMEDIES AND STRATEGIES

It is important for local authorities to be ready to take action on a number of fronts.

Monitor the media

The first line of defence is vigilance. Monitoring of prospective plot sales and advertisements for 'investment land' – especially on the internet – may be carried out by volunteers, or authorities could combine to employ a part-time monitor. The purpose of such monitoring is to provide local planning authorities with early and up-to-date information about the scale of the issue in their area.

Article 4 directions

A direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 ['the GPDO'] removes whichever permitted development rights are cited in the direction, necessitating a planning application for works that normally would not need one. In most cases, an article 4(1) direction does not take effect until the National Assembly has confirmed it. Article 4(1) directions can be made to remove permitted development rights which allow fences and other means of enclosure to be erected, and to prevent the stationing of caravans.

A direction made under article 5(4) can be imposed with immediate effect without needing the prior consent of the National Assembly, though it needs confirmation by the National Assembly within six months if it is to remain valid. Although article 5(4) directions cannot control the stationing of caravans, they can be used to remove the permitted development rights which allow fences and other means of enclosure to be erected.

Some local authorities have had success with timely 5(4) directions to stop the physical subdivision of fields before fences or posts go in, and with 4(1) directions to pre-empt the arrival of caravans.

Section 102 (Discontinuance) Orders

Under section 102 of the Town and Country Planning Act 1990, a local planning authority can require the discontinuance of any use of land or the removal of any building or works. In some cases, use of section 102 can result in payment of compensation. There is more information about discontinuance orders at **Annex 2**.

Section 215

Section 215 of the Town and Country Planning Act 1990 provides a local planning authority with the power to make good the loss of public amenity by requiring the owner to remedy the condition of the land.

Compulsory Purchase power

The National Assembly would normally expect any statutory procedures intended to remedy derelict or unsightly land (such as Section 215 notices) to have been taken as far as they can be before a local authority resorts to Compulsory Purchase. At that stage, or if those procedures would be ineffective, the use of Compulsory Purchase powers may be appropriate, particularly where there is a multiplicity of owners. Local authorities could then explore other post-acquisition strategies, such as leasing the land for its previous use, having imposed the necessary restrictive covenants to prevent sub-division.

Enforcement against unlawful change of use of land

In some cases, plots will be set up in such a way, or used in such a way, that it is plain that no agricultural use would be feasible. If no permission has been granted for change of use of land (for example, to leisure use), enforcement action could be considered.

Media action

Local planning authorities and amenity societies could consider advertising, public notices or use of the internet to give prospective plot purchasers a more realistic idea of the true development potential of their plots.

Next Steps

Along with the ODPM, the Assembly Government is considering the feasibility of a number of ideas, including the possibility of making arrangements to enable an article 4 direction to be served by means of a site notice.

Section 52 of the Planning and Compensation Act 2004 will, when commenced in Wales, provide for the making of Regulations. These Regulations would enable authorities to make immediate use of temporary stop notices where existing forms of enforcement and stop notice would not take effect quickly enough. A temporary stop notice could be in force for up to 28 days, providing time to serve an enforcement or stop notice if necessary.

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In the meantime, local planning authorities are invited to share any instructive experiences of coping with rural plot sales – whether a good or bad experience – with the Planning Division (Planning 2A) (Planning.Division@wales.gsi.gov.uk) and with each other.

Yours sincerely

K S POWELL
Head of Planning Division

ANNEX 1

Forestry Commission contacts:

North Wales Area (north of a line along the A44 from Aberystwyth to Llandrindod Wells):

Forestry Commission
Clawdd Newydd
Ruthin
Denbighshire
LL15 2NL
Tel: 01824 750492

South Wales Area

Forestry Commission
Cantref Court
Brecon Road
Abergavenny
Monmouthshire
NP7 7AX
Tel: 01873 850060

DISCONTINUANCE ORDERS

Section 102 of the Town and Country Planning Act 1990 enables a local planning authority to make an order requiring that any use of land shall be discontinued, or continued subject to conditions (s102(1)(a)), or that any buildings or works shall be altered or removed (s102(1)(b)). An order may also grant planning permission for development subject to conditions specified in the order.

An order under s102 can be made if the local planning authority is satisfied that it is appropriate in the interests of the proper planning of the area (including the interests of amenity and any present or future detriment to amenity). The decision to make a discontinuance order must take account of the development plan and other material considerations.

Discontinuance orders are made to deal with the **use** to which land is being put. An order can discontinue any existing use of land (whether lawful or unlawful) or, alternatively, can impose conditions on the continuance of a use of land. It may also require any buildings or works to be altered or removed.

A claim for compensation may be made to the local planning authority under s115 of the Act if it is shown that a person having an interest in the land has suffered damage in consequence of the order. Other persons may be entitled to compensation in respect of disturbance in their enjoyment of the land or for carrying out works in compliance with the order.

Unlike unopposed revocation and modification orders, discontinuance orders need to be confirmed by the National Assembly. The Assembly has power to modify the submitted order, including power to grant planning permission or to modify the order's grant of planning permission. Before confirming an order, the National Assembly must provide an opportunity to be heard to any person on whom the order has been served.

The National Assembly has the power to make a discontinuance order if it appears expedient for the Assembly to do so (s104). Such an order would have the same effect as if it had been made by a local planning authority and confirmed by the National Assembly.