

Report

Report subject: The Monitoring and Enforcement of Agricultural Occupancy Conditions.

Report to: Western Area Committee.

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Report Summary

To inform Members of ongoing work being undertaken in relation to the compilation of a comprehensive list of dwellings subject to agricultural and other occupancy conditions throughout the District, and; to inform Members as to the intended approach to be adopted to ensure more effective monitoring of such conditions in future to (a) ensure they are being complied with, & (b) detect breaches earlier so that the Council can enforce their compliance where necessary. Further, to inform Members of possible outcomes of enforcement action.

Introduction

Members will recall that at the last meeting on 10th November 2005, they expressed strong concern in a particular case where a dwelling had been occupied for a period in excess of ten years in breach of an agricultural occupancy condition, thus enabling the occupiers to obtain a Certificate of Lawfulness confirming immunity from any enforcement action the Council may otherwise have taken to ensure compliance with the condition.

Background

Members will be aware that currently and historically, planning policies have allowed for the provision of new dwellings in the open countryside where such accommodation is deemed essential to support farming activities, as an exception to the policies of restraint which normally operate in such areas.

However, the sale and renting of agricultural properties, changes in the nature and scale of farming enterprises, farm diversification and restructuring of the farming industry in recent years all have implications for whether conditions are now being complied with.

Additionally there have undoubtedly been deliberate attempts to breach conditions with the hope of subsequently gaining immunity from enforcement, principally for the financial benefits that would accrue.



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Officers have been concerned with the lack of any effective system for monitoring agricultural and other occupancy conditions for some time. In particular, if a property is occupied in breach of an agricultural occupancy condition, it is then unavailable to those persons who could comply with the condition and who may be on relatively limited incomes with restricted access to other local housing.

The unavailability of such dwellings also increases the pressure for new dwellings to meet demand for such accommodation in the countryside.

Unlike some other breaches of planning control, it is much more difficult to detect breaches of agricultural occupancy conditions, often due to the often isolated nature of the dwellings concerned, but also due to the lack of any obvious physical manifestation of the breach. The breach may have occurred for example, when the occupier(s) changed or they changed their employment.

Reactive enforcement methods, such as relying on members of the public to report breaches are therefore of little practical value if an effective approach to monitoring and enforcement is required.

However, the latter has been the past approach of SDC and most LPAs, principally in view of the resource - hungry nature of proactive enforcement and the relative lack of priority given to enforcement activity in general in comparison with the emphasis placed on achieving development control targets.

Towards a Proactive Approach to Enforcement

The government have recognised that effective enforcement involves more than reacting to third party complaints. Ongoing monitoring of conditions, plans and Section 106 Obligations is also required if breaches are to be detected/prevented. The government also recognises that, as already noted above, more resources are required to be dedicated to achieve such an aim.

Members will be aware that as part of a refocusing of enforcement activity towards a more proactive approach, since April 2004 a full -time Compliance Officer has been employed as part of the enforcement team, whose core activity is the monitoring of plans, conditions and Section 106 Obligations.

To date this post has been very successful in, amongst other things, detecting breaches before they have become too far advanced and have increased the instances of earlier remedial action being taken as opposed to longer and more drawn out reactive enforcement activity. The post has also ensured earlier/on time payment of Section 106 contributions at an earlier date than would otherwise have been the case, ensuring that the 'planning gain' promised by developers is delivered in a timely fashion.

Proactive Enforcement: Monitoring Occupancy Conditions

In view of the above problems identified in relation of effective enforcement of occupancy conditions and as part of taking a further step towards a more proactive enforcement role, early in 2005 Officers in the enforcement team initiated a project the purposes of which included:

- To detect breaches of planning control and ensure that Development Plan policies are complied with;
- To protect the Council's position against future claims of immunity from planning enforcement action;
- To reduce the pressure for further accommodation in the open countryside, where such accommodation already exists but is not available due to a breach of planning control.

As part of the first stage of this project, in summer 2005 the Council employed a research student with the objective of setting up a computerised database of all dwellings in the SDC area subject to occupancy and temporary conditions. The scale of the project was ambitious; it embraced any condition imposed on a planning permission since the Planning Acts first came into force in 1947 which limited the occupation of a dwelling or other accommodation, or limited the duration of a planning permission. The research work involved was therefore considerable and included investigating Cartology/Fast Planning Databases to find all relevant

sites as well as researching pre computer manual records, including microfiche and handwritten registers; in total nearly sixty years' worth of planning records.

As an indication of the scale of work involved, research to date had revealed in excess of two hundred dwellings in the parts of the District researched subject to agricultural occupancy conditions, with substantial numbers of other dwellings subject to other occupancy conditions and limiting the duration of permissions.

At the time the student placement finished in mid-September, a database which included the records of, amongst other things, agricultural occupancy conditions in around 75% of the District's Parishes had been compiled. The database is 'live' and can be updated when further permissions with occupancy conditions are granted.

The remainder of outstanding research relates to the Northern Area of the District.

Other work priorities for the Compliance Officer and other Officers in the Enforcement Team have inhibited further progress on the project to date. It is anticipated that a further research student will be required for a temporary period to complete compilation of the database and progress the second stage (see below). The most likely stage for completion of this part of the project and further progress is Summer 2006.

Once the database is completed, it is anticipated that the next stage of the project will involve a survey questionnaire being sent out to all dwellings subject to such conditions, to ascertain whether they are still being complied with. This is likely to be done on a Parish-by-Parish basis, unless a case/cases come to light which should be given high priority (see further below), also during summer 2006.

In the meantime, it is intended that a 'pilot' survey will be undertaken with the database records compiled to date, in one Parish area (Whiteparish) early in the New Year. The choice of Whiteparish was influenced principally by the Parish Council's expressed interest in establishing whether occupancy conditions in the Parish were being complied with and; two recent cases in that Parish involving compliance and enforcement.

In undertaking survey work, it is considered important to ensure that occupiers of agricultural dwellings are approached with caution, to ensure that no undue alarm/ distress is caused.

Work beyond questionnaire stage will revert to existing Enforcement Team Officers to accommodate as a part of their existing caseload. Assessment and evaluation of the responses to the questionnaire by the Enforcement Team will inform whether further investigations are required into whether the relevant condition is being complied with. Equally, failure to respond to the questionnaire may trigger a more in -depth investigation by the enforcement team into the site concerned, possibly resulting in the service of a Planning Contravention Notice (PCN) if subsequent evidence of a breach of the condition is uncovered.

Following the above stage, if evidence of a breach of the relevant condition is established a report will be prepared on a case-by-case basis concerning the expediency of enforcement action to secure compliance with the condition and remedy the breach.

Members will also be aware that it is open to the occupiers /owners to challenge the ongoing need for any occupancy condition by making a planning application to remove the condition. In some cases, there *may* in fact no longer be a need for the condition in any holding or in the area as a whole and such an application if received by the Council may subsequently be approved if supported by relevant justification.

It is also considered important that the monitoring activity is not seen as a 'one off' exercise; it should continue in future.

Therefore, even where no breach of condition is subsequently established from responses to the first questionnaire, it is considered that further survey work should be carried out every 2-3 years to establish whether there have been any changes of occupiers/circumstances since the last survey which could affect ongoing compliance with the occupancy condition. In order to ensure that such activity is in fact carried out in future, it may be necessary to obtain further part-time resources to undertake the work at the time the resurvey is undertaken.

At this time the total number of conditions potentially not being complied with is unknown. For the Enforcement Team to continue to operate efficiently within its existing staff resources, breaches of such conditions where established would be prioritised in conjunction with other breaches of planning control under investigation as part of Officers' reactive role depending on the seriousness of the breach. In this regard Members should be aware that the Enforcement Team currently deals with in excess of 800 enquiries per year, primarily from members of the public and Parish Councils. There will be a small reduction in the number of cases received as a result of the New Forest National Park coming into effect. To enforce compliance with occupancy conditions would therefore largely be in addition to existing workload.

However, where enforcement action is considered expedient in breach of occupancy condition cases they will be prioritised to ensure that the highest priority is given where the time limit for enforcement action is about to expire.

Enforcing breaches of occupancy conditions: Possible courses of action/outcomes

Members will be familiar with the Articles in the Human Rights Act which require that any interference in individuals' rights by government respects, amongst other things, their right to protect their property and their right for respect of their private life, which includes their right to a home. In order for any interference by government to be lawful in the context of the HRA it has to be warranted in the public interest, i.e. the upholding of Development Plan policies. Also, such action must be proportionate.

The expediency of taking enforcement action has to be assessed on the basis of each individual case. However, enforcing occupancy conditions presents particular difficulties as, whilst such action can be justified in terms of the Development Plan, in effect such action is likely to require the occupiers to leave what may, possibly for some years, have been their home and require them to move to another another property. The property may have been acquired by the current occupiers in the first place as it was at a discounted price reflecting the occupancy condition; the occupiers may have difficulty accessing local housing which could allow them to remain in the area. They may have children at a local school.

All of the above could affect the weight given to the Human Rights of the occupiers in each individual case. Any requirement to require an existing residential occupier to leave his/her home within a relatively short period of time would require considerable justification, in HRA terms and carries a risk of failure.

In recent enforcement cases where enforcement action has been expedient, consideration of similar circumstances to those outlined above and evaluation of other options has resulted in an Enforcement Notice being issued which allows the current occupiers only to continue to reside in the property in breach of condition, which is in effect 'suspended' for the duration of their occupation. As well as giving weight to occupiers/ owners' Human Rights, the above also protects the Council's position by ensuring that once the current occupiers leave, the accommodation will still be available for future occupiers who could satisfy the condition or, at the very least that the continuing need for the accommodation will be tested by submission of a planning application to remove the condition with accompanying evidence, which would then be considered in the light of the circumstances applying at that time.

As indicated the above is only one of the possible options for enforcing against breaches of occupancy conditions. Members should also be aware that this approach has to date not been tested at appeal and still carries a risk of failure. Whether this approach is adopted depends on the individual circumstances of a case. Other enforcement options should by no means be ruled out, as each case will depend on the individual circumstances.

Nevertheless, the above is indicative of a possible outcome of enforcement action in the light of the current legislative position and a particular set of circumstances.

CONCLUSION

This report has outlined the work undertaken to establish a database to agricultural and other occupancy conditions to date and the work required to complete the new database; it also sets out how it is intended to monitor such conditions in future and also how potential breaches uncovered as a result of more proactive monitoring of such conditions may be dealt with in the event that it is considered expedient to take enforcement action.

RECOMMENDATION:

That Members note the contents of the report and that progress towards compliance monitoring of agricultural occupancy conditions is progressed in accordance with the timetable outlined in the report.

Implications:

- **Financial:** None at this stage. There will be a cost arising from any additional staff appointed to complete the database and/or assist in the undertaking/evaluation of the survey and provide support for any subsequent enforcement investigations would could amount to half a temporary full-time equivalent administrative post for the duration of the research, survey and follow up work. However, the requirement for additional temporary staff could also be partly absorbed by the reduction in enforcement team workload when the New Forest National Park comes into effect.
- **Legal:** Included in the report.
- **Human Rights:** Detailed in the report.
- **Environmental implications:** Detailed in the report.
- **Council's Core Values:** Protecting the environment; excellent service.
- **Wards Affected:** All.