

## NFNPA 432/13

### NEW FOREST NATIONAL PARK AUTHORITY

#### AUTHORITY MEETING – 28 March 2013

#### COMMONERS' DWELLING SCHEME

**Report by:** Steve Avery, Director of Park Services

#### **Summary:**

The provision of affordable housing for commoners has long been recognised as essential for the future viability of the commoning system in the New Forest. The Authority supports commoning through the Commoners Dwelling Scheme ('the Scheme'). Since its inception (1992) the Scheme has delivered 15 new dwellings, all of which are subject to legal agreements to ensure that the properties remain available for commoning in perpetuity.

The Scheme was suspended in 2010 following a presentment to the Verderers Court which suggested a loss of confidence in the existing rules. A Review of the Scheme was subsequently undertaken and completed in October 2011. Since the Scheme was re-opened in October 2011 there have been two further planning applications for new commoners' dwellings. One of these applications has generated considerable local interest and the merits of the Scheme, and how it is operated, have once again been brought into question. This report sets out the background to the Scheme and seeks to address the wider concerns that have been raised in the consideration of the most recent planning application.

#### **Recommendations:**

- 1. That Members take account of the concerns that have been raised about the membership of the Panel in next appointing members to the Panel (which will take place at the Authority meeting on 27 June 2013);**
- 2. That all future planning applications for commoners' dwellings be determined by the Planning Development Control Committee;**
- 3. That a further review of the Scheme be carried out concurrently with the planned review of the Core Strategy; and**
- 4. That the guidance notes and application form be amended to make it very clear that the three stages (eligibility, planning application and legal agreement) are not separate consenting processes but a sequence of steps that all need to be met before any grant of planning permission can be considered.**

#### **1. Background**

- 1.1 The Commoners' Dwelling Scheme was set up in 1992 by the New Forest Committee to provide a mechanism by which commoners could obtain planning permission to build dwellings outside the main New Forest villages from which they could common.

The management of the Scheme was initially carried out by the New Forest Commoning Trust followed by New Forest District Council. The Authority was then asked if it wished take on the Scheme as the new local planning authority and this was agreed at the Authority meeting in July 2006 (NFNPA 114/06). At the same time the Authority established an advisory Panel to consider eligible applicants and to make recommendations to the then Director of Conservation and Enhancement for approval of applicants on behalf of the Authority.

- 1.2 Since taking over the Scheme, the Authority has consented seven new dwellings (with two pending). The Scheme operates in a three stage process:
- i. Stage One is the consideration of an applicant's commoning history and need for housing. This is undertaken by the Commoners' Dwelling Scheme Panel ('the Panel'). The Panel assess the application against predetermined criteria and make a recommendation as to whether the application is within or without the remit of the Scheme.
  - ii. Stage Two is determination of the planning application by the Authority within the policies of the adopted Core Strategy and specifically Policy CP11: Affordable Housing. If the Authority is minded to grant consent, the application proceeds to Stage Three.
  - iii. Stage Three is the completion of various legal agreements, obligations, transfer and leasing arrangements to ensure that the property remains available for commoning in perpetuity.

## **2. Review of the Scheme (October 2011)**

- 2.1 A Review of the Scheme was undertaken in 2011 following the consideration of an application in 2010 for a new dwelling and associated buildings at the site known as Culverley, near Beaulieu. The application generated huge interest, with many people writing both in support of and against the proposal. Following the Authority's decision to approve the application, the New Forest Association made a presentment to the Verderers Court suggesting that there had been a loss of confidence in the existing rules relating to the scheme.
- 2.2 In response, the Authority suspended the Scheme. The Panel, led by the Authority, carried out a review of the Scheme. The initial issues identified by the Panel, and those raised by partner organisations, formed the basis of the review which included an examination of the robustness of the legal framework, the eligibility criteria and the scale of the holdings developed under the Scheme.
- 2.3 The findings of the Review were shared with the Verderers, the New Forest Association, the Commoners Defence Association, the Forestry Commission and Natural England. The Authority implemented the recommendations of the Panel in October 2011 and at the same time, published the Review, which is attached as **Annex 1**.
- 2.4 Two planning applications have been submitted since the Scheme re-opened. One has been approved at Cove Copse in Bramshaw (subject to completion of the s106 agreement) and the other for a new dwelling at Brockishill Road, Bartley was reported to the Planning Development Control Committee on 19 March 2013. The issues that have been raised in connection with the latter application relate to the membership of

the Panel and the administration of Stage One of the process. Questions have also been asked as to whether the Scheme meets the definition of affordable housing. Each of these points is considered in more detail below.

### **3. The Panel and Stage One of the process**

- 3.1 The Panel is an informal body acting in an advisory capacity to the Authority. The Panel is not a decision making body in its own right and it is not governed by the Authority's Standing Orders. It meets on an ad hoc basis to consider applications as and when they are received, which it assesses against a set of predetermined criteria as set out in Annex 1.
- 3.2 Appointments to the Panel are at the invitation of the Authority and the membership of the Panel at the time of concluding the 2011 Review is listed on page 3 of the attached report. There has been one change since then with the Authority's officer Clare Ings replacing Claire Gingell (who left the Authority last year).
- 3.3 Some third parties have questioned the make up of the Panel, raising concerns that its membership is drawn too heavily from commoning interests and there is therefore a perception of bias. The membership of the Panel will next come up for review at the Authority meeting to be held on 27 June 2013 which is when Members will decide who to appoint to various groups and forums. Prior to confirming appointments to the Panel at that meeting, Members will want to have regard to the concerns that have been raised (Recommendation 1).
- 3.4 Nonetheless, it is important that the Panel is comprised of members who are able to bring relevant expertise and knowledge to bear on the question(s) being advised upon, such as a representative of the Verderers (who is well-placed to comment upon the commoning credentials of any applicant) and also a representative from the commoning community (who might reasonably be expected to know of and understand commoning).
- 3.5 It has also been suggested by some that the perception of bias might further be removed by ensuring that the planning officer assigned to an application (Stage Two) is not the same person as the one responsible for helping to administer Stage One of the process. Officer representation on the Panel will also be reviewed at the June meeting.
- 3.6 But how an applicant meets the eligibility criteria is very material to the consideration of the planning application and that is one of the reasons why the 2011 Review (page 7 of the attached report) concluded that all future planning applications should include a statement from the Panel. It also means that if issues are raised about eligibility, then the planning officer is equipped to deal with them. For this reason, it is considered that there are good reasons for a single officer to be assigned to the consideration of the application through all its relevant stages. Such an arrangement is not dissimilar to how the Authority considers applications for new agricultural worker's dwellings, where the planning officer has to carry out an assessment of the agricultural need for a new worker's dwelling, often having sought technical advice beforehand.
- 3.7 A further concern raised is that interested parties (such as neighbouring residents) are excluded from the Panel's considerations and have no means of challenging the recommendation of the Panel. In considering the related planning application (Stage Two) the Authority is required to have regard to all material considerations and this

includes whether the applicant is a genuine commoner with a demonstrable long term personal and family commitment to commoning. It is open to any interested party to challenge the recommendation of the Panel when commenting on the planning application. In this regard, and to ensure transparency, it is recommended that all future planning applications for commoners' dwellings are reported to the Planning Development Control Committee for a decision, irrespective of the Parish Council's view (Recommendation 2).

#### 4. Affordable Housing and Commoners Dwellings

4.1 As noted above, proposals for new commoners' dwellings are considered through Policy CP11: Affordable Housing as an 'exception' to the normally very strict planning policies that apply to new housing in the countryside. The accompanying text to policy CP11 has a dedicated section relating to commoners' dwellings which records the Authority's commitment to supporting commoning through the Commoners' Dwelling Scheme subject to applicants being able "*to demonstrate a long term personal and family commitment to the exercising (or use) of common grazing rights on the New Forest.*"

4.2 Commoners' dwellings are different from other forms of social/affordable housing in that:

- i. Given that the purpose of the scheme is to support commoning and sustain land management within the New Forest, it is not always practical to locate new commoners' dwellings on sites in or adjoining villages. In identifying suitable sites, more specific criteria apply such as the applicant having to own the land on which the dwelling is proposed (which must have common rights) and the applicant having sufficient back-up grazing land for use in association with the commoning enterprise;
- ii. A commoner's dwelling is financed and built by the applicant whereas other forms of affordable housing are typically financed and built by Registered Providers (such as local housing associations); and
- iii. Occupants of properties built and/or managed by Registered Providers must be drawn from the District Council's housing waiting list and meet a proven local housing need (which normally requires a local 'housing needs' survey to be undertaken prior to the submission of a planning application).

4.3 However, commoners' dwellings are still a form of affordable housing and like other forms of affordable housing, they are considered as an 'exception scheme'. In particular, the Scheme is compliant with Policy CP11 in the following respects:

- i. As part of the Stage One process, applicants must "*demonstrate their need for a commoners' dwelling by proving that they cannot common from their existing dwelling and that they do not have access to a property from which they can carry out their commoning. If an applicant has, in recent years, moved from a property from which they could carry out commoning they must explain the reasons why*" (see page 3 of the 2011 Review). In doing so, applicants are meeting the requirements of paragraph (i) of Policy CP11 "to meet a particular need that cannot be accommodated in any other way".
- ii. Any planning permission for a new commoners' dwelling is subject to a

planning obligation under section 106 of the Town and Country Planning Act 1990 (paragraph (ii) of Policy CP11); and

- iii. The dwelling is capable of management by the Authority by virtue of the terms and covenants imposed by the section 106 agreement. Without this management, the commoners' dwelling would not be permitted.

- 4.4 The approach taken in the Authority's adopted Core Strategy (2010) to delivering commoners' dwellings is consistent with that in the previous New Forest District Council Local Plan (2005) which stated that proposals for commoners' dwellings would be considered under the policy for 'affordable housing for local needs' (NF-H8). The Authority retained this established approach when it adopted its own planning policies in 2010. It should also be noted that the former Salisbury District Local Plan also contained a similar policy (HA3). The Inspector appointed to examine the Authority's Core Strategy in 2010 endorsed the continuation of this approach, commenting in his decision letter that the Core Strategy *"includes adequate provision for commoners' dwellings, recognising the Commoners Dwelling Scheme and the important role this plays in land management within the New Forest."*
- 4.5 A review of the Core Strategy will be undertaken in 2014 and as part of that process, the Commoners' Dwelling Scheme will also need to be reviewed, particularly in regard to how the exceptions' policies will be applied in any future planning framework for the National Park (Recommendation 3).

## 5. Conclusions

- 5.1 The Authority has an agreed (and independently verified) exceptions' policy for commoners' dwellings and an agreed and published scheme for considering the eligibility of prospective applicants. The 2011 Review agreed that the spread and mix of dwellings provided under the Scheme would be kept under review and this review will be undertaken concurrently with the review of the Core Strategy.
- 5.2 In the meantime, in light of recent experiences and the concerns raised by some third parties, it is proposed that the supporting guidance notes and application form be amended to make it very clear that the three stages (eligibility, planning application and legal agreement) are not separate consenting processes but a sequence of steps that all need to be met before any grant of planning permission can be considered (Recommendation 4).

## Recommendations:

1. That Members take account of the concerns that have been raised about the membership of the Panel in next appointing members to the Panel (which will take place at the Authority meeting on 27 June 2013);
2. That all future planning applications for commoners' dwellings be determined by the Planning Development Control Committee;
3. That a further review of the Scheme be carried out concurrently with the planned review of the Core Strategy; and

- 4. That the guidance notes and application form be amended to make it very clear that the three stages (eligibility, planning application and legal agreement) are not separate consenting processes but a sequence of steps that all need to be met before any grant of planning permission can be considered.**

**Contact: Steve Avery, Director of Park Services**

**Papers: NFNPA 114/06**

**Equality Impact Assessment:**

There are no equality or diversity implications arising directly from this report.