

Review of Commoners Dwelling Scheme

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Executive summary

This report details the findings and conclusions of the Commoners Dwelling Scheme review. The key conclusions and recommendations are:

- The existing legal framework is sufficiently robust and does not require amendment.
- The Scheme application and appraisal process will be amended to include consideration of how the applicant's commoning activity will benefit the New Forest overall.
- The minimum amount of land an applicant is required to enter into the Scheme will remain at 2 acres (0.8ha). However, the expectation is that larger amounts of grazing land would be required for exceptional larger holdings.
- The required minimum number of animals depastured will remain the same – five ponies and/or cattle depastured each year for at least seven years. The wording of the criteria will be clarified to avoid confusion to '...seven years in succession'.
- The Scheme application and appraisal process will be amended to include consideration of the availability of suitable commoning properties in the surrounding area. The applicant will be asked to demonstrate that they have looked to secure property by other means prior to applying to the Scheme.
- The Scheme guidance notes will be amended to clarify the information likely to be required in support of a planning application.
- All planning applications will include a statement from the Commoners Dwelling Scheme Panel setting out how the applicant meets the eligibility criteria of the Scheme.
- An optimum number of dwellings to be permitted under the Scheme will not be set but any future increase in the pace of the Scheme will be investigated.
- The NPA will carry out monitoring in April each year to ensure that a sufficient level of commoning activity takes place at each dwelling. Appropriate checks will be made with the Verderers and further monitoring visits will take place if necessary. The outcomes of the monitoring will be included in the NPA's annual Planning Monitoring Report.
- It will remain a criterion of the Scheme that the applicant's land has common rights of pasture, as identified in the Verderers records.
- It will remain a requirement of the Scheme that the applicant must own the land on which the dwelling is proposed.

Background to the Commoners Dwelling Scheme

The Commoners Dwelling Scheme was set up in 1992 to provide a mechanism by which commoners could enter into an appropriate legal agreement to meet the requirement for obtaining planning permission to build dwellings located outside the 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 the New Forest District Council and then the NPA in 2006 when it became the local planning authority for the National Park. Fourteen commoners dwellings have been developed as part of the Scheme.

The provision of affordable housing has long been recognised as essential for the future viability of the commoning system in the New Forest – without commoning the Special Qualities of the National Park cannot be maintained. The New Forest Commoning Review 2007 highlighted the importance of the Commoners Dwelling Scheme in addressing the issue of affordable housing provision.

The Commoners Dwelling Scheme comes under policy CP11: Affordable Housing of the Core Strategy and Development Management Policies Development Plan Document for the New Forest National Park (adopted 2010). In order to guarantee the long term availability of dwellings built for commoners under this policy, applicants are required to enter into legal agreements and to demonstrate a long term personal and family commitment to the exercising of common grazing rights on the New Forest.

Summary of the review

The New Forest National Park Authority's (NPA) Commoners Dwelling Scheme has been reviewed, following a presentment made by the New Forest Association to the Verderers Court suggesting that there had been a loss of confidence in the existing rules relating to the Scheme. The review, which was carried out by the Scheme Panel (led by the NPA), included an examination of the robustness of the legal framework, the eligibility criteria and the scale of holdings developed under the Scheme. The review did not include an assessment of the need for the Commoners Dwelling Scheme as this is set out in the Affordable Housing Core Strategy Policy CP11, which was adopted in December 2010 following a two year consultation process and being found sound by the Planning Inspector.

The findings of the review were shared with the Verderers of the New Forest, the New Forest Association, the Commoners Defence Association, the Forestry Commission and Natural England. The feedback received has been considered by the Scheme Panel.

The NPA has implemented the recommendations arising from the review and the Commoners Dwelling Scheme has now been re-opened.

Commoners Dwelling Scheme Panel

When the operation of the Commoners Dwelling Scheme transferred to the NPA in 2006, a Panel was established to assess the eligibility of applicants to the Commoners Dwelling Scheme. It was intended that the Panel would include officers and members of the NPA and representatives of the commoning community. At the time of the review commencing the Panel consisted of:

- John Sanger (Member of the NPA, appointed by the NPA)
- Oliver Crosthwaite Eyre (selected as a representative of the local community for his knowledge and understanding of commoning)
- Sam Dovey (selected as a representative of the local community for his knowledge and understanding of commoning)
- Steve Avery (Officer of the NPA)
- Claire Gingell (Officer of the NPA)

The Panel now consists of:

- Penny Jackman (Member of the NPA, appointed by the NPA)
- Diana Westerhoff (Verderer, appointed by the Verderers)
- Oliver Crosthwaite Eyre (selected as a representative of the local community for his knowledge and understanding of commoning)
- Sam Dovey (selected as a representative of the local community for his knowledge and understanding of commoning)
- Steve Avery (Officer of the NPA)
- Claire Gingell (Officer of the NPA)

Application Process

Applying to build a commoners dwelling under the Scheme is a three stage process:

Stage One Acceptance onto the Commoners Dwelling Scheme

Stage Two Application for planning permission

Stage Three Signing of legal agreements

Stage One - Acceptance onto the Commoners Dwelling Scheme

Applicants must demonstrate that they are a genuine commoner with an established recent history of active commoning by showing that they have:

- Commoned in their own right with a minimum of five ponies and/or cattle depastured each year for at least seven years; or
- Commoned in their own rights with five ponies and/or cattle depastured each year for at least five years plus two years in conjunction with their family as an adult.

The information submitted to the NPA is checked with the Verderers, who are asked to provide commoning history (e.g. payment of marking fees), animal welfare history and Agister's references. The NPA also consults with other commoning related organisations. The NPA has regard to animal welfare considerations and commoning history when determining eligibility under the Scheme.

Applicants are required to 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.

The applicant must own the land on which the dwelling is proposed and have vehicular access to it. The proposed site should include building land and back-up grazing land for use in association with the commoning enterprise

and should be a minimum of two acres (0.81 hectares). The land must have common rights of pasture, as identified in the Verderer's records.

Applicants must demonstrate their ability to meet the full costs of constructing the dwelling including building costs, costs of obtaining planning permission and building regulations approval, design fees and costs of providing services and utilities. If the applicant requires a mortgage to finance the dwelling this must not exceed 90% of the transfer value of the property.

Stage Two – Application for Planning Permission

An application for planning permission must be made using the normal planning processes. Acceptance at stage one does not guarantee that planning permission will be granted. Any dwelling built under the policy has to meet the highest design standards. The maximum size of the dwelling permissible under the policy is 120 square metres floor area.

Stage Three – Signing of Legal Agreements.

If planning permission is obtained, the applicant is required to sign a set of legal documents which ensure the dwelling remains in use for commoning in perpetuity. The agreement comprises a Section 106 Planning Agreement which requires the commoner, who is responsible for building the dwelling, to transfer the freehold interest of the site on which the dwelling is built to the NPA. The Authority then divides the site into grazing and building land. The building land is conveyed back to the commoner with imposed covenants restricting the use of the dwelling and land to commoning. The grazing land is then leased back to the commoner at a peppercorn rent. Ownership of the dwelling may only pass to a person who has been confirmed eligible for the Commoners Dwelling Scheme and approved by the NPA.

Review of the Commoners Dwelling Scheme

The initial issues identified by the Scheme Panel, and those raised by partner organisations, formed the basis of the review. These were:

- 1) Robustness of the legal framework of the Scheme
- 2) Scale of holdings developed under the Scheme
- 3) Eligibility criteria
- 4) Information required in support of a planning application
- 5) Number of dwellings approved under the Scheme
- 6) Monitoring of dwellings
- 7) Requirement of land to have grazing rights
- 8) Requirement of land to be owned by the applicant rather than leased

1) Robustness of the legal framework of the Scheme

Issue

Questions had been raised about the robustness of the Scheme's legal framework, particularly regarding the situation when the occupant ceases commoning due to retirement or ill-health or in the case of divorce.

Review findings

Legal advice has indicated that the Scheme's legal framework, set up to ensure the dwelling remains in use for commoning in perpetuity, remains robust. No situation has yet arisen where this has been tested.

The framework provides for a holding owner who has ceased commoning to remain in the property if a family member is residing at and commoning from that holding. If this was not the situation, for example, in the situation of a non-commoning widow being the sole resident it would be at the discretion of the NPA whether action was taken to enforce the S106 Agreement and any such situation would be handed in a sensitive and practical manner. In the case of divorce, the courts would give priority to the welfare of any children involved and, although the covenants on the property would be considered, it is probable that the spouse with custody of the children would be permitted to remain in the dwelling. If the spouse was non-commoning it would again be at the discretion of the NPA whether action was taken to enforce the S106 Agreement. If the property was sold as part of a divorce settlement the usual processes governing the Scheme would apply.

Conclusion

The existing legal framework is sufficiently robust and does not require amendment. The framework will be reviewed in light of any test cases.

2) Scale of holdings developed under the Scheme

Issue

The Panel considered that concern regarding the scale of holdings developed under the Scheme was a key issue requiring review. This was echoed by the responses received from partner organisations to the draft report of the review and was brought about largely as a result of the most recently approved commoners dwelling at Culverly. Although the size of the dwelling house always remains the same due to the maximum permissible size, there can be variations in the scale of agricultural and ancillary buildings due to the differing levels of commoning activity undertaken by applicants.

Review findings

The scale of the holding that can be developed is a planning matter and is separate to the acceptance of a commoner onto the Commoners Dwelling Scheme. Control over the scale of holding is provided through the development management policy governing the construction of agricultural buildings. This sets out that a functional need for the building must be demonstrated and that its scale must be commensurate with that need. This is determined during the planning application process by the NPA's Planning Development Control Committee.

The Panel agreed that the Scheme should continue to allow for differing scales of commoners holdings to be secured in order to reflect and provide for the varying levels of commoning activity that occurs in the Forest.

The 2007 Commoning Review spoke of the need to ensure that in planning terms, commoners holdings are able to evolve and develop to meet the needs of modern activity and recommended that the NPA appraise applications on an individual basis where the benefits of supporting a continuing commoning enterprise outweigh other planning issues. In order to help assess the overall contribution that the proposal of a Scheme applicant would bring to commoning in the New Forest, the Panel agreed to question and appraise this as part of the application process.

The Panel considered whether the minimum amount of land an applicant must enter into the Scheme (currently two acres) should be increased in line with the scale of the proposed development, with larger holdings entering more land. Legal advice suggested that although it would be possible to apply such a sliding scale at the outset, it would be more legally complex and potentially costly if any additional development was carried out at any time in the future, e.g. the construction of an additional barn, as this would require additional legal agreements to be applied to the holding. The Panel were also concerned that increased requirements may make commoners ineligible for the Scheme if they do not have sufficient land in their freehold, even if they have secure tenancy of other land to support their commoning activity.

Conclusion

The Scheme application and appraisal process will be amended to include consideration of how the applicant's commoning activity will benefit the New Forest overall.

The minimum amount of land an applicant is required to enter into the Scheme will remain at 2 acres (0.81 hectares). However, the expectation is that larger amounts of grazing land would be required for exceptional larger holdings. This will be highlighted in the Scheme guidance notes and would be agreed with the NPA following negotiation on a case by case basis.

3) Eligibility criteria

Issue

Concern has been raised that the eligibility criteria for the Commoners Dwelling Scheme should remain rigorous.

Review findings

The eligibility criteria for the Scheme, as set out on page 2-3, relate to the applicant's commoning history and their need for a commoners dwelling.

With regard to commoning history, it has been suggested that the required minimum number of animals depastured should be increased from five to twenty. The Panel considered this and agreed that the current criteria reflect commoning practices today. They were concerned that a requirement for a higher minimum number could encourage an increase in the number of animals depastured on the Open Forest.

With regard to the need for a commoners dwelling, the application process requires the applicant to demonstrate that they are unable to common from their existing dwelling and that they do not have access to a property from which they can carry out their commoning. Clear demonstration of an applicant's need is critical to ensure that the Scheme remains robust and as such, consideration will be given during the application process to the availability of suitable commoning properties in the surrounding area.

Conclusion

The required minimum number of animals depastured will remain the same – five ponies and/or cattle depastured each year for at least seven years. The wording of the criteria will be clarified to avoid confusion to ‘..seven years in succession’.

The Scheme application and appraisal process will be amended to include consideration of the availability of suitable commoning properties in the surrounding area. The applicant will be asked to demonstrate that they have looked to secure a suitable property by other means prior to applying to the Scheme.

4) Information required in support of a planning application.

Issue

Confusion has been expressed over the level of information required to support a planning application and the stage at which that information is required. Concern has also been expressed over the complication and cost of the required information.

Review findings

Most applications require more information than can be provided by the application form alone. The requirement for supporting documentation is often mandatory and the NPA has no discretion to waive these requirements. The supporting documents required will be dependent on the scale of the proposed development and its location, e.g. the following may be required:

- Biodiversity survey and impact assessment
- Flood risk assessment
- Landscape visual impact assessment
- Tree survey / arboriculture survey
- Archaeological survey
- Heritage statement

Further details about the level of supporting information required can be found on the NPA website and NPA Planning Officers will advise applicants at the pre-application stage of the exact requirements for specific proposals. The costs of meeting the requirements for supporting documents must be met by the applicant.

Conclusion

The Scheme guidance notes will be amended to clarify the information likely to be required in support of a planning application.

All planning applications will include a statement from the Commoners Dwelling Scheme Panel setting out how the applicant meets the eligibility criteria of the Scheme.

5) Number of dwellings approved under the Scheme

Issue

The question was raised as to whether there should be a level set for the optimum number of dwellings approved under the Scheme.

Review findings

Fourteen commoners dwellings have been approved since the Scheme began nineteen years ago. There is no reason to suggest that the Scheme will not continue at its current pace. The Panel were keen to avoid identifying a maximum number that may be viewed as a target but agreed that the spread and mix of dwellings provided under the Scheme should be kept under review.

Conclusion

An optimum number of dwellings to be permitted under the Scheme will not be set but any future increase in the pace of the Scheme will be investigated.

6) Monitoring of dwellings

Issue

Ensuring that dwellings built under the Scheme remain in use for commoning.

Review findings

Provision exists within the framework of the Scheme for the NPA to annually monitor the level of commoning activity taking place at each of the commoners dwellings.

Conclusion

The NPA will carry out monitoring in April each year to ensure that a sufficient level of commoning activity takes place at each dwelling. Appropriate checks will be made with the Verderers and monitoring visits will take place if necessary. The outcomes of the monitoring will be included in the NPA's annual Planning Monitoring Report.

7) Requirement of land to have grazing rights

Issue

Enquiries have been made as to whether a commoners dwelling can be built on land that does not have grazing rights as long as the commoner has land elsewhere that does.

Review findings

In order to be eligible for the Commoners Dwelling Scheme, the applicant's land must have common rights of pasture, as identified in the Verderer's records. This is essential in order to enable covenants to be put in place ensuring the dwelling is retained for commoning in perpetuity. It would be impossible to insist that the dwelling remain for commoning if the land did not have common rights of pasture.

Conclusion

It will remain a criterion of the Scheme that the applicants land has common rights of pasture, as identified in the Verderer's records.

8) Requirement of land to be owned by the applicant rather than leased

Issue

Enquiries have been made as to the possibility of building a commoners dwelling on land that is leased by the applicant rather than owned.

Review findings

In order to be eligible for the Commoners Dwelling Scheme it is essential that the applicant owns the land on which the dwelling is proposed. This is to enable the applicant to enter into a legal agreement which transfers the freehold interest to the NPA. The applicant would not be in a position to enter into such an agreement as a tenant.

Conclusion

It will remain a requirement of the Scheme that the applicant must own the land on which the dwelling is proposed. The possibility of building a commoners dwelling on land which the applicant leases on a 999 year lease will be explored further. Consideration will be given to increasing the supply of commoners dwellings available in the rental sector.



