



# **THE CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS**

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## **RURAL WORKERS' DWELLINGS PLANNING CONTROL IN THE UNITED KINGDOM**

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That approach was then affirmed by the Court of Appeal in *Millbank*. However, an Inspector can only take that decision on the basis of his findings as to the evidence, from his inspection and with his experience and judgment. In that, the appellant is most likely to be the person most interested in marshalling and submitting evidence and argument to demonstrate that the condition is no longer needed. It was the Inspector's apparent errors in understanding the import of those cases that led to a decision lifting an agricultural condition being overturned by the Court in *Lliw Valley Borough Council v Secretary of State for Wales and Evans*.

#### **4.3 Marketing and the Problems with Marketing**

4.3.1 The most difficult issue to address is how to respond to the common insistence (despite points above) by the local planning authority that the applicant demonstrate that there is a lack of demand for that type of accommodation from those employed or last employed in agriculture. The point has been made that the real test here should be that of whether there is a need for an agricultural occupancy condition on that dwelling (in its location), not of demand for it. Marketing can only test demand, not need. The problems with marketing a property when there is no intention to sell it are discussed below. Again, it is advisable to discuss this with the planning officers in advance and agree a strategy with them.

4.3.2 **Marketing?** – The common traditional approach required by local planning authorities has been to test the market for potential occupiers by offering the property for sale or to let with marketing over an agreed period with appropriate advertising, often on a basis agreed with the LPA.

4.3.3 Alongside the required marketing effort, it will usually be expected that the property must be offered at a discounted price to reflect the condition. Experience is that LPAs (and Inspectors) will typically expect to see the property offered at a discount of 25 to 30 per cent from market value – subsequent disputes may turn on this figure. In *R (Epping Forest DC) v STLR and Emery* it was accepted that a 25 per cent discount from an unencumbered value was appropriate. It referred to the asking price being just a “guide”; it was open to any interested person to make an offer at a lower price.

4.3.4 That approach turns on the unfettered market value being fairly assessed. Some LPAs will now ask for three appraisals of the unencumbered market value and then judge the discount it will view as reasonable from an average of those.

4.3.5 The Welsh Government offered its thought on value in the Practice Guidance to TAN 6 – see 7.6.22 below.

4.3.6 For this approach to work, it will naturally be necessary for the applicant to ensure good records of:

- copies of advertisements
- details of enquiries – a Tribunal criticism in *Rasbridge* (noted at 4.8.5-13 below) was that no details had been kept of telephone enquiries that did not result in viewings
- details of viewings
- details of offers received.

It would be relevant to know for each serious expression of interest whether the person appeared compliant with the condition or not. Even serious interest from non-compliant people may not be pertinent demand but rather aid the case for the condition not being relevant.

4.3.7 That will then be submitted to the local authority with the application to lift the condition. This approach may still be an appropriate option *provided* that the property owner is genuinely prepared to sell or let the property if a realistic offer is made. In practice, this may often have been limited to offering the property for sale but there may be a growing interest in whether there would be rental interest in it.

**4.3.8 The Problems with Marketing** – While the marketing exercise has become conventional, it poses a number of problems. A fundamental one is that the real issue over the condition is whether it is necessary, not whether there is a demand for the property. The two are not identical and not all bidders that may come forward in response to the marketing may say if they qualify under the condition or need the property.

4.3.9 However, where the property owner wishes to keep the property for their own use and does not plan to sell or let it, then it is not appropriate to use the marketing approach to test the market as this would be contrary to the Consumer Protection from Unfair Trading Regulations 2008 (which have replaced the Property Misdescriptions Act). The Regulations prohibit unfair commercial practices which might affect the “transactional decision making” of the average consumer. “Unfair commercial practices” includes making a misleading omission and it seems likely that failing to make clear that a property is not, in fact, available to buy or rent would be a misleading omission which would affect a consumer’s decision about whether to proceed with a transaction. A breach of the Consumer Protection Regulations is punishable by a fine and in serious cases, up to two years’ imprisonment. The equivalent regulations for businesses are the Business Protection from Misleading Marketing Regulations 2008.

4.3.10 This point had previously been identified by the Inspector in *Lliw Valley* in 1992 when he observed (albeit with his error on the onus of proof):

“... I accept that it would be unreasonable to expect you to carry out a marketing exercise to show a lack of demand, when you had no intention of selling, since this might be regarded as a fraudulent exercise.”

4.3.11 The guidance issued by the former Office of Fair Trading on the 2008 regulations (OFT Guidance on Property Sales – Compliance with Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 – September 2012) said:

“The new regulations ban traders in all sectors from using unfair commercial practices towards consumers. They set out broad rules outlining when commercial practices are unfair. These fall into four main categories [including]:

- A general ban on conduct below a level which may be expected towards consumers (honest market practice/good faith). This is intended to act as a “safety net” protection for all consumers.
- Misleading practices, like false or deceptive messages, or leaving out important information. ...

For a practice to be unfair under these rules, they must harm, or be likely to harm, the economic interests of the average consumer. For example, when a shopper makes a purchasing decision he or she would not have made had he or she been given accurate information or not put under unfair pressure to do so.”

This guidance appears to challenge any LPA insistence on inviting offers for a property that is not really for sale or let. Among the 31 practices specifically identified as banned is

**“10. Promoting a product you don’t want to sell**

Making an invitation to purchase products at a specified price and then:

(a) Refusing to show the advertised item to consumers;

**or**

(b) Refusing to take orders for it or deliver it within a reasonable time; ...”

4.3.12 If a marketing exercise is inappropriate, then it may be necessary to explain to the LPA the applicant's reasons for not being willing to sell or let the dwelling. The LPA's essential concern is with land use policy not the preferences of the applicant.

#### **4.4 Other Approaches**

4.4.1 Other evidence which might help to demonstrate a lack of demand (or indeed need) for agricultural workers' dwellings in the area might include:

- a review of the general demand for housing in the area
- a review of the changing nature of agriculture in the locality since the property became subject to the condition. The agricultural workforce has reduced substantially over recent decades with changing enterprises, greater efficiency and use of machinery. There may now be little non-family employment in many areas. However, that may mean there are still potential occupiers who still qualify as retired from agriculture.
- an assessment of the number of rural workers employed in the area at the current time, compared to the number employed when the property became subject to the condition
- details of any new rural workers' dwellings made subject to occupancy conditions over, say, the last five years
- details of any other restricted properties being sold or advertised for sale or to let in the locality over, say, the last five years. Even if the LPA suggests that locality may be narrowly defined it may be prudent to consider a larger area lest it become an issue at any appeal.

4.4.2 Past applications can be sought through the planning register and then investigated to identify their circumstances. The case for such applications is often site-specific and so may not meet the needs of other possible occupiers with their site-specific needs.

4.4.3 It will commonly be the case that when a dwelling is needed, its location in relation to the business is paramount but the historic condition then allows occupation by qualifying workers in a wider area. Yet many of them will need to be very near their work.

#### **4.5 Have The Issues Now Changed in England?**

4.5.1 The English planning policy framework for agricultural occupancy conditions has been withdrawn. At the time of writing there is insufficient experience to know what this might mean.

4.5.2 Not only has the new Rural Workers' Housing exception been created by the NPPF but PPS7 with its Annexe A has been withdrawn and the body of Circular 11/95 with its justification for agricultural occupancy conditions was withdrawn in March 2014 with the launch of the Planning Practice Guidance suite.

4.5.3 Appendix A to 11/95 does remain in force to retain the wording of a large number of model conditions under the heading "Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances". Thus, while the template for an agricultural occupancy condition survives, the justification for it in the body of Circular 11/95 has been withdrawn.

4.5.4 As noted, some adopted local plans will however have agricultural occupancy policies, perhaps requiring consideration of the interaction between them and the NPPF in the circumstances to hand.