Green Belt – sales of small plots

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This note discusses some issues involving farming and the planning system. Some related issues are discussed in other standard notes: Agricultural occupancy condition (SN/SC/470) and Farm Diversification, Countryside and Planning which includes polytunnels.

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1 Speculative purchases of farmland for housing

A problem in some areas is the speculative purchase of land without planning permission. The following Adjournment Debate in April 2003 explained the issue:

> **Mr. Alan Hurst (Braintree):..**. A farmer in the Stisted parish sold an allotment of land in the region of 50 acres in size. I am told that he believed that he was selling it for the purpose of grazing horses, but the price paid was above that of agricultural land...However, local people soon discovered that the modern age had intruded, as the sale of the land was being readvertised via the internet. It was being advertised not as one whole lot of 50 acres or so, but in small plots of up to one fifth of an acre. The internet parcels had divided the land into 236 individual plots and the asking price was between £3,000 and £6,000 a plot. It is estimated that the agricultural value of the land was £2,500 to £3,000 per acre. The internetted plot land value was about £25,000 per acre. Quite a tidy profit would be made if all the plots were sold. It is true that Gladwish, the company that offered the plots, did not pretend that the land had planning consent. The advertisement on the internet said specifically that the land was sold without planning consent and that the company's business and purpose was to sell agricultural and forestry land. However, it also said that agricultural land prices are lower than those for plots with planning consent, that land prices rise faster than house prices and that a solicitor was not necessary to complete the transaction. I do not think that I need to declare an interest at this point because that is a negative for solicitors, not a positive.
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> Stisted was not the only site that was advertised on the internet. Gladwish advertised sites in Sussex, Norfolk, Surrey, Hertfordshire, Hampshire and Bedfordshire, and I understand that other companies trade in a similar way…
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> A spokeswoman for the Council for the Protection of Rural England said that
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> ''barbed wire and fence posts are appearing in very scenic areas''
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> of the Norfolk site. In Stisted, the fear is that the new plot holders will start to site caravans, huts and shelters on the land, that the land will be divided into small segments and that the area will assume the character of a shanty town…
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> The sale of agricultural land carries with it a general development order, which allows the owners of any part of the land to fence it, construct shelters in connection with animal husbandry and go a little further if they claim that it is to be forestry land. People who bring a sheep on to their plot can construct a shelter for the sheep or themselves. The entire 50 acres could easily become a mosaic of caravans, camper vans and sheds in connection with pseudo-smallholder activities.
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> There was some concern at the public meeting about the speed with which Braintree district council could move. Everybody acknowledges that it moved with exemplary speed. In days, it laid an article 4 direction.[1] I was not too familiar with that before the problem arose. However, once laid and approved by the Secretary of State, it prohibits any form of development on the land, including fencing and constructing shelters.
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> The direction has two parts. First, it prohibits the erection of fences, walls and temporary buildings without planning consent. That prevents the other feature of the modern age, the car boot sale. There is no 28-day provision for such use once an article 4 direction has been laid. Secondly, it prevents the use of the land as a campsite either for caravans or tents.

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[1] This is a direction under article 4 of the General Permitted Development order 1995 (SI 418) allowing the local planning authority to suspend some permitted development rights in certain circumstances. The effect is that express planning consent would be required for erecting fences or similar barriers.

> My praise does not extend only to Braintree district council. The Secretary of State, operating through the Government office for the eastern region and the appropriately named Mr. Speed, approved the order in seven days. Consequently, the residents of Stisted and Greensted Green feel that they have the best protection that the law can currently provide…
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> In conclusion, unless the problem of internet sales is dealt with, the whole structure of town and country planning—particularly country planning—will become a shambles, just as those sites will do if they are left unchecked.

The Minister (Tony McNulty) sympathised with the complaint, and agreed with the action taken. First, he denied that the Government's commitment to the provision of new housing in the South East would result in undermining long-standing policies for protection of the Green Belt. Then he continued:

> Turning to the specific issue that has caused so much concern for my hon. Friend and his constituents, I should explain that permitted development rights, granted by Parliament, are removed only in exceptional circumstances, and only when a real and specific threat to the interests of the proper planning of an area has been demonstrated. To do otherwise would undermine the rights granted to the public to undertake minor works, and certain temporary uses, without the need for planning permission.
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> However, when it is shown that such a threat exists, we appreciate that prompt action is required, by both local government and central Government, to ensure that, in appropriate instances, permitted development rights are removed before uncontrolled and potentially harmful development takes place …
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> My hon. Friend will be comforted by the fact that we have also confirmed article 4 directions at other locations in Essex, and elsewhere in the east of England. Sadly, the story of Stisted is familiar: property speculators sub-dividing land and selling plots as "investment opportunities". In all instances, the local planning authorities have produced clear and compelling evidence that the uncontrolled exercise of permitted development rights would harm interests of acknowledged importance. We have shared their view that numerous fences and assorted temporary buildings and structures, erected without proper planning control, do not necessarily reflect the character and appearance of unspoilt areas.
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> All those directions allow local councils to require that planning permission has to be obtained for what was previously "permitted development". In that way, development that may have adverse effects on the character of the countryside can be brought within full planning control. I should, of course, point out that the effect of the directions is not to prevent development outright. That is not the purpose for which they are intended…[2]

Another option open to a local planning authority (LPA) is the use of the *Town and Country Planning Act 1990* s215. This section provides LPAs with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. LPAs also have

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[2] HC Deb 4 April 2003 cc 1245-6

powers under s219 to undertake the clean up works themselves and to recover the costs from the landowner.

It is a discretionary power, but Government guidance specifically suggests its use in such cases:

> Subdivision of fields and woods into small plots for sale, usually over the internet, can lead to unsightly consequences. The buyers may be misled into confidence that, one day, they will be able to carry out works on their 'investment' plots, or change the land-use. Neglect or unlawful works may occur. If this is damaging the landscape or other countryside amenity, action under s215 could be considered.[3]

One reason for the speculative purchases may have been the Government's ambitious plans for housing development in the South East. Although the plan was that 60% should go on brownfield sites, that still leaves 40% on greenfield sites. Developers may be willing to buy up small pieces of farmland, knowing that, if only a few are eventually developed, the profits would justify the whole exercise. They may also hope that the small parcels of unfarmed land will become unattractive and unloved. Local opinion might then be willing to accept development that would have been rejected on active farmland. CPRE (Campaign to Protect Rural England) has campaigned against the Government proposals to increase housing provision in the South East, arguing that it will undermine the Green Belt. It also complained in December 2002 that planning law was not properly enforced.[4]

Many farmers, particularly those near to cities, would like to sell off a small amount of land for housing, so as to keep their enterprises profitable. The planning system, however, has made no concessions to the financial concerns of farmers. If land is earmarked for agriculture in the local development plan, it is unlikely to receive planning permission for residential development.

Ferdinand Mount in October 2004, on the other hand, supported subdivision, because he would like more land to be sold off to people other than wealthy landowners and farmers:

> These initiatives are regarded as the work of the devil by the Campaign to Protect Rural England and most local councils. Yet I have sympathy for these speculators and hope that one day they will come to be regarded as admirable pioneers. Not simply does small-plot landscape offer opportunities for self-expression to people who are not well off, as the plotlands movement did until the 1947 Act killed it off; it keeps the land in a better heart, as John Seymour, the father of the self-sufficiency movement, pointed out so eloquently.[5]

2 The Mulholland Ten Minute Rule Bill

On 1 November 2005, Greg Mulholland introduced a ten minute rule Bill to ban landbanking of Green Belt land. He objected to the way that small parcels of land are sold to investors, often with unrealistic hopes of gaining planning permission for housing:

> The central purpose of my Bill is to protect the green belt, which covers 13 per cent. of England. Wales has only recently introduced its own green belt policy, while Scotland has a broader concept of green belt. The Barker report, which said that 140,000 extra homes needed to be built every year, has given rise to further fears that new

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3 ODPM, *Town and Country Planning Act 1990 Section 215: Best Practice Guidance*, 2005

4 CPRE Press Notice, *Countryside campaigners expose the weakest link*, 12 December 2002

5 Ferdinand Mount, "Put the people back in the picture", *New Statesman*, 11 October 2004

development could eat into the green belt. The Bill would strengthen green belt legislation, as it would seek to enshrine green belt status in statute, and it would enable local authorities to designate green belt land with enhanced protected and legal status. It seeks to devolve decision making about green belt status to local authorities, removing the Secretary of State's power to overrule a local decision to refuse planning permission or designation.

The Bill would effectively outlaw the scurrilous practice of land banking, and would require that designated green belt land can be sold and marketed only as protected land, not under the guise of any future development. It has the support of members of all parties and of people from all four corners of the country…[6]

The Bill did not make any more progress, but Greg Mulholland secured a debate on land banking on 12 July 2006 in Westminater Hall. He expanded on the proposal:

I come to the specific proposals, for which there are precedents in other parts of the world. As the Campaign to Protect Rural England has highlighted, in Australia in December 2005 the European Land Sales Partnership stood accused of grossly misleading potential investors over its ability to obtain planning permission and the likelihood of planning permission being granted on the tracts of land that it owned. The key difference in that case was that the state government of Victoria was able to act quickly and decisively to bring a halt to the mis-selling. The state legislature obtained an interim injunction order against ELSP, which prevents it from engaging in a range of promotional and marketing activities until there has been a full hearing into its activities, which is due to take place in the Victoria Supreme Court this year. So far, no such decisive action has taken place in the UK. The only course of action for investors who feel that they have been sold land on a false premise or been the subject of misrepresentation would appear to be to pursue cases individually through the courts.

There is a strong coalition working on this matter. As I mentioned, I am working with the CPRE. I am also working with several MPs from all parts of the House, and I have been contacted by reputable land investment companies, including possibly the largest such company in the United Kingdom, UK Land Investments Group. Firms of that nature are concerned, because they invest large sums to ensure that land is bought and sold legally and without misrepresentation. They wish to see fly-by-night organisations brought to book for their scandalous practices and the damage that they do to the industry.

We may need new legislation for that to take place or we might simply need the extension or clarification of existing legislation. Sufficient powers might already exist but they might not be being used. What is clear is that, because of loopholes in the law, a lack of law, or a lack of action on the part of the Government, firms are being allowed to escape unpunished, despite engaging in practices that are misleading and misrepresentative. I hope that the Minister will acknowledge that.

In addition to challenging the Government to consider legislation, I propose the setting up of an independent, self-regulating body to monitor the actions of land investment firms to ensure that they are not engaging in the kind of practices that I have mentioned. Such a move could include the establishment of an accreditation scheme to ensure that firms act responsibly and correctly. Only where organisations are found

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[6] HC Deb 1 November 2005 cc728-30

to be acting accordingly with agreed guidelines would they receive accreditation and thus be allowed to persist in investing in, and selling on, tracts of land.[7]

The Government shared Greg Mulholland's disapproval of the sale of small speculative plots in the Green Belt. However, it does not want to introduce new legislation dealing with fraudulent selling, but rather to make it easier for local authorities to prevent the erection of fences to mark small plots. The MInister explained the Government's position:

> **The Parliamentary Under-Secretary of State for Communities and Local Government (Meg Munn):** …The Government share the hon. Gentleman's strong disapproval of plot sale enterprises that exploit people's eagerness to build homes in open countryside, often at the expense of their limited knowledge of planning laws and policies.
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> The Government recognise the harm and adverse consequences of the subdivision of land in the countryside. Some of those consequences arise from open land being divided up with pegs, stakes, or fences, creating an eyesore that detracts from the appearance of the countryside. When plots are sold and are no longer in agricultural use, it can lead to neglect. That is especially difficult to put right if plot owners cannot be traced.
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> The mis-selling of land can be tackled in a variety of ways. Depending on the nature of the deceit, instances of mis-selling might be dealt with by the police, the Office of Fair Trading, local authority trading standards departments or the Department of Trade and Industry. The latter has powers under the Companies Act 1985, and can investigate companies if there is reason to suspect fraud, dishonesty or any other objectionable conduct, and can, in the public interest, take proceedings to wind up a company and/or disqualify its directors…
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> The planning system is not designed to supervise land ownership or to protect the unaware from ill-advised purchases. A primary concern of the planning system is the impact of development on amenity. It would be impractical to place an added burden on local government in respect of the oversight of the sale of rural land. However, planning has an important part to play in limiting harm to rural land…
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> We are working on proposals to amend the procedures for making article 4 directions, in order to enable local authorities to bring into effect more quickly and efficiently a direction to prevent subdivision of rural land. We propose to increase the scope of local authorities' powers to remove permitted development rights without having to wait for the Secretary of State's approval. We also plan to allow local authorities to bring article 4 directions into force more quickly by serving the relevant notice on the land by site display in cases where one or more owners cannot be identified or located, or where the numbers of owners or occupiers makes it impractical to serve a notice on every individual. The planning system is concerned with land use and the impacts of development; it does not deal with how land is sold, the ethics of the vendor or even who owns the land and how they might behave. If there is no development involved, there are no controls to invoke.
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> In conclusion, we are committed to the protection of the countryside against inappropriate development and, in particular, to the protection of green belt.[8]

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7 HC Deb 12 July 2006 cc491-2WH http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060712/halltext/60712h0331.htm#06071261000628

8 HC Deb 12 July 2006 cc493-5WH

3 The subdivision of woodlands

In a Westminster Hall Debate in October 2004, Huw Edwards called for woodlands to be included in the consultation exercise on subdivision and permitted development rights:

> Those "Woodlands for Sale" signs have been erected by Woodland Investment Ltd. It advertises small plots of woodland for sale through the internet. It is believed that potential buyers are urged to own a piece of Britain's beautiful countryside and advised that they can use the wood for a variety of purposes such as holding family reunions or the siting of caravans. In planning terms, those activities would require a change of use from agricultural forestry to recreation. However potential buyers are not informed of that. One of the main purposes of the debate is to highlight the need for a potential change of use, and the directives that local authorities should give in such cases…
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> On the woodlands.co.uk website, the question is asked,
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> "What sort of things can I do with my woodland?"
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> The answer is quite intriguing:
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> "You can walk, climb, make camp fires, study wildlife or work with wood. You can camp there and have family reunions, christenings and bonfire night parties. With your own wood you can do things that aren't possible in 'public woods'".
>
> I wonder what that is a reference to.
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> "For many woodland owners there is the satisfaction of owning a small piece of the British countryside and being able to manage it."
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> I do not think that anybody would question that as an objective. However, it is the non-forestry, non-woodland functions that most concern my constituents.
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> "Potential buyers are advised that they are not able to build a house on the woodland—but you can build for forestry purposes".
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> For example, one could erect
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> "a steel shipping container as a shed that could be used if you were to engage in forestry work."
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> It is said that
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> "These are very secure and surprisingly cheap (under £1,000 for 1690 sq feet). This has the advantage that they can be installed quickly and moved within the wood . . .should the planners object to the siting, they can be relocated."
>
> My constituents are rather horrified at the idea that local woods could be subdivided into small plots, with shipping containers located willy-nilly throughout them in case people want to engage in woodland work, with the proviso that they had better move on should the planners try to catch up with them. Another question that is asked is,
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> "Can I park a caravan?"
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> to which the answer is:
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> "The 28 day planning rule means that you can park a caravan in your wood and use it for 28 days in the year. Many people leave a caravan in their woodland for longer but this can only be done if there are no objections from neighbours. A white caravan in a wood does "shout" so it is sensible to paint caravans in dark green or brown."
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> Again, that idea causes great concern to my constituents. As well as P and O shipping containers, we are to have caravans painted in brown or green dotted around the woodlands of the Wye valley...There is also a clear effort to minimise the planning limitations and the permitted development rights associated with using small woodland sites for such activities as family reunions, the parking of caravans and steel containers, and the dangerous practice of having bonfire parties. There have been

serious fires in the Wye valley in recent years and the fire service faces major problems in combating forest fires…[9]

4 Policy in action, 2008

Here is a typical example from a council website of a recommendation from planners to the council:

> **Reason for report**
> Land at [the]… Fruit Farm… is currently being advertised for sale. The vendors, First Property Bank UK, are offering investments in land in the form of small potential building plots.
>
> The former orchards extend to approx. 80 hectares (200 acres) of agricultural land. Information on the vendors' website confirms that land is being offered for sale in the form of small potential residential building plots, with reference to recent statements by central government regarding housing land shortages in the south-east and pressure to release greenfield sites to meet housing demands.
>
> There is concern that sub-division of the land and fragmentation into small plots could undermine the open character and visual amenities of the area due to development which would normally not require planning permission, including fences, structures, temporary uses of land, etc.
>
> **RECOMMENDATION**
> Article 4 Directions be made on land known as [the]…Fruit Farm… as indicated on the attached plan (Appendix 1) to remove permitted development rights for the following classes of development:
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> (i) erection or construction of gates, fences, walls or other means of enclosure (Class A of Part 2);
> (ii) formation, laying out and construction of means of access … (Class B of Part 2);
> (iii) provision of temporary buildings, etc (Class A of Part 4);
> (iv) the use of land for any purpose for not more than 28 days (Class B of Part 4);
> (v) use of land as a caravan site … (Class A of Part 5)
>
> If the above recommendation is accepted the matter be referred to the Portfolio-holder for ratification.[10]

5 Consultation on Article 4 directions

The Government published a consultation paper on article 4 directions in July 2009. This will deal with bringing into force s.189 of the *Planning Act 2008* to remove the need to pay compensation for withdrawal of permitted development rights provided that there is a 12 month consultation period. There will also be draft statutory instruments to remove the requirement that most article 4 directions require approval of the Secretary of State. The changes are likely to come into force in April 2010. The consultation document explained:

> 53. In addition to commencing the compensation provision in Section 189 of the
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> Planning Act 2008, the Government proposes to make the following changes through secondary legislation to the process by which Article 4 Directions are made:

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9 HC Deb 12 October 2004 cc56-8WH

10 http://sharepoint.bromley.gov.uk/Public%20Docs/06-DC-1202.doc

• remove the need for Secretary of State approval for all Directions made under the GPDO to remove permitted development rights, but retain a reserve power for the Secretary of State to revoke or revise them

• require LPAs to consult on proposals for Directions for a minimum of 21 days before confirming them. The method of consultation will be for the LPA to determine, but they should be mindful of advice available to them on good practice

• Directions will be notified by serving notice on the owner/occupier of the land to which the Direction relates. Or, where an LPA considers that individual service is impracticable, it may give notice of the making of the Direction by site display at not less than two places within the specified areas of the Direction, for a period of not less than six weeks. Directions will come into effect at a date determined by the LPA. There is also a requirement to publish the Direction locally

• there will remain a provision for LPAs to act quickly, if necessary, in order to deal with a threat to the amenity of their area. The LPA will be able to make a direction removing permitted development rights immediately. Such a Direction would last six months and would expire unless confirmed by the authority following consultation.[11]

[11] DCLG, Improving Permitted Development - Consultation, July 2009