

**REPORT BY THE ESTATES OFFICER ON BEHALF OF THE PROPERTY &
PROJECTS GROUP**

SUBJECT: CONSERVATION COVENANTS

Purpose of Report

To seek members' agreement in principle that, officers could discuss the voluntary introduction of Conservation Covenants with interested landowners to provide long-term protection of high quality sites. Any individual proposal to be subject to CMT and NPA approval.

Background

For many years the Authority has had a policy of encouraging and assisting private owners to manage their land in pursuit of conservation best practice. This typically sees the Authority providing conservation and management advice or making payments to financially compensate or incentivise the landowner. In some cases the NPA uses our warden teams to carry out work to bring land to a better conservation standard or to assist with movement of grazing animals. Some of these working relationships are documented by fixed term Management Agreements whilst others are of a more informal nature. However, neither guarantees the continuation of that conservation best practice beyond the expiry of the working agreement, meaning that the Authority's accumulated investment into the land is continually at risk.

Your Officers also receive occasional approaches from private landowners who are selling land and enquiring if there is anything the Authority can do to protect the conservation value of their land once it has passed into third party ownership. Historically this was often a catalyst for the Authority to consider protective purchase, and whilst this remains an option, the current climate would require very exceptional circumstances.

The normal mechanism for retaining influence over another's land is via the use of covenants. However this is a complex area of law and many covenants entered into in all good faith are subsequently challenged and held to be unenforceable to the detriment of the original objective. Some legal jurisdictions around the world have already sought to limit this risk where the public interest could be adversely impacted by the introduction of bespoke Conservation Covenants. This same approach is presently under consideration by the Law Commission who have made recommendations for their introduction in England & Wales, and that National Parks be included within the category of public bodies able to negotiate and enter into binding Conservation Covenants with land owners. If these proposals do become law it will represent a significant new management tool for the Authority to use in its discussions with landowners who wish voluntarily safeguard and secure their land

beyond the period of their own protective ownership. However, their introduction is still far from certain and the relevant timescale is even less clear. In the meantime, the long term value of our conservation work on privately owned land remains at risk and we have no measure to deal with offers from landowners other than acquisition.

As an interim alternative, your Officers have become aware of an existing provision contained within S.33 Local Government Act 1982 & Sch 8 Environment Act 1995 which already allows the Authority to enter into enforceable covenants in pursuit of conservation best practise, but only if the Authority is the legal owner of the land at the time the relevant covenant is entered into. This would limit its practical application by this Authority to the following scenario:

- Party 'A' owns land with high conservation value and wants to see that high conservation value protected beyond their ownership.
- Party 'B' has agreed terms to acquire the land from Party 'A'. The circumstances of Party 'A' mean that any covenants they might want to enter into directly with Party 'B' to protect the lands ongoing conservation value would not be enforceable.
- By mutual agreement with Party 'A' & 'B', the Authority inserts itself into the legal 'chain' of ownership by acquiring the land from 'A' and simultaneously transferring it onto 'B' having imposed the required covenants in that moment in time when it was the legal owner of the land. Thereafter, the Authority would be able to enforce the benefits of the said covenants against Party 'B' and their future successors in title in pursuit of its statutory objectives.

It should also be noted that this same approach could be equally applied in situations where the incumbent land owner has no present intention to sell to a third party, but still wishes to protect the conservation value of his land in advance of any future circumstances necessitating its sale to a third party. In this scenario Party 'A' & 'B' would be the same legal entity.

Financial, Risk & Compliance Considerations

The Authority's Monitoring Officer is of the opinion that this mechanism would be appropriate and effective, subject to the caveat that the relevant covenants precise wording would need to be approved by specialist lawyers on each and every occasion to ensure its future enforceability.

This mechanism would only be appropriate for use if the transfer of ownership from 'A' to the Authority and from the Authority to 'B' took place simultaneously (i.e a 'back to back deal') and the consideration paid to 'A' by the Authority was the same that it received from 'B'.

The Authority's irrecoverable costs would be the stamp duty (if applicable) when acquiring the land from 'A' and its own legal costs in documenting the transfers with 'A' and 'B' respectively.

The successful application of this mechanism would safeguard the ongoing benefit of any preexisting conservation work undertaken by the Authority on the land and also provide a sound justification for the continuation of that investment into the future.

If the owner were to use the land in breach of the covenant the Authority would still need to follow the appropriate legal procedures in pursuit of a remedy including the legal costs of pursuing that course of action.

Human Rights/Equality Issues

No issues – this would be entered as a voluntary agreement.

Biodiversity Implications/Sustainability Appraisal

A significant and previously untried opportunity to safeguard and influence long term conservation best practise over specific areas of land.

Welsh Language Statement

No issues

Summary

The combination of circumstances that would justify and permit the application of this ‘tool’ are likely to be extremely rare. However, it is also the very scarcity of its possible application which highlights its potential importance as a conservation tool of last resort.

Recommendation

That Members endorse the recommendation of the Property & Projects Group that until such time that Conservation Covenants are introduced by statute, Officers should be encouraged to consider and discuss the use of S.33 Local Government Act 1982 & Sch 8 Environment Act 1995 in their dealings with private land owners on a case by case basis in pursuit of long term conservation best practise, with any resulting proposals including the associated financial costs, being subject to CMT and NPA approval on each and every occasion