



Campaign to Protect
Rural England

THE GREAT LANDBANKING CARVE-UP

A very risky investment which messes up the countryside

Hundreds of pieces of English countryside are being sold direct to the public, both in the UK and overseas, as a supposedly surefire way of making large amounts of money. These so called 'landbanking' schemes have sprung up in recent years aimed at gullible punters across the globe and they are starting to mess up the countryside. A CPRE investigation has now found 29 landbanking operations marketing plots (briefing available from CPRE's press office).

The operators sell the land in tiny plots on the basis that its value is bound to rise because one day houses will be built on it. They use the Internet, or flyers placed in glossy magazines, or even full page advertisements in national newspapers.

But that 'one day' may not be in any investor's lifetime. Local council planners often insist the sites in question are the very last place they would want to see housing development and that it has no prospect of getting planning permission. CPRE [1] argues that these businesses need authorisation from the Financial Services Authority in order to realise the development gains they refer to, but so far as we are aware none of them have this authorisation. The operators involved don't tell their punters – some of them on the other side of the world – these inconvenient facts.

The result is a fast growing mess. The sites in question are sometimes divided up into plots by stakes and fencing, spoiling their appearance. If the sites remain as undeveloped countryside, which nearly all of them will, there is no incentive to look after the land. Nor is there any easily enforceable obligation to do so. So it is likely to become a mass of scrub and a haunt of flytippers.

And even if, years from now, any of the sites can actually obtain planning permission for new homes, it's highly unlikely any developer would be able to come up with a viable scheme for a housing estate. How could they, given the multitude of small plotowners involved which they will have to negotiate with, some of whom will be untraceable or deceased?

This is a shabby, speculative carve-up of our precious countryside. Investors may well face the same risks as those who have backed schemes such as timeshares, pyramid selling and ostrich farms. They should beware – and Government should clamp down. It has been reported that a few of the individuals behind landbanking operations have a history of involvement in such schemes.

1. CPRE, the Campaign to Protect Rural England, is a charity which promotes the beauty, tranquillity and diversity of rural England. We advocate positive solutions for the long-term future of the countryside. Founded in 1926, we have 60,000 supporters and a branch in every county. President: Sir Max Hastings. Patron: Her Majesty The Queen.

CPRE has found that the landbanking operators:

- buy farmland or woodland neither zoned for change of use in the local council's development plan nor with any planning permission for development;
- subdivide it into small plots, sometimes only large enough for a single small house, sometimes using stakes and/or fences;
- sell the land using the Internet, and other forms of advertising, usually at prices much higher than the agricultural use value at which it was purchased. Once initial contact is made with a prospective purchaser, high pressure telephone sales techniques can sometimes follow.

Many operators have also offered to provide purchasers with further services, for example in the obtaining of planning permission. It is very difficult to see how the plot owners could ever get planning permission for development on their little holdings without joining together to obtain such services. Why? Because it simply makes no sense to get planning permission for each home, one by one. They all need to share access roads and services such as power, street lighting, and water. Their design needs to harmonise in order to avoid an eyesore.

But if the operators do promote, or facilitate, this joint action to obtain planning permission they are, in effect, operating 'collective investment schemes'. The operators of such schemes need authorisation from the Financial Services Authority (FSA) and, in any event, collective investment schemes involving landbanking are not allowed to advertise to the general public.

CPRE believes that most landbanking operations are, in effect, collective investment schemes – and should be regulated by the FSA as such. If they were, the prohibition on advertising would drastically curtail their activities. Two landbanking operations have already been forced to cease trading after the Insolvency Service and the FSA respectively acted against them on the basis that they were unauthorised collective investment schemes. We think the same should apply to many others, but that more co-ordinated action by Government agencies is needed.

The landbanking 'industry' has grown rapidly in recent years. Hopefully it will soon decline, as investors become aware of the pitfalls. But economist Kate Barker's review of planning, commissioned by HM Treasury [2], may give the landbanking operators a boost. She called for major reviews of Green Belt boundaries. **This may encourage operators to market hundreds of fresh plots on the basis that the restriction on development which comes from Green Belt status may soon be lifted.**

Landbanking for the small investor - what is the problem?

The banked land is deteriorating. Some of our most valuable countryside is being targeted. CPRE has found many of the sites marketed for housebuilding are specifically protected as countryside in planning policy, as either Green Belt, Area of Outstanding Natural Beauty (AONB) or by other wildlife or landscape protection policies. Hoad's Wood near Bethersden in Kent, marketed by Gladwish, is a Site of Special Scientific Interest.

Once subdivided by the landbankers, the quality of the land has often declined. Some sites (such as at Marple near Stockport) have become overgrown and have attracted litter and illegal camping, and many have been criss-crossed with unsightly stakes and fences.

Even where there has been no obvious deterioration, it becomes much more difficult to manage a piece of countryside coherently and effectively when it has dozens, even hundreds, of different owners across the world. There is much less scope to manage it as productive farmland, a nature reserve or community open space. Subdivision also makes a piece of greenfield land vulnerable to the kind of development which does not require planning permission - such as putting in concrete vehicle parking areas.

Are landbanking operations mis-selling to the public?

Landbanking businesses buy land at prices close to its farmland value then sell it on to the public at prices well above that which agricultural land normally commands. That is how they make their profit. In their sales pitch they claim that the value of the land is bound to rise – because it will eventually be developed and because prices for all kinds of land have tended to rise faster than inflation in recent years.

But if the punters pay too much for their plots in the first place – because the land has little or no development potential – this tendency of land prices to rise is irrelevant.

Dodgy advertising: CPRE Hertfordshire complained to the ASA about an advert placed by Property Spy in March 2006 in a local newspaper, and in May that year Property Spy agreed informally to remove the advertisement. The advert claimed that 25,000 homes were proposed on the edge of St. Albans, based on speculative proposals put forward by two landowners on the edge of St. Albans district rather than the town itself. The same company was also the subject of a formal ASA adjudication in 2002, upholding a complaint made about claims by Property Spy that all plots it was selling on a site at Battle, East Sussex had a road frontage.

Sites are purchased in areas where housing markets are buoyant, often close to urban areas or to land that has been zoned for new development in the development plan for the area. A common feature of nearly all landbanking company websites is an array of quotes from media news stories and the Government, stating that there is a shortage of housing, that household numbers are growing fast, and that more greenfield land will be used for housing in the future. Well known – or once well known – television personalities have been used to talk up the benefits of landbanking.

Dubious claims: In the autumn of 2006 'Countrywide Land Holdings Limited' marketed dozens of small plots of greenfield land at Chavey Down, on the western fringe of Ascot, Berkshire. A landbanking 'consultant', one of the operation's sales force, told a CPRE representative posing as a prospective purchaser that just four plots remained, ranging in size from 0.03 of an acre (at £7,980) to 0.08 of an acre (at £21,300). In fact 0.03 of an acre is just 121 square metres – or 11 by 11 metres. This is too small for a detached or semi-detached home. It might be possible to fit a small terraced home on it, but how can the owner of a single plot build a terrace?

Lack of space is only the beginning of a purchaser's problems. On the telephone, the consultant talked up the prospects of gaining planning permission for homes to be built on the site, currently covered by grass and woodland. It is, he said, within a 'Major Development Area...these are areas that the Government point out to developers as where they want them to build houses – they've told councils, they've told the BBC.' But in fact it is not in any such 'Major Development Area'. He went on to say that buying one of the plots would a better investment than stocks and shares, fine wine and antiques. 'Land can only go up in value ... building land is running out very, very rapidly. You need to make your mind up today – we've got 15 brokers hanging on for this site.'

So what does the local planning authority, Bracknell Forest District Council, have to say? Its planning department told CPRE the prospects for gaining planning permission for housing on the triangle-shaped site were vanishingly low in the foreseeable future.

Why? Because long standing council policies, set out in the Local Plan, rule out development on this particular site. It is defined as 'Land Outside Settlements', in this case because it forms part of a strip of valuable countryside stopping Ascot merging into Bracknell. Policy EN8 says only very restricted development is allowed on such land, under particular circumstances. And Policy H5 says that new homes must be built within existing settlement boundaries – only under very limited circumstances can exceptions be made. A major new housing development on this particular site could never meet those circumstances.

As if that was not enough to frustrate any chances of gaining planning permission, there is the fact that the site is right next to the Green Belt. Policy EN8 says development can only be permitted on land if 'where conspicuous from the Green Belt, [it] would not injure the visual amenities of the Green Belt.' The consultant mentioned none of this in his high pressure sales pitch. The planning department said the site had formerly been used for dumping waste. He did not mention this either. Nonetheless, it is believed that Countrywide Land Holdings, which gives a City of London address, managed to sell all of the plots on the site to investors.

Much of the land is marketed overseas, to investors who have no detailed understanding of the UK's land markets or its planning system. The actions of European Land Sales in Australia have prompted the state government of Victoria to take an injunction against Stephen Cleeve on the grounds that ELS '*grossly misrepresents the likelihood of planning permission being granted and its experience and skill in obtaining such permission*' (Consumer Affairs Victoria website).

The Guardian recently reported (22 September 2006) that one firm had been marketing land in India. Another operator, Profitable Plots, has been marketing on satellite television in Malaysia and Singapore. Landbankers have also particularly targeted Asian radio stations in England.

A website has now been set up which warns investors of the perils of landbanking, and also reveals the damage the schemes can do to the countryside and neighbouring communities – see www.propertyscam.org.uk.

How do the landbankers make their money?

The scheme starts off with a landbanker finding a field or piece of woodland, usually on or near the edge of a settlement. The land is normally brought at or near agricultural use value, divided into small plots and marketed.

Until quite recently, it was normal to use fences and posts to demarcate the plots. Local councils have begun to clamp down on this despoliation of land using planning regulations (see also the section on our recommended changes to planning below). A map of plots still features, however, on many landbanking operators' websites, sketched out as though it was a proposed housing estate (see for example, Hayden James' advertised site with over 100 plots for sale at Bicester in Oxfordshire, www.haydenjames.co.uk/land_oxfordshire.php). In selling the plots, landbankers can make profits running into millions of pounds.

We have not seen any evidence that a landbanking business has actually applied successfully for planning permission for houses to be built on any site that it subdivided into plots and sold to investors. If they had applied for permission, then they would be a collective investment scheme requiring authorisation and regulation by the Financial Services Authority (FSA).

Planning permission refused: Landlink subdivided a site at Crook in County Durham. In December 2005 Villa Lynx, a planning consultancy, applied for planning permission for 49 dwellings on the site. This was rejected by the local planning authority in April 2006, because it decided there was no need to develop a greenfield site for new housing and because inadequate information had been given on design and access to the proposed development.

So what should be done?

There needs to be an urgent, high level meeting of Government departments and regulatory bodies to prepare an action plan for cracking down on the sale of small plots of land to uniformed investors who have not been given the facts they need.

This meeting should include representatives of the Department for Trade and Industry, the Department for Communities and Local Government, the Department for Environment, Food and Rural Affairs, the Financial Services Authority and the Office of Fair Trading. It would kick start the process of devising the most effective ways of dealing with the problems.

CPRE proposes the following as solutions:

The Financial Services Authority (FSA) should regulate landbanking companies more actively.

The selling of land for investment, unlike other forms of investment such as shares, would appear to be outside the remit of the FSA. However, the marketing of small plots of land as an investment product *would* fall under FSA regulation if they exhibited the characteristics of units in a 'collective investment scheme' as defined in Section 235 of the Financial Services and Markets Act 2000. CPRE argues that the majority of these operations *do* have these characteristics, as set out in the FSA guidance, because those marketing the plots are offering a collective service to investors in order to help make their investment profitable [3]. Why? Because they claim to help investors through either taking the whole site through the planning process, or selling it to another agent such as a housebuilder. Yet none of the operators we name are, to the best of our knowledge, authorised by the FSA.

If these operators were covered, those running the operations would need to be 'authorised persons' and a criteria for getting such authorisation includes 'a fit and proper management'. Landbankers would need to gain a further express authorisation to advertise plots for sale using the Internet or other media. This would be unlikely to materialise because, like private share clubs, landbanking schemes do not meet the legal criteria to advertise publicly. FSA regulation would also provide protection for consumers through complaint (using the Financial Ombudsman Service) and compensation schemes.

The FSA should take action to either enforce the prohibition of unauthorised collective investment schemes, or ensure that all those running landbanking schemes that are 'collective investment schemes' are properly authorised and operate within FSA rules. This would apply to the great majority of operators – and drastically curtail their operations.

The Office of Fair Trading should investigate the sales claims of all operations.

We argue that the great majority of advertising of landbanking schemes fail to give the investing public the crucial facts about planning which they need to know. If people were given a true picture of the planning status of the land they were buying, most would never purchase it.

We believe the Office of Fair Trading (OFT) is the best placed organisation to investigate the advertising claims of landbanking operations and take action it deems appropriate from the range of legal powers it has. This is for three reasons, all relating to the limitations on the remit of other agencies that could or have acted on the issue:

- not all the operations we name can be considered 'collective investment schemes', and these exceptions are therefore outside the remit of the FSA;
- the OFT has powers in relation to misleading advertisements, exercised through co-ordination and guidance of local trading standards activity, and as a legal 'backstop' regulator to the Advertising Standards Authority (ASA); and

3. FSA Perimeter Guidance Manual [PERG], Section 11.3, available from <http://fsahandbook.info/FSA/html/handbook/PERG/11/3>

- The OFT, unlike the Companies Investigation Branch of the Government's Insolvency Service, is able to investigate the activities of individuals and partnerships as well as companies.

Local authority trading standards officers can act under The Property Misdescriptions Act 1991 against false or misleading statements made about specified aspects of land and buildings offered for sale. But no successful prosecutions have, to our knowledge, been brought by local trading standards officers. This is unsurprising, since the plots are marketed over the Internet across the globe rather than within a single town or district in England.

Government should give local councils more freedom to tackle landbanking's impact on the countryside.

In the early days, landbanking operators routinely used to divide the land they sold to investors into individual plots with unsightly fences and posts. But action by local planning authorities (local borough and district councils) to tackle this is increasingly effective. Markers have already been removed from a number of sites in Hertfordshire.

The main tools available to local planning authorities are 'Article 4 Directions' and discontinuance notices. Putting up fences and stakes is a 'permitted development' in planning law, meaning that it can usually take place without requiring planning permission. An Article 4 Direction means that the landowner *does* have to apply for planning permission. The Direction cannot, however, be applied if the fencing has already gone up. Discontinuance notices (under Section 102 of the Town & Country Planning Act 1990) can be used to remove fences and stakes already erected.

Both of these powers - Article 4 Directions and discontinuance notices - need approval from the Secretary of State before local planning authorities can exercise them. The present procedures are bureaucratic and costly. In Chiltern Borough, Buckinghamshire, 24 Article 4 directions have been served, all of which needed prior approval from the Government.

The Government has recently consulted on a change to planning regulations, removing the need for local planning authorities to get Government approval in advance (though not the need for approval in itself) before serving an Article 4 Direction preventing landbankers erecting fences and posts. In CPRE's view, it would be much more effective for the Government to remove this need for approval outright in cases relating to landbanking.

The Government should also issue policy guidance, encouraging local authorities to use discontinuance notices to remove fences and posts that were already put up before an Article 4 Direction could be served.

Conclusion

Our countryside is being subdivided into small plots by an increasing number of 'landbanking' operations in an increasing number of locations. Plots are sold at prices high above their current use value, on the basis of high pressure sales techniques and seriously inadequate information supplied to investors. Huge gains are promised - but only the operators themselves are likely to realise these. Affected countryside is deteriorating or at risk of deterioration. Landbanking requires solutions from across local and national government. Urgent, co-ordinated action is needed.