

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL BY ECOLOGICAL LAND COOPERATIVE**

**Site at NGR 307117 120011
(Greenham Reach)**

APP/Y1138/A/12/2181807/NWF

APP/Y1138/A/12/2181808/NWF

APP/Y1138/A/12/2181821/NWF

Inquiry opened 29.1.2013

APPELLANT'S OPENING SUBMISSIONS

The Approach of the Local Planning Authority

1. The Local Authority in this Inquiry appear to proceed as if the only circumstance in which planning permission in this case might properly be granted is where the Appellant is able to show an essential need for workers to live on site.

2. This question of essential need it would narrow:
 - a) in terms of content – reducing it in practice to functional agricultural needs, (by contrast with the more expansive sense given to this concept by the Council's planning officer who advised:

“Previously it would have been considered to fail against the functional need test in PPS 7. The test now is whether there is

an 'essential' need for 'rural workers' to live at or near their place of work. Having said that, the information put forward by the applicant ... are considered to justify a dwelling on site for a temporary period of 5 years as it is 'essential' for the success of this project that the occupiers work and live on site."

- b) in terms of scope – effectively suggesting that such need amounts to a need for overnight presence and/or the need to be available (in the words of emerging policy DM /10 “at all times”, by contrast with ‘at most times’ in Annex A to PPS 7.

Alongside this narrowed test of functional / essential need the Local Authority seek to place a revived set of tests derived from Annex A of PPS 7 – see eg. Berryman para 2.5.

- 3. Everything else put forward by the Appellant as a reason for approval the Local Authority dismissively disregards as either, 'personal points' or 'personal wishes' (eg. Statement of Case para 4.5 last sentence, AB proof para 5.2.6). Alternatively, at some points the Council purports to support the initiative, while refusing the permission for dwellings without which this project will not be capable of realisation, as the Council Officer's report recognised.
- 4. The Appellant contends that this approach is misconceived both legally and in terms of planning policy as a whole. Legally, it fails to take into account the extent to which the NPPF has broadened and rendered more flexible the criteria which need to be applied. In terms of planning policy, this approach: pays no regard the broad social, economic and environmental benefits which the scheme as a whole proposes, none of which will be realisable without the provision for accommodation on site, and which taken as a whole amount to a compelling special circumstance justifying planning approval.

The Unique Character of the Application

- 5. In paragraph 4.44, 4.58 and 4.64 of Ms Wangler's Proof of Evidence, and in para 4.2 of the Appellant's Statement of Case are summarised some of the key benefits which the scheme will deliver – these include amongst others:

- a) Provision of affordable smallholdings for new entrants to agriculture, in the context of a call by DEFRA for 60 000 such new entrants over the next decade (p.18 Appendix ZW 06).
- b) An innovative and valuable pilot project which seeks to demonstrate a possible mechanism for achieving radical reductions in carbon emissions – aiming for 0.2 tonnes of CO2 per person per year compared with the Mid-Devon average of 2.7 tonnes per person per year (see para 7.1, Background information supplied by Council Head of Planning and Regeneration).
- c) Conservation and enhancement of local biodiversity and the environment, including improvement in soil and water quality.
- d) Support for the rural economy and community by the provision of rural employment and delivery of local services with the concomitant boost to local markets, small shops and town centres.
- e) Meeting housing need: a benefit which should be weighed against the background of the current housing crisis (see Taylor review at Appendix ZW – 10).
- f) The expansion of applied research addressing the ability of the scheme to deliver on the five objectives described above by an organisation acclaimed by the Research Councils UK for the quality of its research.

The Appellant will contend that these six benefits deliver progress along all three dimensions of sustainable development (see ZW proof para 4.64) and across a host of planning and other policies. Taken together they amount to a special circumstance warranting the grant of planning permission, *whether or not* the Inspector should find that there is, “an essential need for a rural worker to live permanently at or near their place of work.”

6. Rather than permitting this application to be reduced to no more than just another application for a rural worker’s dwelling, the Appellant proposes that the Inspector note the assessment of Holcombe Rogus Parish Council which considered:

“These policies (MDDC Core strategy 2026 and PPS 7 – Annex A) can be more clearly understood in the context of traditional agricultural activities where the agricultural dwelling is clearly subsidiary to agricultural enterprise. They do not fit happily with the proposed project at Greenham Reach. The emphasis of low impact living is the promotion of a way of life, the centre of which is the ability to live on the land and to use the land’s resources wholly or partly for subsistence in a sustainable manner. For this reason some caution is required in trying to apply standard policies that were not drafted with this kind of social enterprise in mind. Our council does not consider that MDDC has any clear policy that contemplates what is being proposed at Greenham Reach. There is a case for treating the planning proposals as ‘sui generis’.”

Planning Framework

7. Paragraph 14 of the NPPF provides that:

*"At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking."*

It goes on to explain that:

*"For **decision-taking** this means:*

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted."*

8. The Appellant argues that paragraph 14 should be applied in determining this appeal and that permission should be granted UNLESS the Council is able to show that its adverse impacts significantly and demonstrably outweigh the benefits of so doing on the grounds that:
- a) The development plan is absent, silent and/or relevant policies are out-of-date, and
 - b) There are no specific policies in the NPPF to indicate that development of this kind should be restricted.

Relevant policies out of date

9. The Core Strategy includes policy COR18 which provides that:

"Development outside the settlements defined by COR13 - COR17 will be strictly controlled, enhancing the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. Detailed development control policies will permit agricultural and other appropriate rural uses, subject to appropriate criteria, as follows:

a. affordable housing to meet local needs, gypsy accommodation, replacement dwellings, housing essential to accommodate an agricultural or forestry worker and accommodation ancillary to a dwelling;

b. appropriately scaled retail, employment, farm diversification and tourism related development (including conversion of existing buildings);

c. appropriately scaled and designed extensions and other physical alterations to existing buildings;

d. agricultural buildings;

e. community facilities, such as educational facilities, buildings associated with public open space, development required to support or enhance biodiversity or geodiversity interests, transportation and infrastructure proposals, horse riding establishments and golf facilities; and

f. renewable energy and telecommunications."

10. The NPPF's transitional arrangements are at paras 214-215. Where there is more than a limited degree of conflict between existing policies and the NPPF,

or where the decision taker is acting more than 12 months from adoption of the NPPF, then para. 215 states:

due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)

11. While it is accepted that – absent any unusual delay - this Appeal is likely to be determined within 12 months of March 27 2012 (publication date of the NPPF), this is nevertheless a deadline which is rapidly approaching and regard should be had to this imminent obsolescence of existing policies when assessing their degree of conflict with the NPPF.

12. The Appellant suggests that while COR 18 should be given some weight, there is more than a limited degree of conflict with para 55 of the NPPF because:

- a) The exceptions to 'development outside the settlements defined by COR 13-COR 17' that are set out in COR 18 are a *closed* and finite list, whereas para 55 of the NPPF sets out a non-exhaustive list of *examples* of circumstances in which an in-principle *open* category of 'special circumstances' might be considered to apply.
- b) All the exceptions detailed in COR 18 relate to a single theme: the promotion of sustainable diversification of the rural economy. By contrast para 55 includes a range of other circumstances such as where the development would bring redundant buildings back into use or where the building's design is of an exceptional quality or innovative nature. Furthermore, unlike COR18, the NPPF recognises that other rural businesses, not just those relating to agriculture, may have an essential need for on-site accommodation.
- c) The rural worker exception in para 55 of the NPPF refers to an essential need for such a worker to live permanently at or near their place of work, permitting the interpretation that this test need not necessarily be applied in cases in cases of temporary permission.

(Although it is accepted that another interpretation of the meaning of permanent is possible).

13. The narrower and more restrictive ambit of COR 18 places it in more than limited conflict with the NPPF, and therefore, while it may be given some weight in accordance with para 215, the development plan is certainly to be regarded as 'out of date' for the purposes of para 14.

Development plan 'absent or silent'

14. The LPA may seek to argue that emerging policy DM/10 is capable of filling the lacuna in the development plan, such that this cannot be regarded as absent or silent.

15. DM/10 provides:

"Applications for rural workers dwellings will be permitted where:

a) It can be demonstrated that the nature and demands of an existing rural business are such that a full time worker has an essential need to be permanently resident at or near their place of work so they are available at all times;

b) The need cannot be met within a nearby settlement, or by existing housing at or near the site or through the conversion of a suitable redundant or disused rural building at the site;

c) The size and scale of rural workers dwellings will be commensurate with the scale of the operation and designed to reflect the location and setting of the proposed site.

Where a rural business is not established a temporary dwelling may be permitted on the basis of the criteria above and where there is clear evidence of a firm intention to establish a rural enterprise and sound financial planning."

16. Para 216 of the NPPF sets out the weight that should be accorded to emerging plans having regard to the stage reached in the plan development process, the extent of unresolved objections and the degree of consistency between the emerging plan and the Framework.

17. While Local Plan Part 3 is at an advanced stage of the consultation process, having been through two rounds of public status there remain 173 unresolved

objections to the Plan, 4 of which relate to DM/10. This reduces to some extent the weight that should be afforded to the policy.

18. More important however, is the question as to whether or not the text of DM/10 is consistent with the NPPF. The Appellant contends that it is not so consistent in at least two and possibly three important respects.

19. The two *definite* inconsistencies with the NPPF are that, contrary to the general presumption in favour of sustainable development and the shift to a more flexible approach which has seen the **removal** of Annex A of PPS 7, the proposed policy DM/10 although it dispenses with the financial viability test, otherwise represents a *more* restrictive policy than the functional need test in paragraph 4 of Annex A, since:

d) It replaces the need for a worker to be readily available 'at **most** times' with a requirement that he or she be available 'at **all** times;'

e) The provisions in relation to temporary permissions add an additional requirement of full time working which was not to be found in paragraph 12 of Annex A which related to temporary permissions.

20. The *possible* inconsistency concerns the intended application of the test. The Local Authority may seek to argue that despite its permissive wording ("Applications ...**will** be permitted where...") DM/10 does not merely set out criteria prescribing circumstances in which approval will definitely be granted, but implicitly and conversely entails that failure to satisfy these criteria will necessarily mandate a withholding of such approval. There are certain indications in the supporting text that this may be intended by the policy (eg. para 5.10.3: "developments will only be permitted where...") (see Annex PJR 3 to Rowan Proof). Certainly this is the approach the local authority appear to be taking in relation to the present case.

21. The NPPF makes clear that 'essential need' is only one of an open list of categories of special circumstances in which development may be permitted. In the present case the Appellant argues that this application for rural workers' dwellings ***is also*** one in which there are special circumstances warranting approval of planning permission unrelated to any, "essential need to be resident at or near their place of work so they are available at all times."

Accordingly, to the extent that the Inspector finds that policy DM/10 attempts to **limit** rural workers dwellings where they do not satisfy its criteria, (rather than simply permit them where they do), the policy will be in severe conflict with the NPPF since it will fail to make allowance for (other) special circumstances.

22. Paragraph 14 does not expressly permit emerging policies to fill absences or silences in the development plan, but given the conflict between the NPPF and emerging policy DM/10 it is submitted that even if this were possible in principle, it would not be appropriate in this case, given the limited weight that para 216 would prescribe for a policy which is not consistent with the NPPF.

Consequences of the Development Plan being absent, silent and/or out of date

23. Where it can be shown that the Development Plan is absent, silent or relevant policies are out of date, then paragraph 14 of the NPPF provides that planning permission should be granted only where EITHER any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, OR specific policies in the NPPF indicate that development should be restricted.

24. Footnote 9 provides examples of such specific policies and references - sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion. None of these apply. Moreover, all of these policies are very obviously '*specific*' – in the sense of having a special application or particular reference to a special category of land in a way that para 55 – which applies a *general* balancing framework for sustainable development in relation to all housing in all rural areas – is not.

25. Thus it is submitted that the task facing this Inquiry is to undertake a balancing exercise between the benefits of the proposal and its adverse impacts. Only where the adverse impacts significantly and demonstrably outweigh the benefits should permission be refused. Here the ELC has demonstrated that there are significant benefits to the proposal as set out at paragraph 4.2 of its Statement of Case. In contrast, MDDC has put forward very little evidence as

to any potential adverse impacts with the exception of its precedent argument, let alone shown that any such adverse impacts significantly and demonstrably outweigh the benefits.

FURTHER OR IN THE ALTERNATIVE..

26. In the event the Inspector is not persuaded by this reasoning, the Appellant argues that – given the conflict and inconsistency between the old and emerging plan and the NPPF detailed above, these other plans should be given limited weight and the application should be determined primarily against the criteria in NPPF itself rather than against the criteria in these plans.

27. In the event the Inspector considers that full or near full weight should be given to the existing and/or emerging plan, the Appellant will argue that in applying the plan, regard should be had to the spirit, intention and purpose behind the the relevant policies rather than their formalistic or dogmatic application. In the words of Sedley LJ:

“[an] undoubtedly genuine application by somebody living by what amounts to subsistence farming requires not a rigid application of criteria designed for commercial agriculture but a practical application of those criteria to secure the underlying purposes of the policy.” (Petter & Harris v. SoS ETR; at Appendix ZW18 p.11).

28. In the event the Inspector should still consider these applications to be contrary to the development plan it is submitted that the matters set out in para 4.2 of the Statement of Case amount to a material consideration justifying a departure from it.

Essential Need

29. The Appellant obviously continues to argue that whatever the correct legal approach to the planning framework, the dwellings can be justified in terms of essential need, and this suggests that this need is spelled out in great detail and with great knowledge in the proof of Rebecca Laughton.

Temporary Permission

30. In the event any residual uncertainty about the value of this proposal remains in the mind of the Inspector the Appellant refers again to para 111 of Circular 11/95 which suggests:

Again, where an application is made for permanent permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development ...In certain circumstances it may be possible to grant temporary permission for the provision of a caravan or other temporary accommodation where there is some evidence to support the grant of planning permission for an application for an agricultural or forestry dwelling, but it is inconclusive, perhaps because there is doubt about the sustainability of the proposed enterprise. This allows time for such prospects to be clarified.

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29 January 2013