

Town and Country Planning Act 1990 (as amended)

**Land at NGR 307117 120011 (Greenham Reach), Holcombe Rogus, Devon.**

**Appeals by the Ecological Land Co-operative Ltd.**

**Mid Devon District Council references:**

11/02007/MFUL, 12/00045/MFUL and 12/00107/MFUL

**Planning Inspectorate References:**

APP/Y1138/A/12/2181807, APP/Y1138/A/12/2181808, and  
APP/Y1138/A/12/2181821

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**THE APPELLANT'S STATEMENT OF CASE**

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## 1.0 INTRODUCTION

1.1 On 16 August 2012 the Ecological Land Co-operative Ltd. (**the Appellant**) submitted planning appeals against Mid Devon District Council's (**MDDC**) decision to refuse planning permission for three linked developments.

1.2 The planning applications sought planning permission for three new smallholdings with three temporary agricultural worker's dwellings, a shared barn, PV array, wetlands ecosystem waste water treatment system (**W.E.T.**) and alterations to the existing highway access and private ways, as follows:

*11/02007/MFUL: Use of land for siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, poultry hatchery/brooder, W.E.T. waste water treatment system, bore hole, and alterations to existing highway access and private ways as part of a scheme for new entrants to ecological agriculture. (Plot C)*

*12/00045/MFUL: Use of land for siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, greenhouse, W.E.T. waste water treatment system, bore hole, and alterations to existing highway access and private ways as part of a scheme for new entrants to ecological agriculture. (Plot A)*

*12/00107/MFUL: Use of land for siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, W.E.T. waste water treatment system, bore hole and alterations to existing highway access and private ways as part of a scheme for new entrants to ecological agriculture. (Plot B)*

(together the "**Appeal Scheme**"). It should be noted that the proposed development no longer includes the provision of a bore hole. This was clarified to Members by way of an update report ahead of the meeting of the MDDC planning committee of 6 June 2012.

1.3 The applications were supported by the following documentation that applies generally to all three applications:

- Landscape Plan
- Transport Statement
- Flood Risk Assessment
- Management Plan (revised between validation and determination)
- Template Lease (revised between validation and determination)
- Draft Section 106 Agreement
- Research into small holder viability
- Drawing: Barn
- Drawing: Proposed passing point
- Response to Holcombe Rogus Parish Council
- Response to Objections

In addition, the following plot specific documentation was provided in support of each individual application:

- Site Location Plans
- Block Plans
- Drawing: Proposed temporary dwelling (Plot C only)
- Drawing: Poultry Hatchery (Plot C only)
- Drawing: Glasshouse (Plot A only)
- Business Plans
- Agricultural Appraisals
- Design and Access Statements
- Ecology Assessments
- Energy Statements
- Water and Waste Water Treatment Statements

- 1.4 Following a request by both parties to extend the statutory period for submission of the Statement of Common Ground and the Statement of Case, the Planning Inspectorate agreed that these documents be submitted on 26 November 2012.
- 1.5 This document comprises the Appellant's Statement of Case. It sets out the particulars of the case that the Appellant proposes to put forward at the Inquiry.
- 1.6 A draft Statement of Common Ground (**SoCG**) was provided by the Appellant to MDDC on 31 October 2012. Comments on the draft are yet to be received from MDDC and it is understood that MDDC will not be in a position to provide comments prior to 26 November 2012.
- 1.7 The draft SoCG provided by the Appellant to MDDC is a deliberately comprehensive and detailed document prepared to assist the Inspector and third parties. It addresses the following matters:-
- the description of the site and the surrounding area;
  - the site's planning history;
  - planning policy considerations;
  - a description of the proposed development;
  - other matters of agreement;
  - the determination process of the applications;
  - proposed planning conditions and S106 agreement; and
  - matters of dispute.
- 1.8 This Statement of Case has been drafted on the assumption that the agreed SoCG, when submitted, will also address the above issues. These issues have therefore not been set out in this Statement of Case to avoid duplication. Should the agreed SoCG not address the above issues, the Appellant reserves the right to amend this Statement of Case accordingly.

## **2.0 THE COUNCIL'S REASONS FOR REFUSAL**

2.1 MDDC's decision notices in respect of all three planning applications are identical. The refusals were given contrary to officer's advice and recommendations. The two reasons for refusal given in respect of each application are as follows:

*"The proposal is for a new isolated temporary dwelling in the countryside which should be avoided unless there are special circumstances. In the opinion of the Local Planning Authority, no such special circumstances have been justified and there is no essential need for a rural worker contrary to the National Planning Policy Framework.*

*If granted, based on the supporting information submitted, the proposal would set a precedent for further dwellings, in association with permaculture and agroforestry proposals, in the countryside which the Local Planning Authority would find difficult to resist".*

2.2 The Appellant will show in evidence that the reasons for the refusals do not stand up to scrutiny. It will also be shown that MDDC's decisions disregarded the significance and worth of the sustainability of the Appeal Scheme which is a fundamental part of government planning and policy, and disregarded the Appeal Scheme's benefits many of which are specifically required to be supported through planning.

### 3.0 THE APPELLANT'S CASE

- 3.1 The Appellant will demonstrate that for the reasons outlined in the three applications and supporting material the Appeal Scheme accords with the Development Plan. This was the finding of MDDC's planning officer in recommending that the three planning applications be approved. MDDC's Planning Committee cited no Development Plan policy in the reasons for the refusals.
- 3.2 Therefore, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 14 of the National Planning Policy Framework (the "**NPPF**"), the Appeal Scheme should have been granted permission without delay unless material considerations indicated otherwise. The Appellant will show that no such material considerations exist to justify MDDC's refusal of the applications. Further, it is incumbent on LPAs to look for solutions not problems and to approve applications for sustainable development where possible (paragraphs 186 and 187 of the NPPF).
- 3.3 In respect of the specific reasons for refusal the Appellant will demonstrate that with regard to the Appeal Scheme:
- (a) special circumstances exist for each of the three proposed farm businesses justifying the provision of temporary on site accommodation. The special circumstances vary for each of the three proposed farm businesses but include, inter alia, the following:

#### Essential Need

It will be demonstrated that in respect of each of the businesses there is an "*essential need for a rural worker to live permanently at or near their place of work in the countryside*". It will be shown that residential presence is needed: to deal with emergencies; for the successful running of the enterprises which require many tasks to be undertaken

throughout the year, at many different times of the day and night; for the smallholders to maintain an integrated working relationship with their land, plants and animals; to provide security; and for the smallholders' safety and well-being;

Sustainability

It will be shown that on site accommodation is integral to the delivery of the sustainability objectives of the Appeal Scheme; and

Viability

It will be shown that, without the provision of the temporary on site accommodation as envisaged by the Appeal Scheme, the proposed businesses would be unviable and therefore the benefits and contributions towards policy objectives to be derived from and provided by the Appeal Scheme would be lost.

- (b) that permitting the Appeal Scheme would not set a precedent for other applications for temporary worker's dwellings in association with permaculture and agroforestry that would prove difficult for MDDC to resist and that the applications should not have been refused on this ground. The Appeal Scheme would in fact provide an exemplar of this form of development against which any future such proposals can be compared.

#### **4.0 OTHER MATERIAL CONSIDERATIONS**

4.1 The Appellant will further demonstrate that the Appeal Scheme will positively contribute to the attainment of sustainable development in accordance with the overarching objectives of the NPPF.

4.2 The benefits of the proposed development have been assessed by the Appellant as set out in the applications and are considered to include (inter alia) the following:

The Appeal Scheme would:

- (a) Provide affordable smallholdings for new entrants incorporated in a co-operative and social enterprise thereby delivering on section 3 of the NPPF, Policies ST1 and ST3 of the Devon Structure Plan, Policy COR1 of the Core Strategy and Policy DM/23 of the draft Local Plan Part 3 and also:
- the aims of smallholdings legislation within the Agriculture Act 1970 and the government's current policy of encouraging new entrants into agriculture (Future of Farming Group 2012);
  - government policy to increase the fresh fruit and vegetable supply base (Fruit and Vegetable Task Force 2010); and
  - the government's Big Society agenda which seeks to promote and support social enterprises in their role of providing sustainable solutions to social problems.
- (b) Support the transition to a low carbon future, include energy saving measures and reduce resource use in accordance with paragraph 17 and section 10 of the NPPF, Policy ST1 of the Devon Structure Plan, Policies COR5 and COR9 of the Core Strategy, Policy AL/IN/6 of the Allocations and Infrastructure DPD and Policy DM5 of the draft Local

Plan Part 3 by facilitating three households aiming to live and provide their livelihood within the planet's environmental limits, including through: (i) the provision of a decentralized renewable energy supply, (ii) ensuring tenants achieve at least Level 4 Code temporary dwellings; (iii) soil carbon sequestration; and (iv) the reduction of fossil fuels consumed in agricultural production and distribution. Radical reductions in greenhouse gas emissions are fundamental to the NPPF (including small scale projects – see paragraph 98) and are also legally required of the UK government (2008 Climate Change Act);

- (c) Provide research on changes in the Appeal site's soil, biodiversity, and productivity as a result of conversion from conventional to ecological agriculture, on the contribution the scheme makes to the local economy and on the sustainability of the occupants (and their shift to a low carbon life) thereby contributing to the UK's knowledge industries, principally universities, in accordance with paragraph 21 of the NPPF;
- (d) conserve and enhance the natural environment by recognising the benefits of ecosystem services, minimizing impacts on biodiversity, providing net gains on biodiversity and contributing to the Government's commitment to halt the overall decline in biodiversity in accordance with paragraph 109 of the NPPF and CO9 of the Devon Structure Plan;
- (e) support a prosperous rural economy by providing sustainable rural employment, providing for the growth of enterprise in a rural area and providing for the diversification of agricultural rural businesses in accordance with paragraph 28 of the NPPF, Policies COR1, COR4 and COR18 of the Core Strategy and Policy E11 of the Local Plan;
- (f) promote flexible working practices in accordance with paragraph 21 of the NPPF;

- (g) assist in strengthening local town centres by the promotion of competition and the enhancement of local farmers markets in accordance with paragraph 23 of the NPPF;
  - (h) promote sustainable transport by providing a solution to support reductions in greenhouse gas emissions, contributing to wider sustainability and health objectives and minimising journey lengths for employment in accordance with section 4 of the NPPF, Policies ST1, TR2 and TR5 of the Devon Structure Plan, Policies COR1 and COR9 of the Core Strategy and Policy S6 of the Local Plan;
  - (i) provide for reductions in domestic waste in accordance with Policy ST1 of the Devon Structure Plan and Policy S6 of the Local Plan;
  - (j) provide improvements in soil and water quality in accordance with Policy S6 of the Local Plan;
  - (k) assist in flood prevention in accordance with Policy CO13 of the Devon Structure Plan and Policy COR1 of the Core Strategy; and
  - (l) be adaptive for climate change in accordance with Policies COR1 and COR5 of the Core Strategy.
- 4.3 The Appellant would safeguard the smallholdings for ecological agriculture through the proposed lease, Management Plan and Section 106 Unilateral Undertaking. The Appellant has asked for every additional possible condition to ensure that the Appeal Scheme is never taken out of agricultural use and to guard against occupation of any of the buildings other than in accordance with the objectives of the Appeal Scheme.
- 4.4 The Appeal Scheme is entirely reversible. Only a temporary (5 year) permission for the Appeal Scheme is sought. Further planning permission will therefore be needed to extend the life of the temporary accommodation

buildings beyond this period. This will give all parties the opportunity to assess the impacts of the Appeal Scheme before any permission is granted to continue the Appeal Scheme, an approach that accords with paragraph 111 of Circular 11/95 (Use of Conditions in Planning Permission) and draft Policy DM10 of the draft Local Plan Part 3. Furthermore, the Appellant has committed to reporting on the proposed Management Plan made binding by way of the S106 Agreement, and has agreed that any temporary planning permission be revoked should the Appellant fail to deliver in accordance with the Plan's objectives.

## **5.0 OTHER CONSIDERATIONS**

5.1 It is considered critical that the Inspector understands fully the operational, and financial as well as the wider social and economic context behind the Appeal Scheme, in terms of:

- Absence of opportunities for new entrants to ecological agriculture;
- Need to increase horticultural production as a result of a decline in land under horticultural production and increasing consumption (mostly of foreign imports);
- Constraints on the 'third' or community sector (and government) to find solutions to the above without supportive planning regulations; and
- Need to reduce agriculture's undesirable impacts on the environment, particularly greenhouse gas emissions.

5.2 Evidence on such matters will therefore be provided to the extent relevant to the Inspector's consideration of the Appeal Scheme.

## **6.0 CONCLUSIONS**

The Appeal Scheme is consistent with the NPPF and the relevant policies of the adopted Development Plan and should be approved by the Inspector.

## **7.0 DOCUMENTS REFERRED TO AT INQUIRY**

The Appellant may refer to, or put in evidence, the documents (or relevant extracts) listed below (and reserves the right to refer to any further documents at a later stage).

### **Application and Related Documentation**

- the application documentation including additional supporting documentation provided between validation and determination;
- the officer's reports and committee updates;
- representations submitted to both PINS and MDDC in respect to the Appeal Scheme;
- minutes of meetings between MDDC planning officers and the Appellant; and
- Transcript of the Committee Meeting of 6 June 2012.

### **Additional Plans, Drawings and Maps**

- Appeal Scheme site location plan;
- drawing showing extent of shared area within Appeal Scheme site;
- national cycle route near Appeal Scheme site; and
- Map of bus routes serving the Appeal Scheme.

### **Planning Policy and Evidence Base Documents**

- the Development Plan;
- emerging plan policy;
- the NPPF;
- the Regional Spatial Strategy for the South West;
- Sustainability Appraisal Scoping Report for the proposed Local Plan Part III (previously called the Development Management Development Plan Document);
- Sustainability Appraisal and Strategic Environmental Assessment of the Core Strategy adopted 2007;

- Sustainability Appraisal and Strategic Environmental Assessment of the Allocations and Infrastructure Development Plan Document;
- Rural Services in Mid Devon 2010;
- the draft Green Infrastructure Plan (Document E11) and its own evidence base;
- Circular 11/95 'Trial Runs'; and
- Mid Devon's Landscape Character Assessment LCT 3B.

### **Court Decisions**

- Ann Morgan v The Secretary of State for Transport, Local Government and The Regions, South Somerset District Council [2002] EWHC 2652 (Admin);
- Guildford Borough Council v First Secretary of State [2004] EWHC 1291 (Admin);
- Jarman v Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 1140;
- Millington v Secretary of State for the Environment, Transport and the Regions [1999] EWCA Civ 1682; and
- Petter and Harris v Secretary of State for the Environment, Transport and the Regions and Another 79 P. & C.R. 214.

### **UK Legislation and EU Directives**

- Chapter 34 Part I of the Agriculture (Miscellaneous Provisions) Act 1968;
- Part III of the Agriculture Act 1970;
- 2008 Climate Change Act;
- Article 3 and Annex 1 of the 2009 Renewable Energy Directive; and
- Schedules 1, 2, and 5 of the Welfare of Farmed Animals (England) Regulations 2007.

### **Appeal Decisions**

- APP/M2270/A/94/241023/P2 (Brickhurst Farm);
- APP/J9497/C/11/2149857 (Dartmoor Chilli Farm, Land at Rosebarn Farm);

- APP/F1230/C/04/1162420, 21, 22, 25 and APP/F1230/A/04/1159852 (Fivepenny Farm);
- APP/F1230/C/07/2055628 (Green and Pleasant, Sydling Brook);
- APP/K0805/F/06/2018725 and APP/K0805/C06/2018726 (Keval Farm);
- APP/N6845/A/09/209672 (Lammas);
- APP/K1128/C/06/2032148 (Landmatters);
- T/APP/W1145/A/99/1034645/P2 (Plants for a Future);
- APP/C1435/C/03/1114412 (Quickenwood);
- APP/J9497/C/08/2083419-28 and APP/J9497/A/08/2072884 (Stewards Community Woodland);
- APP/C/94/R3325/635596-63560 (Tinkers Bubble); and
- APP/K0805/C/07/2058055 and 2058053 and APP/K0805/A/07/2058497 (Trevalon Organic Vegetables).

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