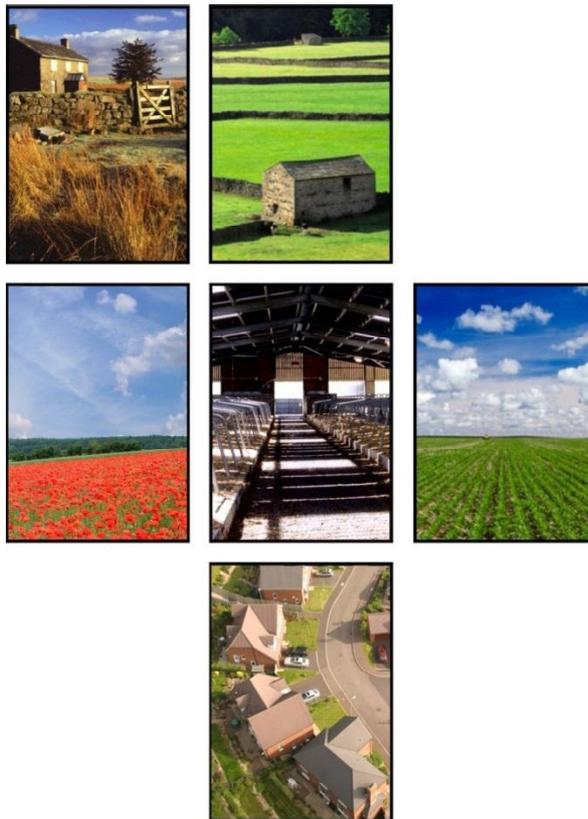


**Proof of Evidence
Appeal by Ecological Land Cooperative
Greenham Reach
Holcombe Rogus**



Prepared for:

**Mid Devon District Council
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*Date
17 December 2012*

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1.0 Introduction

- 1.1 My name is Adrian Berryman and I am a member of the Royal Institution of Chartered Surveyors having qualified in 1974. I am a fee paid consultant working solely for Acorus Rural Property Services Ltd (Acorus), my former employer, who are based at Addlepool Business Centre, Woodbury Lane, Clyst St George, Exeter. I had worked for Acorus for 7 years between 2002 and 2009, and before that for ADAS since 1974 and for most of that time had been involved in planning matters, particularly in relation to new dwellings in the countryside.
- 1.2 Acorus have been retained by Mid Devon District Council to represent them at the forthcoming appeal, giving evidence specifically on the aspect of the 'essential need to be resident' in respect of the three planning appeals referred to collectively as Greenham Reach.
- 1.3 My evidence will supplement that of Mr Peter Rowan who has been retained to cover the planning aspects of the appeal.

2.0 Essential Need

- 2.1 No matter what the merits of any case may be, when a planning application is submitted for residential accommodation for a rural worker in the open countryside, the main test that has to be satisfied is that for 'the essential need to be resident'. This test has been constant through all planning guidance issued by various Governments over recent years, and the need relates the needs of the business and not the personal needs of those running the business. If there is an essential need to be resident, there then follows other criteria that also have to be satisfied in order to fulfil the planning requirements. I do not believe that these requirements should be applied any differently in this case from any other planning application where permission is sought for a residential presence at the business.

- 2.2 Although the new NPPF is less prescriptive than previous versions of Government Planning Guidance, paragraph 55 is clear that Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances such as *'the essential need for a rural worker to live permanently at or near their place of work in the countryside.'*
- 2.3 I believe that essential need can be answered by asking the following question, 'what is likely to go wrong at the business and what are the consequences if nothing is done to rectify matters?'
- 2.4 The other important thread running through the NPPF is that of sustainability. All businesses should aim to be sustainable both in the way they operate, and also financially in being able to generate sufficient money to cover their investment requirements for new infrastructure.
- 2.5 The other consequential aspects that then have to be satisfied are:
1. How often are these problems likely to occur?
 2. Is there a full time labour requirement arising from these ventures?
 3. How well structured is the business financially?
 4. If there is a need for a worker to be resident, is there any other accommodation in the area that is suitable and available for occupation? and
 5. Are the other normal planning requirements satisfied?
- 2.6 I accept that these aspects are those covered in the previous planning guidance in PPS7, and that this document is no longer extant, but it does represent a well understood starting point for assessing 'essential need'.
An essential need might arise for example if:
1. Livestock require immediate attention to prevent injury or death occurring, or
 2. If an emergency situation arises where serious damage or harm may happen, e.g. in the case of an outbreak of fire.
- In both these aspects, the scale of the enterprise is also relevant.

- 2.7 I accept that the new NPPF makes no reference to the way that the 'essential need' is to be assessed. However, the emerging Local Plan has Policy DM/10 which deals with Rural Workers Dwellings, and I believe that this new Policy closely follows the criteria that were laid out in PPS7 at Annex A. At a recent appeal decision (APP/C1625/C/12/2171928 and 217069 dated 2nd August 2012), the Inspector helpfully set out how they thought the tests for 'essential need' should be applied. A copy of this appeal decision is attached at Acorus 1.
- 2.8 A full time labour requirement for employees is normally taken to be 275 Standard Man Days (SMDs) each being 8 hours/day, or 2,200 hours per annum. This in practice is 45 weeks work of 39hrs/week (after holidays, illnesses etc. have been deducted), plus an average of 10hrs overtime/week, i.e. 45 weeks @ 49hrs per week, or 2,205 hrs. pa¹, see Acorus 2. I think it is reasonable for the Principal in the business to show a greater commitment than their employees, so a figure of 300 SMDpa is not unreasonable.
- 2.9 All businesses need to be financially viable to be sustainable. As long ago as 1973, planning guidance said that 'It is, for example, clear that a farm (now any rural business) which could not provide an income at least equal to the minimum agricultural wage² (currently £14,114.88 from 1st October 2012, see Acorus 3) would not be viable, and an income above that level may be necessary for viability in view of the investment requirements of a farm business.³' Viability is normally expected to be achieved by year 3. This concept of viability has been carried forward through successive editions of planning advice. A copy of the Annex to DoE Circular 24/73 is attached at Acorus 4.

¹ John Nix Farm Management Pocketbook, 43rd edition, 2013, p.178

² The Agricultural Wages (England and Wales) Order 2012, p.19

³ Annex to Department of the Environment Circular 24/73

2.10 In 1992, the then Land Use Planning Unit of MAFF attempted to provide a standard methodology for financial calculations, and this is set out below.

Stage	Details of Methodology for Financial Calculation
1	Assess Gross Enterprise Outputs deduct Variable Costs to give
2	<hr/> Enterprise Gross Margins deduct
3	Fixed Costs (e.g. employed labour, machinery, depreciation, general overheads etc.) to give
4	<hr/> Net Annual Income (Farm Profit) <hr/>
5	Assess Notional Rent for owner occupied land and
6	Assess cost of dwelling , other new buildings required together with tenant's and working capital requirement charged at 2½%
7	deduct notional rent and capital costs from Net Annual Income to give
8	<hr/> <u>Return to Unpaid Labour</u> <hr/>

This document is attached at Acorus 5.

- 2.11 Regarding the possible location of any accommodation if an essential need to be resident is proved, the NPPF uses the words 'at or near their place of work', previous planning guidance had used similar words such as 'at or in the immediate vicinity' of the place of work. ADAS and Acorus have used the term 'within sight and sound of the main farmstead', or now the centre of the business. This is to convey the concept that if something untoward happens, the dwelling should be located in such a position as to be able to either see or hear that something is wrong. The precise location of any dwelling however is normally a matter to be agreed with the Local Planning Authority.
- 2.12 Whether or not the normal planning requirements are satisfied is a matter for the Local Planning Authority.

3.0 The Site Chosen

- 3.1 The land chosen for this site is in an area shown on the provisional Agricultural Land Classification map as predominantly Grade 3. This mapping was originally done using the 1:63,360 scale Ordnance Survey map and a survey on this scale was essentially of a reconnaissance nature. For this and other reasons, the exact grade of areas less than about 80ha cannot be determined without a detailed soil survey being carried out, see ALC Explanatory Note attached at Acorus 6.
- 3.2 The Soil Survey maps for the area indicate that the soils on the flatter land adjacent to the road are likely to be within the Neath Association of carboniferous sandstone and shale derivation, defined as 'well drained fine loamy soils, often over rock. Small patches of similar soils with slowly permeable sub soils and slight seasonal water logging.' Their use is typically dairying and some cereals and stock rearing, some early potatoes in Dyfed.'
- 3.3 The soils within the valley are likely to be part of the Hallsworth 2 Association of drift from carboniferous sandstone and shale, defined as 'slowly permeable seasonally waterlogged clayey, fine loamy and fine silty

soils.' Their use is typically permanent pasture for stock rearing and dairying with some woodland and wet moorland habitats. Soil Survey details are attached at Acorus 7.

3.4 From this description, the site would not seem to be particularly well chosen for the many of the intended uses.

4.0 Ecological Cooperative Management of the Sites

4.1 I accept that the Cooperative want to offer prospective tenants an opportunity to manage land under a permaculture system and that the proposed business plans submitted by the prospective tenants cover ideas that they believe in.

4.2 However, in assessing the proposals against the criteria for establishing whether or not there is an essential need to be resident, the same criteria have to be applied to these cases as to other planning applications where a dwelling or temporary residential accommodation is required.

4.3 I have therefore applied the same criteria to the business plans put forward as to the many other cases I deal with, both for prospective applicants and for Local Planning Authorities.

5.0 The Proposed Businesses

5.1 I now propose to evaluate each of the proposals against the criteria outlined above. These comments are based on the assumption that these people are the prospective tenants, if this changes and new tenants and proposals come forward, they will need a new evaluation.

5.2 For Plot A – Mr Boyle (12/00045/MFUL)

5.2.1 Key points from his appraisal:

1. Organic production - though not certified,
2. Production and transportation to be as fossil free as possible,
3. Offer a 1 year apprenticeship, plus seasonal volunteers,
4. Produce will be grains, vegetables, fruit, nuts, apple juices and willow baskets and chairs,
5. 1 acre of land devoted to summer and winter vegetable boxes from year 3,
6. Fruit boxes introduced from year 3,
7. 2 acres of orchard (under agroforestry) for fruit, nuts, herbs and perennial vegetables, apple and other fruit juices,
8. 0.5 acres for growing grains (oats, barley and rye), and
9. 1½ acres of land for willow production, baskets, chairs and gift items.

5.2.2 Looking at the essential need to be resident, it is first justified by having 'hens and ducks' on the site. No indication is given as to numbers, though the plan includes a reference to the coops, each 1.8 x 0.9m in size, i.e. 1.62m². With laying hens stocked at 9 birds/m², this equates to 14-15 hens, and with breeding ducks at 3 ducks per m², this equates to 4-5 ducks. I do not believe that with numbers as low as this, there is an essential need to be resident.

- 5.2.3 The second point is raising seedlings in a polytunnels. Here, I accept that the control of the environment in a polytunnels does on occasion need an immediate presence to deal with changing conditions within the tunnel, particularly in the spring and autumn, there can be a need to respond to changing conditions at short notice. In my opinion though, these situations will not be so frequent over the whole year that they will equate to an essential need for a full time residential presence on site.
- 5.2.4 The low profit nature of agriculture today does not give rise to any need to be resident on site, and in my opinion, neither does the harvesting of crops. This is an aspect that may require an early start or a late finish which is expected in agriculture, but there is no need to respond at short notice.
- 5.2.5 Security and stock protection is an aspect that is of concern to many farmers, but has never been considered sufficient on its own to justify a residential presence on site.
- 5.2.6 Lack of local accommodation and the desire to have a fossil free transport policy similarly are personal points, they do not arise from the needs of the business.
- 5.2.7 Finally agroforestry, I do not believe that the squirrel problem identified can be overcome by residing on site. I do not believe that dogs will have any significant effect, as the dogs will be on the ground and the squirrels in the canopy of the trees.
- 5.2.8 Regarding the financial forecasts, year 3 (year ended 31/10/14) suggests a gross profit of £10,750 with overhead costs of £4,800, giving an operating profit of £5,950. Bearing in mind that the gross profit is well below the minimum wage for agricultural workers, and that earlier years had made a loss, I do not consider that a business operating at this level of profitability can be regarded as financially sustainable.

5.2.9 If the methodology set out in Acorus 4 is applied to the budgets, it gives the following figures:

Year 3 calculations			£:p
Income			£11,450.00
Less variable costs			£700.00
Gross Margin income			£10,750.00
less Fixed costs			£4,800.00
Net Annual Income (Farm Profit)			£5,950.00
Less Capital costs			
Notional rent (£65,000 @ 2.5%)		£1,625.00	
Capital investment			
Year 1	£4,910 @ 2.5%	£123.00	
Tenants and working capital, say		£5,000.00	
Cost of dwelling		£100,000.00	
Total capital costs @ 2.5%		£106,748.00	£2,668.70
Return to Unpaid Labour			£3,281.30

5.2.10 In conclusion therefore, I do not consider that the case has been made to support the view that there is an essential need to be resident.

5.3 For Plot B – Mr Stanton and Ms Long (12/00107/MFUL)

5.3.1 The key points from the appraisal are:

1. The principal enterprise in the first two years is the production of quality salad bags and culinary herbs,
2. Keeping of bees, 5 hives in year 1 rising to 25 in year 2,
3. establishing a flock of 40 Maran hens for egg production,
4. From year three on there will be salad dressing ingredients, and fruit juices, and
5. In future years (5-10) organic cider vinegar as a salad dressing.

- 5.3.2 In this case I do not consider that any argument has been made to be resident. The business plan put forward is just a review of the proposed enterprises with some budgets at the end. I see no case where the criteria set out in PPS7 have been addressed. As with Plot A, there are proposals for a polytunnel, and I accept that there will be occasions when an immediate response is required to control the environment within the tunnel. Again though, for the reasons set out at paragraph 5.2.3 above, I do not consider that this equates to an essential need for a full time residential presence on site.
- 5.3.3 The poultry will only number a maximum of 80 hens with some chicks, 300 in total, again numbers far too small to justify residing on site.
- 5.3.4 There is a work schedule showing how typical days may be filled but in my opinion this is not the same as detailing why there is an essential need to be resident. Again, I accept that some days will involve long hours of work, that is the nature of agriculture, but spending much of the day on occupations such as weeding, mulching, cleaning out hens or delivering salad bags does not justify being resident.
- 5.3.5 The financial figures are presented as a running cash flow, and for year 3 (starting February 2013), the total receipts are £16,109 and the cash paid out is £11,681, give a surplus of £4,428. Even the planning appraisal submitted as part of the application documents concedes that the net profit by year 5 will only be £11,900, well below the minimum wage for agricultural workers. Again, I do not consider that a business operating at this level of profitability can be regarded as financially sustainable.
- 5.3.6 In conclusion therefore, I do not consider that the case has been made to support the view that there is an essential need to be resident.

5.4 For Plot C – Mr & Mrs Guskov (11/02007/MFUL)

5.4.1 The key points from the appraisal are:

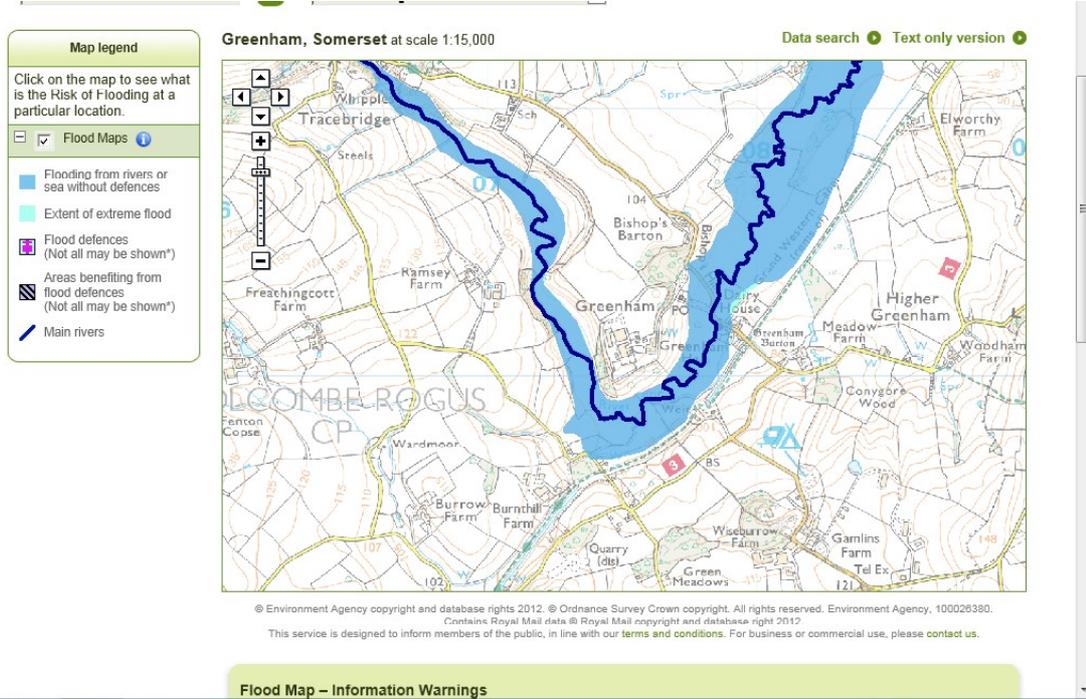
1. A 1ha market garden managed on a 5 year rotation, with 2no polytunnels (5 x 20m),
2. A polytunnel for seed propagation,
3. A 1ha agroforestry enterprise,
4. Processing surplus fruit and vegetables into preserves,
5. Sheep grazing on the steeper land, and
6. 0.3ha for poultry use, 80 laying hens.

5.4.2 Again, in this case with the polytunnels I accept that there will be times when an immediate response is required to control the environment within the tunnels, but again, in my opinion though, these situations will not be so frequent over the whole year that they will equate to an essential need for a full time residential presence on site.

5.4.3 This plot is the most difficult area with steep slopes and land within the flood plain, as shown on the Environment Agency flood map, see below.



Environment Agency Flood Map River Tone



Reproduced from the Ordnance Survey Super Plan map by permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office, © Crown Copyright. All rights reserved. Acorus Licence no. AL 100020449.

5.4.5 In this case I do not consider that any argument has been made to be resident. The business plan put forward is just a review of the proposed enterprises together with some budget calculations. I see no case where the criteria set out in PPS7 have been addressed. As with Plots A and B, there are proposals to erect polytunnels, and I accept that there will be occasions when an immediate response is required to control the environment within the tunnels, but again, in my opinion though, these situations will not be so frequent over the whole year that they will equate to an essential need for a full time residential presence on site.

5.4.6 The poultry will only number a maximum of 80 hens with some chicks, 300 in total, again numbers far too small to justify residing on site, but again, in my opinion though, this small number of poultry will equate to an essential need for a full time residential presence on site.

5.4.7 There is a labour projection showing the main work areas through the year but in my opinion this is not the same as detailing why there is an essential need to be resident. Again, I accept that some days will involve long hours of work, that is the nature of agriculture, but spending much of the day on occupations such as pruning and coppicing, weed control or harvesting produce or attending Farmer's Markets does not justify being resident.

5.4.8 The financial figures are again presented as a running cash flow and for year 3 (p.16), the total receipts are £16,867 and the expenditure is £22,490, giving a loss of £5,623. If the value of the family labour (£7,000) is added back in or deducted from the costs, the margin, instead of being a negative figure is +£1,377. Again, I do not consider that a business operating at this level of profitability can be regarded as financially sustainable.

5.4.9 In conclusion therefore, I do not consider that the case has been made to support the view that there is an essential need to be resident.

6.0 Other General Points

- 6.1 All the sites are currently bare land, and as each is less than 5 hectares in area, they only benefit from the limited permitted development rights available under Class B of the General Permitted Development Order, see details at Acorus 8.
- 6.2 In all cases, much of the proposed argument to be resident relates to the personal wishes of those running the businesses, not to the needs of the business itself. As mentioned earlier in this proof, if new tenants are appointed and they have new management proposals, a fresh evaluation will be required and conclusions may change.
- 6.3 There is a peppercorn rent being asked in each case of £1pa, paragraph 2.2 of the tenancy agreement. If the tenants are purchasing the leasehold, this should be clearly stated and shown in the budget calculations.
- 6.4 Much of the proposed income is a result of 'added value' rather than core agricultural production. Although this may be acceptable under the new description of a 'rural business', it does not add any weight to the argument for being resident on site.
- 6.5 As the site has been owned for some time now, I would expect there to be some evidence of the 'intention and ability' to develop the site, but there is none. I accept that the individuals running the businesses will be tenants rather than owner occupiers, but a licence could have been granted allowing them to enter the land and start work.

7.0 Conclusion

- 7.1 This appeal relates to the three planning applications submitted by the Ecological Land Cooperative Ltd in respect of the proposed businesses at Greenham Reach.
- 7.2 There has never been any problem with individuals wanting to practice a form of agriculture that is different from the commercial norm, and that is still relevant to these cases. However, the need to be resident on site has always been regarded as an 'exception' or a 'special case'. Although PPS7 has now been replaced by the NPPF, the same criteria can be used to assess cases as they provide a well tried and understood starting point.
- 7.3 In these cases, I do not believe there is an essential need to be resident because:
1. The enterprises where a need to respond urgently are minor in scale, or the need will only occur at limited periods over the year,
 2. It is unclear that the businesses will all be full time, generating a labour requirement of at least 275 and preferably 300 SMDs per annum, and
 3. The limited amount of income generated is not sufficient to state that the businesses are viable and sustainable in the longer term.
- 7.4 For the reasons stated above, I do not believe the case for temporary residential accommodation has been made.



Adrian Berryman, MRICS
Acorus Rural Property Services Ltd
17th December 2012