

APPEAL BY ECOLOGICAL LAND CO-OPERATIVE LTD

CLOSING SUBMISSIONS OF MID DEVON DISTRICT COUNCIL

31 January 2013

1. The Council repeats its opening for its policy stance and the background to the appeal.
2. The Council says the issues are:
 - a. The approach to policy: on that:
 - i. Apply the Development Plan unless material considerations indicate otherwise.
 - ii. The Development Plan is set out in the Statement of Common Ground, most immediately the relevant policies are ST5 and COR18.
 - iii. COR18 is not out of date: it has full weights as a result of paragraph 214 of the NPPF. This is supported by the appeal decision (land at Whitemoor Lane, Cadbury).
 - iv. The Council's stance is supported by DM/10 and paragraph 55 of the NPPF ("essential need").
 - v. Whether the "sustainability credentials" of the scheme amount to "special circumstances".
 - b. On the last point, the Council says:
 - i. The matters put forward are not "special".
 - ii. They are either matters dealt with in other legislation and therefore not material planning considerations or issues arising under Development Plan policies or the NPPF. As such, they should be taken into account as a matter of course by developers when making applications.
 - iii. These matters (set out in our Statement of Case #4.2) may well be material considerations, but as ordinary Development Plan / NPPF policies, they are not "special".
 - iv. It will be noted that the "special circumstances" relate to what could be called site specific matters (e.g. optimal use of a

particular heritage asset). This makes it less likely that general issues of sustainability could be regarded as “special” circumstances.

- v. If it was necessary, to obtain a permission for dwelling in the countryside, it was only necessary to show that the proposal met a number of policies on sustainability (which?/ how many?), the potential for proliferation of dwellings in the countryside (a generally unsustainable use of land) would be great and the primary object of the policy (to restrict development in the countryside) would be thwarted.
 - vi. There is nothing in the NPPF to suggest that control has been so relaxed that the mere fact that the development (or any attached business) is sustainable is sufficient to be “special” reasons for a grant of permission.
 - vii. It would have been easy for the NPPF to say that some form of “sustainable” development should amount to “special” circumstances. It has not done so; it may be that this is a “localism” matter which should be left to LPAs to deal with (e.g. as in Pembrokeshire).
- c. Whether there is an essential need which, it is accepted, includes both a functional and a financial test (see also Bird Farm, Stancombe AD-Acorus 1.
 - d. The approach is to apply the relevant Development Plan policies – ST5/COR18 – which correspond with paragraph 55 of the NPPF and in particular the “essential need” test. To this must be added the emerging policy which is the Council’s preferred method of “fleshing out” paragraph 55 of the NPPF.
 - e. Material considerations which it is suggested might indicate otherwise are the fact that the NPPF now gives non-exclusive categories of circumstances permitting development in the countryside. Sustainable development, particularly with a suggested strong promotion of sustainability principles, is suggested as an exception.
 - f. The problem with this approach has been dealt with above in part but it will be noted that the definition of sustainability is intended to be a

comprehensive one. It is set out in paragraph 6 of the NPPF and means the policies in paragraphs 18 to 219. It therefore includes paragraph 55 applying the “essential need” test – but not extending the exceptions further.

- g. It is sustainable to restrict development which does not fulfil an “essential need”.

Essential Need

- 3. The Council says that on all the evidence there is no functional need because:
 - a. The tasks which have been set out are those carried out daily by horticulturalists and farmers. They are carried out by those who live off-site (evidence of Berryman and see Ms. Laughton at 8.3).
 - b. A number of tasks (see xx. Ms Laughton) can be dealt with at or about the same time.
 - c. The day is long but that does not mean that tasks are all carried out by one person.
 - d. The appellant(s) unnecessarily handicap themselves by insisting on using particular apparatus (woodburning stoves to heat polytunnels) where electricity and a bio-diesel generator as a back-up would be labour saving and more appropriate.
 - e. The same is true with the approach of rearing the chicks. IT seems curious that the “hair-shirt” approach to using a boiler that requires stocking twice a night should be preferred to more user friendly alternatives (electricity above).
 - f. There is no real issue over security of livestock or produce – fences are the first line of defence. The most vulnerable times are dawn and dusk when (resident or not) someone will be there – letting out or shutting up poultry.
 - g. However desirable research is (and there are existing projects up and running), it is not, in itself, an aspect of functional need. Research into the way in which sustainable agricultural works can be conducted without site an on-site presence.

Financial Need

4. This can be seen either as an aspect of viability (Ms. Laughton xx) or in terms of emerging policy DM/10 which refers to a rural enterprise with evidence of “sound financial planning”.
5. Whichever test is applied, the Council says that the profit and loss forecasts do not give a true picture of the businesses. As accepted by Ms. Laughton xx.
 - There were left out of account important expenses:
 - i. Cost of land
 - ii. Cost of buildings
 - iii. Repayment costs of loans (where appropriate)
 - iv. Cost of living (where appropriate)
 - v. Cost of capital employed to set-up
 - vi. Failure to carry forward losses
 - vii. And or run the businesses.
 - The effect of not taking these factors into account was illustrated in the case of Plot C where the overall profit turned into a loss of £6,496.
 - It is accepted that if the deducted “growers’ remuneration” in Years 3,4 & 5 is factored back in this gives an overall profit of £25,504 over 5 years (c. £5,100 pa).
 - But this ignores the losses in Years 1 & 2 – no remuneration and no profit – and how the occupants live in that period. No other aid is built in.
 - It does not take account of payments for land and for buildings or for loan costs.
 - To suggest that one can ignore these because of accounting conventions (balance sheet rather than P&L a/c) is to forget that in the real world of financial planning real people have to live and to account for the money they expend.
 - Ms. Laughton (as the expert in financial appraisals) was clear that these matters should have been taken into account. She regretted that they had not been. Her evidence (as the expert dealing with these assessments) should be preferred on this issue.

- The effect on the other sites can be briefly stated:
 - i. Plot A: no account of cost of land, bank loan and premium or capital invested
 - ii. There is no obvious means of living for years 1 & 2: loss or minimal profit
 - iii. The overall profit over 5 years (taking into account drawings as part of profit and losses) is £7,131 which is £1,426 pa – without the other matters listed
 - iv. Plot B is not proceeding: it is difficult to quantify
 - v. No drawings are shown and profits over 5 years (taking into account losses) are £8,722 which are £1,744 pa
 - vi. The matters referred to above (land etc.) are not quantified
- 6. This position is extremely unsatisfactory. On any basis it is difficult to conclude that there has been “sound financial planning”. The appellant’s own expert cannot support the figures put forward without considerable amendment. She did not say, xx, that these are accounting matters that should be left to others; rather that there were (major) omissions which meant she could not support the figures as they exist.

Miscellaneous Matters

- 7. There is no proper evidence in support of Plot B. The smallholders whose plan is crucial to its success have withdrawn. There is no guarantee that any replacement will adopt their plan. There is no proper evidence to support a functional / financial need.
- 8. COR18: It commands Development Plan weight; it is not out of date (#214 NPPF). (There is no other NPPF provision that indicates it might be.) Even if paragraph 215 of the NPPF is applied, a significant weight should be given to this policy. It is substantially in accordance with paragraph 55 of the NPPF; the Core Strategy, as is apparent, was prepared on the basis of sustainability principles, (see COR1, COR2 (a) (b) (d), COR5, COR7).
- 9. As has been indicated already, the LPA does not doubt that “sustainability credentials” are a material factor. What it disputes are that they are “special circumstances”. It adds that the most relevant policies are those directly

connected to the substance of the application namely, the residential use of the site and the “essential need” for a dwelling there. As Ms Wangler makes clear in her proof without the residential element this, and other scheme, cannot proceed (7.2). The issue of “other schemes” is not a material consideration of this appeal.

10. The authority and principles in Petter & Harris are not disputed. It was a financial need issue: functional need was not disputed there. In our case it is accepted (Ms. Laughton) that financial need as evidenced in the business plan is very much in issues. This case does not assist here.
11. The LPA submits the appeals should be dismissed.

Peter Wadsley, Council for Mid Devon District Council

31/01/2013